

VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from York County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACKLEEN ELIZABETH MULLEN,

APPELLANT

APPELLATE CASE NO. 2024-001302

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1 Q. More than one?

2 A. Yes.

3 Q. Okay. Now a question this jury is going to be
4 interested in -- and I imagine, why would someone in an
5 abusive relationship stay in a relationship if the abuser is
6 not only abusing her, but is harming the children? Why would
7 they stay, in your experience?

8 A. That is -- that is -- again, a very complex
9 question. When the -- the way I -- I described it to you
10 earlier, and I described it to you guys, when there is this
11 phenomenon of coercive control in this relationship, lots of
12 power and control, the victim is really trying to stay
13 three steps ahead of the abuser in order to minimize any
14 risk. What she is doing many times is trying to read what is
15 the next thing that's going to happen with the -- in -- in
16 this relationship. And if there has been an incident where
17 there has been abuse to the child -- again, that cycle of
18 violence is -- there's that explosive incident and there's
19 that honeymoon period.

20 There is this connection sometimes where the victim
21 really feels responsible for the abuser and feels like,
22 "Okay, this may not have been an okay thing, but there are
23 excuses for this, there are reasons for this." He's probably
24 given her reasons for this. He may have even made her feel
25 responsible for it. And so this, "We" -- "it's us against

1 the world" kind of mentality is "We will deal with this." It
2 very well could be that there is a feeling of shock. "I -- I
3 don't know how to handle this. I don't know what to do to --
4 to mitigate this. I -- I may have called law enforcement
5 before and -- and they didn't help me," or "I may call law
6 enforcement and it -- it -- it may be turned on me." There
7 can be many -- many reasons why someone is not necessarily
8 going to report child abuse from this aggressor.

9 Q. Describe to this jury what a trauma bond is.

10 A. So a trauma bond is another one of those terms
11 that you've probably heard bounced around. What that
12 basically is, is that when there are a group of people who
13 come together and bond over something horrible that happens.
14 You think of soldiers at war. "We went through this together
15 and we have this kinship that nobody else has together.
16 Because we went through this together." There are -- this --
17 there is this -- these -- these theories that also say that
18 victims of domestic violence and their partners have a trauma
19 bond. It is a bond that is unique to any other kind of bond,
20 and it is that they are together in this against whatever it
21 is. And usually it's the rest of the world because nobody
22 understands them. And so there is this -- these deeper
23 feelings of connection than you would have with anybody else
24 because you've gone through this. It's almost like the --
25 the -- the hardships of our relationship have made us

1 stronger -- have made the relationship stronger.

2 Q. Okay. So, I mean, in your experience, is often
3 the abuser in a domestic violence relationship may get in
4 trouble for the abuse with law enforcement, right?

5 A. Correct.

6 Q. Do you find, in your experience, that often the
7 victims will try to prevent the abuser from getting in
8 trouble?

9 A. Correct. Yes.

10 Q. And why? Why?

11 A. Well, because that's the person they -- they love
12 and they don't want them to have any pain come to them. They
13 just want the -- they want the abuse to stop. So they don't
14 necessarily want that their partner to get in trouble or bad
15 things to happen to them. They just don't want it to happen
16 anymore. So the -- it's interesting there -- there was some
17 studies that were done where folks listened to jailhouse
18 conversations with victims of domestic violence and their
19 perpetrators. And there was a -- a -- a -- a similar thing
20 that would happen. Number one: When they would talk with
21 them right after -- they -- the -- the abuser was in -- in
22 jail for abuse, and they would call their partner and the
23 first thing that they would do was minimize the abuse that
24 had occurred. And then the second thing was to garner
25 sympathy from the -- the victim in order to get them to -- to

1 feel sorry for them and to help them.

2 Q. Okay. Do you find when an abuser is in criminal
3 trouble due to the abuse that they will promote -- I mean, if
4 they're promoting a lot to try to help themselves, does the
5 victim sometimes go along with that in this -- in this
6 domestic abuse?

7 A. Yes. It sounds -- yeah, it sounds like, you know,
8 it's -- you would think, "There's no way I would -- I would
9 ever go along with that." What I've said about living in a
10 -- a relationship where there is this consistent control --
11 this coercive control, it's like living in a place called
12 Crazytown. Crazytown, the mayor of Crazytown is the abuser
13 and calls all the shots, and you got to do what it is that
14 the mayor of Crazytown does. This is just the culture of the
15 town, or else things will go bad. Now, the victim uses a
16 host of many things to try to keep that from happening, that
17 ultimately they're going to have to either go along with the
18 mayor of Crazytown or bad things will happen to them. And it
19 -- and -- and -- and they have been threatened that -- and --
20 and many times that bad things do happen to them if they
21 don't go along with it.

22 Q. Ms. Callaham, I know we've talked about the risk
23 that non-biological children are to an abuser. In your
24 experience, do you ever -- have you come across situations
25 where the abuser tries to drive a wedge or convince the --

1 the -- the woman about the lack of value of their children to
2 try to gain control or power in that situation?

3 A. Well, so what -- you know, in that dynamic, yes,
4 the answer is "Yes." In that dynamic, what may be happening
5 is that what the victim is trying to do is trying to mitigate
6 the tension, trying to do whatever she can do to make him
7 happy. And so if he's going to be complaining about
8 something, she's going to be on his side and she's going to
9 -- the ultimate goal is to try to mitigate any tension in the
10 relationship. So if going along with what he's saying seems
11 to keep violence from occurring, then that's one of the --
12 the -- the tactics she may use to try to keep the peace.

13 MR. B. SHEALEY: Okay. Beg the Court's indulgence?

14 THE COURT: Uh-huh.

15 MR. B. SHEALEY: Thank you, Ms. Callaham. Please
16 answer any questions the Prosecution has for you.

17 THE WITNESS: Sure thing.

18 MR. ANTHONY: Beg the Court's indulgence for a moment?

19 THE COURT: Sure.

20 CROSS-EXAMINATION

21 BY MR. ANTHONY:

22 Q. Hey, Ms. Callaham.

23 A. Hey.

24 Q. You testified that there are some risk factors
25 that make -- in a -- in a domestic violence relationship,

1 that there's some risk factors that make it more likely that
2 a child will be killed in the -- in the context of the
3 relationship?

4 A. There are risk factors where the child -- yes.
5 Yes -- yes.

6 Q. Okay. And you -- I mean, you -- I believe, you
7 said that -- that -- that a younger child and a disabled
8 child is more likely to be killed in a domestic violence
9 relationship than out of a domestic violence relationship, in
10 a non-domestic -- than in a non-domestic violence
11 relationship; is that correct?

12 A. Wait, what -- what was the question again?

13 Q. You were saying that a -- that the risk factors
14 for a child not being killed in a domestic violence
15 relationship are higher for disabled children and younger
16 children?

17 A. Correct.

18 Q. Okay -- okay. Would -- is it -- is it also true
19 that the risk factor for a disabled child to be -- to be
20 killed is just higher in -- in general by the -- by a -- a
21 parent?

22 A. I don't have those statistics.

23 Q. You don't have? Okay. And you testified -- well,
24 you -- you came in to testify today, and all you know about
25 this case is the document that Dr. Knight prepared, correct?

1 A. Correct.

2 Q. So you don't know any of the particulars of this
3 case?

4 A. I do not.

5 Q. And you have -- you just talked a lot about
6 general domestic violence situations and giving the jury
7 information about those situations?

8 A. Correct.

9 Q. But as far as what was going on with Ms. Mullen
10 and her boyfriend, like, you don't know anything about that
11 other than what you -- like, a paragraph in a report you got
12 from somebody who works for the Defense team?

13 A. Correct.

14 Q. Okay -- okay. And you talked about a -- a trauma
15 bond, like, two people sort of feeling like they're facing
16 the world together?

17 A. Uh-huh.

18 Q. Okay. But you are not saying that having a trauma
19 bond with somebody would excuse criminal behavior?

20 A. No.

21 Q. Okay. I mean, that is not a defense to a crime
22 that you were bonded with a -- a person.

23 A. No, it just explains counterintuitive behavior.

24 MR. ANTHONY: Okay. All right. Okay. If I can have
25 one moment?

1 THE COURT: Uh-huh.

2 BY MR. ANTHONY:

3 Q. And just -- you -- you said that -- I get that,
4 generally when we're -- we're talking about these -- these
5 type -- type of situations, we put the male in the role of
6 the abuser and the female in the role of the -- the victim.

7 A. Uh-huh.

8 Q. But that is not always the case, correct?

9 A. Correct.

10 Q. I mean, it -- it is possible to have relationships
11 where the female is -- is the abuser --

12 A. That's -- that's correct.

13 Q. -- and the male is being abused?

14 A. That's correct. It's less likely, but it is
15 correct.

16 Q. But it is possible?

17 A. It's possible.

18 Q. Okay. All right. And did -- and you -- you
19 testified that you were getting -- you -- you were retained
20 by the Defense to come over and testify?

21 A. Yes.

22 Q. All right. How much were you getting paid?

23 A. I'm getting paid 250 an hour, I believe.

24 MR. ANTHONY: Okay. All right. All right. Thanks.
25 That's everything on cross.

1 MR. B. SHEALEY: That's brief (inaudible).

2 THE COURT: Okay.

3 RE-DIRECT EXAMINATION

4 BY MR. B. SHEALEY:

5 Q. Ms. Callaham, regarding this trauma bond, you just
6 testified that it -- it can explain some nonintuitive
7 behaviors, right? In a domestic --

8 A. Counterintuitive.

9 Q. Counterintuitive?

10 A. Counterintuitive, yes.

11 Q. Okay.

12 A. Yeah.

13 Q. So behaviors that may not necessarily be -- what -
14 - intuitive in terms of what personal --

15 A. It would be the opposite of what you think you do.

16 Q. Right. Okay. And that is a unique dynamic within
17 a domestic abusive relationship, right? Trauma bond?

18 A. Not trauma bond, but -- but no, not necessarily.
19 But it -- it definitely does occur in domestic violence.

20 Q. Right -- right. Because we mentioned other places
21 that it can exist.

22 A. Correct -- correct.

23 Q. Just to confirm again, when there's domestic abuse
24 present, the children that are most at risk are the
25 non-biological children of the abuser, right?

1 A. Yes.

2 Q. That are younger, right?

3 A. Yes.

4 Q. Of a different gender?

5 A. Yes.

6 Q. And have disabilities?

7 A. Correct.

8 MR. B. SHEALEY: Thank you.

9 THE COURT: You may --

10 MR. B. SHEALEY: Nothing further, Judge.

11 THE COURT: You may step down. Everybody think it's a
12 good time for a lunch break?

13 MR. B. SHEALEY: Yes, sir.

14 THE COURT: All right. It's almost 12:35 by the clock
15 in the courtroom. You all be back in the jury room just
16 before 2:00. We'll try to be ready to start at 2:00 sharp.
17 Don't talk about the case. See you after lunch.

18 (Jury exits room at 12:35 p.m.)

19 THE COURT: Anything else we need to pull on the record
20 before we break?

21 MR. ANTHONY: No, sir. Not from the State.

22 THE COURT: Okay.

23 MR. L. SHEALEY: No, your Honor. Not -- not currently.

24 THE COURT: Okay. All right. See you all after lunch.

25 (Off the record from 12:36 to 1:57 p.m.)

1 THE COURT: You all did good on getting back a
2 few minutes to 2:00. 1:58 by my clock right there.
3 Excellent job. Call your witness.

4 MR. L. SHEALEY: Your Honor, at this time, the Defense
5 would rest.

6 THE COURT: All right. Any rebuttal before we take up
7 motions?

8 MR. ANTHONY: If we could just have a second.

9 THE COURT: Okay.

10 MR. ANTHONY: No, sir. We -- no -- no -- no reply
11 case.

12 THE COURT: All right. I didn't know that. So you all
13 need to step back in the jury room. I got a couple things to
14 put on the record. I had no idea. So anyway, don't talk
15 about the case, but we're good.

16 (Jury exits the room 1:59 p.m.)

17 THE COURT: All right. You all.

18 MR. L. SHEALEY: Your Honor, are you -- I guess as part
19 of my directed verdict motion, I -- I probably would need to
20 know your ruling on the pending motion, but...

21 THE COURT: The two -- the two issues regarding the
22 references to DJJ and account of the jail. I would like to
23 give an instruction to the jury about that's not an issue to
24 be discussed. And so I'm going to deny the motion for a
25 mistrial. The basis that it was-- said DJJ, the Court cannot

1 make a finding as to what the jury thought that may or may
2 not have meant without asking them, and I've not asked.

3 I was troubled by the cumulative aspect of the account
4 of the jail, mentioning the incarceration -- I referenced the
5 incarceration, and then the reference to the DJJ referencing
6 prior trouble with the law. I don't think that rises
7 sufficiently to a grant of mistrial. However, if you want me
8 to add that into my jury instructions that custody status is
9 not an issue to be discussed, nor is it probative of
10 anything. I'll be glad to do that.

11 MR. L. SHEALEY: Probably would be fair in your jury
12 instructions. Yeah. Case law, and, like, a curative, you
13 know, seems to say that I don't -- although I need it, I
14 don't want you to highlight it.

15 THE COURT: I'm -- I -- and I'm always concerned about
16 -- hey, did you all hear what they just said?

17 MR. L. SHEALEY: Right.

18 THE COURT: I mean, it's very important that you not
19 pay attention to it.

20 MS. L. SHEALEY: Right.

21 THE COURT: I mean, it's like with the Wizard of Oz,
22 don't pay attention to the guy behind the green curtain.

23 MR. L. SHEALEY: That -- yeah, that tends to put
24 Defense in a bind, but that's part of a jury instruction. I
25 wouldn't object to that, but...

1 THE COURT: I think that's the best place to put it,
2 particularly now that you all are at this point in the trial.

3 MR. L. SHEALEY: Yes, sir. All right. Well, just
4 moving on to my directed verdict motion. We would renew
5 that, your Honor has heard the State's case. You've now
6 heard our case. As you know, directed verdict concerns
7 itself with any direct evidence or substantial circumstantial
8 evidence. Again, I'm going to cue in on the aiding and
9 abetting aspect indictment for homicide by child abuse. I
10 brought up the State v. Lewis case before. I'm just going to
11 go ahead, if I can give you a hard copy. I don't know if you
12 have one.

13 THE COURT: I'm sure I don't. February 13th?

14 MR. L. SHEALEY: Yes -- yes, sir. February 2013.
15 Okay. You got there?

16 THE COURT: Uh-huh.

17 MR. L. SHEALEY: In that case, it addressed essentially
18 what I'm asking you to address right now. And Mr. Lewis's
19 counsel in a homicide by child abuse, where he had
20 two co-defendants, both were blaming each other. Not unlike
21 this case. Mr. Lewis asked for a directed verdict on the
22 aiding and abetting portion of the homicide by child abuse.
23 And that was the main issue taken up on that appeal. The
24 court deemed that it was an error. This was out of Laurens
25 by colleague -- Judge Addie, that it should have been a

1 directed verdict. And that is for the reasons that I would
2 say are -- are keenly similar to this case and that the
3 person has to knowingly aid and abet.

4 Number one: The State's theory is not that she's an
5 aider or an abettor, it's that she's the principal that has
6 come out throughout their case -- hasn't been any evidence
7 that she's an aider or an abettor. Simply to be present at a
8 crime does not make you an aider or an abettor, you have to
9 -- as -- as an all-accomplished liability, you know, through
10 some common design aid, or abet, or assist in the commission
11 of the crime through an overt act. Again, an overt act, it
12 makes clear that is required, which necessarily quotes
13 "Excludes the possibility of being held liable for failure to
14 act."

15 And in that case, the State submitted that Mr. Lewis's
16 failure to act satisfied that statute and -- and the court
17 makes clear it doesn't. So in the kind of inconsistent
18 theories of liability here by the State, they say she's the
19 killer, she smothered a baby, she committed blunt-force
20 trauma, the brief hours while Mr. Williams was at work. But
21 if you don't believe that, then it's her failure to provide
22 adequate medical care, or get medicine, or take her -- call
23 police. That's -- that's what is -- makes her guilty of
24 aiding and abetting. And so that's lack of action, and that
25 cannot be evidence sufficient to get that aspect of the

1 statute to the jury or the Lewis case.

2 So I -- again, would -- would submit that as my
3 request, to not present that to the jury and that would be
4 that. I would renew all motions, objections, particularly
5 the three mistrial motions. I understand you've made very
6 clear reasons for that. Particularly the sex acts elicited
7 there by -- in question of James Howerton that he didn't
8 recall, but were impeached through an email that we hadn't
9 received. Just to simply say that she is gratifying her
10 sexual lust and desires while her baby is circling the drain.
11 I've already commented on that. And I do think regarding the
12 mistrials, it is the cumulative effect that really puts us in
13 a bind and I renew all those motions and objections.

14 THE COURT: Well, I may be wrong, but I think that one
15 of the aspects of this Lewis and the Hepburn case, which is
16 companion case, it was tried at the same time regarding your
17 motion for DV on the aider or abettor, it seems to me Judge
18 Addie had a -- had the issue come up that he denied directed
19 verdict at the close of the State's case, and he listened to
20 the co-defendant's case, and basically supported his motion
21 for directed verdict with additional evidence. It was not the
22 co-defendant's responsibility to present. I'm not going to
23 do that. So I'm going to consistently rule that there's
24 testimony, if believed, that the primary actor was the
25 boyfriend and that her -- all her acts: Misleading the

1 police, not rendering aid, can be considered by the jury if
2 they want to consider that charge. I think they're
3 independent. I think she's one or the other. I don't think
4 she'd be guilty of both those two things. That's just my
5 opinion.

6 MR. L. SHEALEY: Yes, sir. I understand that. And I
7 think the only distinction there that is also brought out as
8 Lewis is distinguishing the Smith case referenced in there,
9 is that here, although we have two Co-Defendants pointing the
10 fingers at each other, it's clear from the record and the
11 evidence that whatever significant trauma event that's
12 occurring, any evidence that we've adduced that he did it is
13 while she's not there. So the presence is how they
14 distinguish Smith from Lewis.

15 In the Smith case, both homicide by child abuse,
16 defendants were present at the house during the alleged
17 abuse. The evidence in this case is that they were separate
18 and apart. It's just who did what while who's separate and
19 apart while who's at work. So they're not present and that's
20 why the Lewis case is pretty significant for saying that mere
21 presence does not get you over the line on that. So I just
22 -- I will say that.

23 THE COURT: Okay. All right. And I -- I've made my
24 ruling, but your record is very well protected.

25 MR. L. SHEALEY: Thank you. As far as housekeeping, I

1 know we -- we still have the statement -- the video and
2 interview statement by Detective Smith of Mr. Williams that I
3 sought to have admitted -- I believe with Detective Smith and
4 we hashed it out, but I wasn't going to publish it. And I
5 think the State wanted -- I think, they generally objected
6 and I said, "Well, it's a statement against interest and he's
7 testified and he's --"

8 THE COURT: I think it was clearly identified and -- by
9 the interviewee.

10 MR. L. SHEALEY: There was some -- probably some dead
11 time in there where they left and we didn't want the jurors
12 to sit with that. And so I think, Julia and Ms. Joyner have
13 -- if you're going to admit it, which I think you should,
14 have narrowed it down to redact it, hopefully in a way that
15 doesn't have a lengthy amount of dead time and stuff like
16 that. So they've done that as far as I know. So I -- I
17 would ask that -- that go into -- into the record as
18 evidence.

19 THE COURT: We'll be (inaudible) Ms. Joyner?

20 MS. JOYNER: Well, I -- Ms. -- Ms. Barrington submitted
21 times that they were not just of dead times, but after they
22 sought to admit the video, they realized that there was
23 repeated reference in the interview to Ms. Mullen's court in
24 probation. So after it had been -- they had talked to admit
25 it, she came back with some times where she believed those

1 things were mentioned. So I did review those times and I
2 agreed with the times that she had listed do mention court or
3 probation, with the exception of noting I thought one could
4 go longer, but that was not by any means to suggest that we
5 agreed with it coming in. We still object to it coming in.
6 Tell the Court that, you know, procedurally at the time that
7 they saw it to introduce the video they were seeking to
8 introduce for Detective Smith. We objected, your Honor, and
9 we were going to come back on the record later -- discuss the
10 reasons for that.

11 But at that point in time, Mr. Williams had not yet
12 testified. And so at that point in time, there would've been
13 no basis to admit those statements. This would have been
14 something that had the Defense wanted to admit the video, it
15 should have come in under Rule 613 as extrinsic evidence of a
16 prior inconsistent statement, only after Mr. Williams had
17 testified. So while this matter was under advisement, the
18 Defense had the opportunity to cross-examine Mr. Williams.
19 They did ask him about lying to the police in his initial
20 interview, and he did admit to lying to the police in that
21 initial interview.

22 Now, what specifically they were seeking, they would be
23 seeking to enter it for -- after he's denied -- admitted to
24 lying. I don't think there's any probative value about it at
25 this point because the rule is clear under 613 that evidence

1 of a -- extrinsic evidence of a prior inconsistent statement
2 by a witness is not admissible unless the witness is advised
3 of the substance of the statement, time and place that was
4 allegedly made, the person to whom it was made given the
5 opportunity to explain or deny. If a witness does not admit
6 that he has made the prior inconsistent statement...

7 THE COURT: I know the rule, you don't have to read it.

8 MS. JOYNER: Yes, extrinsic evidence, but otherwise it
9 should not be admissible. And so at the time they were
10 seeking to enter it through Detective Smith, they could not
11 have laid the proper foundation. And there is a case of
12 State v. Stokes that it's not something that's necessarily on
13 point, but in the way that they -- the court does kind of
14 explain Rule 613 as a foundational requirement, I think
15 that's relevant because they -- they could not have laid the
16 foundation to Detective Smith. And so, your Honor, the
17 -- where they refer the proper foundation has been laid under
18 Rule 613, it's on page 5 of the -- the handout. That would
19 be under the heading "One Confrontation Clause."

20 Under the rules of evidence, a prior inconsistent
21 statement may be admitted where the proper foundation has
22 been laid. So Detective Smith could not -- they couldn't
23 have laid the proper foundation through Detective Smith. The
24 only way they could have done that was through Mr. Williams.
25 They asked Mr. Williams, he said he lied. They had an

1 opportunity to parse through that statement more carefully if
2 they had wanted to. They did not take that opportunity.
3 Therefore, it's the State's position that this video should
4 not come into evidence.

5 MR. L. SHEALEY: It's not a 613 analysis. This -- he
6 is a Defendant the State has charged in this case to
7 prosecute him. They have chosen to have him testify, but his
8 statement that's videotaped is -- is no more hearsay than
9 Ms. Mullen's body-cam statement that was introduced into
10 evidence. He's the one who's in charge of the investigation.
11 He was the one conducting the interview. I asked him
12 numerous questions about it. It's not an extrinsic evidence
13 situation where someone totally denies that something exists
14 or was made by them, and then I have to put it and show it to
15 them, and then I get to enter it. These types of interviews,
16 and indeed in this case against Ms. Mullen, just come in. He
17 would be the person best to authenticate and lay the
18 foundation for it, which he has. It's been sanitized in
19 terms of conduct that might or -- you know, words that might
20 violate what we're all trying to protect. But it's -- it
21 comes in just as her statement would come in. So it's just
22 -- just unique in that they -- I mean, this -- usually the
23 Prosecution is getting in this evidence all day, every day at
24 any court across the land. The Defendant, he's a Defendant,
25 he just happens to also be their witness. So I don't think

1 your ruling should change. It was very much correct in the
2 moment. I can understand perhaps why the State doesn't like
3 the evidence, but that's just the way this case is postured.

4 MS. JOYNER: Your Honor, I -- I don't think that
5 there's a rule of evidence that allows for it to come in.
6 It's -- the Defense is offering it. What is the -- what is
7 the rule by which they are asserting they are allowed to
8 enter the statement? They question the detective about his
9 investigation, but you don't have to have this -- the
10 statement in to question him about the investigation.

11 MR. L. SHEALEY: I don't have to, but I can. There's
12 no rule to put -- preventing it. It's an 804 statement
13 against interest three.

14 MS. JOYNER: Okay.

15 MR. L. SHEALEY: He's lying to police as a -- as a
16 subject of a homicide by child abuse investigation. And
17 those were all relevant as they decided to then take his
18 version of events over some other source of prosecution
19 information.

20 MS. JOYNER: But it's not a statement against interest
21 if he's denying -- I mean, he's denying at that point in time
22 called (inaudible) and the crime. So in order for this
23 statement to be a statement against interest it would have to
24 be a statement against interest. I mean, that's not why the
25 Defense is offering it. That's not the basis, that's not --

1 MR. L. SHEALEY: He's lying to police. That's a
2 statement against interest.

3 MS. JOYNER: But none of the fact that -- that this --
4 the individual statement that he makes within the recorded
5 interview though that's what the Court has to look at,
6 whether those individual statements are admissible. The fact
7 that he's lying to police was established for the officer and
8 it was established through the questioning of Mr. Williams.
9 It is a 613 analysis extrinsic evidence of his prior
10 inconsistent statement. He admitted his prior inconsistent
11 statement.

12 MR. L. SHEALEY: That's how you make something that's
13 normally hearsay, not hearsay, and you admit it. This is by
14 this definition because it's made by a Co-Defendant as part
15 of this interrogation not on hearsay. He's lying. He would
16 later admit that he lied. He's denying. He now comes in and
17 says he's an eye witness to a child being smothered. Your
18 Court's instincts were absolutely correct on this. It's just
19 -- I -- I don't have to be dictated what form of evidence
20 comes in by Opposing Counsel. It came in through the lead
21 investigator who knows -- has knowledge of the case and then
22 the specific -- specifics of it come in because they're
23 admissible.

24 MS. JOYNER: It was authenticated through the officer.
25 The Court did not make a ruling on its admissibility at the

1 time. It's not a -- it is simply not a state -- the
2 individual statements on the video are not statements against
3 interest. If he had wanted to -- it is -- it would -- it
4 should be an extrinsic evidence question. Mr. Williams is
5 the person who made the statement. He should be questioned
6 about them. He admitted the falsehood -- the prior
7 inconsistent statement, that should be the end of the
8 analysis. It's not -- it's not his -- these individual
9 statements on the videos are not statements against interest.

10 THE COURT: It was first presented, the video was --
11 was it a DVD or some flash drive or something? I don't
12 remember exactly how it was. It wasn't a flash drive?

13 MR. L. SHEALEY: It was a CD.

14 THE COURT: CD. It was an interview with Detective
15 Smith, but in full, and you all have since redacted it or as
16 you said, "Showered it" or something?

17 MR. L. SHEALEY: Sanitized it.

18 THE COURT: Sanitized it. I think it's relevant. I
19 think it comes in, it was identified the -- and authenticated
20 by the detective. It's -- it's okay. And it's admitted.

21 MS. JOYNER: All right. I will tell the Court, I -- we
22 have not seen the redacted copy. We trust Ms. Barrington
23 because the -- this -- the -- the redactions are to the
24 benefit of her client. We cannot vouch for what's on the --
25 the flash drive.

1 THE COURT: Okay.

2 MR. L. SHEALEY: I -- I vouch for Ms. Barrington as an
3 officer of the court. This is what they've agreed to.

4 THE COURT: Okay.

5 MR. L. SHEALEY: What was the -- the number of the
6 prior copy?

7 THE COURT: Hold on. Got to check and see if that's
8 right where I've got it.

9 MS. JOYNER: Was that the (inaudible)?

10 MR. L. SHEALEY: That was --

11 THE COURT: This --

12 MR. L. SHEALEY: Yes. There we go. It was --

13 MS. JOYNER: It was 20.

14 MR. L. SHEALEY: It was 20.

15 MS. JOYNER: Oh.

16 THE COURT: I've got to show the State's Exhibit 20,
17 redacted interview of Rob Smith. Nine-and-a-half-minute
18 video cam interview at the police station. That's what it
19 is.

20 MR. L. SHEALEY: Okay.

21 MS. JOYNER: And in fact, that would be the -- I think
22 that's the State's -- is nine and a half minutes.

23 MR. L. SHEALEY: I know that this was the Defendant's
24 -- our exhibit that State -- Defendant's 20.

25 THE COURT: Oh, well, I may be looking at the wrong one

1 that said "State."

2 MS. JOYNER: (Inaudible).

3 THE COURT: I had it marked as Court's Exhibit 1 under
4 advisement. So double underline. Court's Exhibit 1 has to
5 be authenticated by Smith. Defendant tried to introduce the
6 interview. That's what it should have been a Court's --
7 Court's Exhibit Number 1. And now we've to mark as Defense's
8 exhibit as admitted.

9 MR. L. SHEALEY: All right. Do you want me to just
10 simply put this last drive-in place of the disc that was
11 originally contemplated?

12 THE COURT: How does that sound to the State? Sounds
13 good to me.

14 MS. JOYNER: What's that, I'm sorry?

15 MR. L. SHEALEY: You want me to just --

16 THE COURT: The Court's exhibit stays in.

17 MS. JOYNER: Okay.

18 THE COURT: As a Court's exhibit, you're going to go to
19 the jury, then Defense's exhibit, whatever number that is,
20 will be a separate exhibit. That'll make the record clearer.

21 MS. JOYNER: Yes, sir.

22 MR. L. SHEALEY: Okay. So...

23 MS. JOYNER: That would be Defense's Exhibit --

24 MR. L. SHEALEY: 20.

25 THE COURT: Yeah. So Defense's Exhibit 20, but I want

1 that CD marked as Court's Exhibit Number 1 because that's
2 what I've got written down. That sound right (inaudible)?
3 She can mark if you like, put a sticker over the top, and
4 then give you a new sticker for 20 on your -- in your thumb
5 drive.

6 MR. L. SHEALEY: All right.

7 THE COURT: Mr. -- what you -- you got something in
8 your hand.

9 MS. JOYNER: (Crosstalk) something matters to your
10 Honor.

11 THE COURT: Okay.

12 MS. JOYNER: Want to enter what's been marked as 34 and
13 35 as Court exhibits with item 34 being the unredacted copy
14 of the -- type of -- Smith clip, the one that we made the
15 redactions to 35 stating the unredacted clip of the -- of
16 Detective Beach statement. And that's just in the event
17 there's ever a question of what was taken out of the
18 evidence.

19 THE COURT: Okay. Well, I thought it was -- the CD was
20 the whole thing -- the interview.

21 MS. JOYNER: We have -- these are Court's exhibits,
22 your Honor, this -- their CD -- that -- redacted videos that
23 were offered. These are the unredacted just to make Court
24 exhibits not for the jury.

25 THE COURT: Okay. Well, I thought that the CD there

1 was also unredacted of the interview at the court at the --
2 police station by Detective Smith of Mr. Williams.

3 MR. L. SHEALEY: It was.

4 MS. JOYNER: That -- that, your Honor, that's a Defense
5 exhibit. So this --

6 THE COURT: No -- no, it's not a Defense exhibit.

7 MS. JOYNER: Okay.

8 THE COURT: That's a Court's exhibit.

9 MS. JOYNER: Yes, sir -- yes, sir.

10 THE COURT: The unredacted is a Court's exhibit.

11 MS. JOYNER: Yes, sir.

12 THE COURT: The redacted one is Defense's exhibit.

13 MS. JOYNER: Yes, sir -- yes, sir. Each are -- these
14 are Court exhibits of two videos, the State's interview
15 unredacted.

16 THE COURT: Okay.

17 MS. JOYNER: So we just wanted to make those part of
18 the record.

19 THE COURT: Will be -- whatever the next Court's
20 exhibit is.

21 MS. JOYNER: 34 and 35. There --

22 THE COURT: Next number -- next number. All right.
23 I'm going to be working on more of the instruction because
24 Melissa put it together. Is there any discussion among the
25 lawyers as to how the instructions ought to go? Any lesser

1 included, which I need to be working on while you all are
2 here?

3 MR. L. SHEALEY: I do have about 13 proposed jury
4 instructions.

5 THE COURT: Okay. I can review those while you all are
6 arguing and we can talk about them afterwards.

7 MR. L. SHEALEY: I don't have -- I don't -- thought too
8 much about the lesser included it's --

9 THE COURT: It hit me yesterday.

10 MR. L. SHEALEY: I do think there's lots of evidence of
11 unlawful -- the standard off/on neglect of a child in terms
12 of not seeking medical care and things -- things of that
13 nature. Enough to present it to the jury.

14 THE COURT: Is there evidence of voluntary
15 manslaughter? Just consider Mr. Williams's testimony. He
16 walked in, and saw a pillow, and some strikes to the head,
17 and she lost her composure for a minute. I mean, I don't
18 know. I don't know what you all going to argue.

19 MR. L. SHEALEY: I don't -- I don't think there is.
20 But in terms of jury charges, I do want to -- probably
21 something that -- the Court needs to be aware of, and maybe
22 the State will be unhappy with or take exception to, it's
23 going to be -- I think it's the right number. Competent
24 Court counsel says "Number 12." Yeah. So -- and this will
25 be based on State v. Green. I alluded to this discussion in

1 chambers. I'll go ahead and pass around -- maybe Green. But
2 the basic rule is that in a case involving a homicide, that
3 although multiple charges for a homicide such as a
4 manslaughter or homicide by child abuse as a principal -- or
5 homicide by child abuse as an aider or abettor, they can be
6 submitted to the jury. But the jury has to be instructed
7 that they can only select one if they're going to select any.
8 And that was reversible error in the Green case because the
9 general rule is that for one homicide, you have one homicide
10 punishment. And that was made very clear. In the Green
11 case, it was a homicide by child abuse where the officer
12 submitted involuntary manslaughter and they came back on
13 both. The homicide by child abuse and the -- and the
14 involuntary manslaughter. And they appealed and they
15 basically said the judge should have instructed to the jury,
16 you can only choose one because for due process and double
17 the jeopardy reasons we have this rule. If there's one
18 homicide --

19 THE COURT: I understand that rule.

20 MR. L. SHEALEY: Right.

21 THE COURT: The State alluded to that earlier and I
22 didn't continue asking questions. But isn't it one death,
23 one body, one charge? I mean, you can't kill a child twice.

24 MR. ANTHONY: Your Honor, she can only be sentenced on
25 one. That would be our position. I think that the law would

1 allow her -- the Court can only impose a sentence on one of
2 the charges. But I think the jury can find her guilty on
3 murder and homicide by child abuse. And we think Green is
4 different than this situation because that was homicide by
5 child abuse, involuntary manslaughter. And the verdicts
6 would have to rest on a different factual finding by the
7 jury. But here, the jury could find -- it's -- it's just a
8 matter of whether Ms. Mullen inflicted the abuse or not. And
9 the homicide of a child abuse and murder are not consistent
10 -- inconsistent. You can cause the death of a child with
11 extreme indifference by abuse. And you can commit a -- an
12 act that causes death with malice aforethought. And those
13 are not inconsistent charges. And Green actually --

14 THE COURT: It seems to me it's going to confuse the
15 jury greatly to say you convict her of both. That's
16 confusing to me just to say it.

17 MR. ANTHONY: See, I -- I -- I would argue it's more
18 confusing to say you can only convict her of one. Like, I --
19 I would think that it's -- it's simpler to try and explain it
20 if -- if you find that she inflicted the injuries, well
21 that's a malicious killing. And it's also abuse with extreme
22 indifference leading to death. And there's a -- there's
23 another case, it's in Green -- that's cited in Green. I
24 think it's the Easler case where they said, "Well, in this
25 case it was appropriate to let the jury" -- "tell the jury

1 they could convict on both." And I think our case is much
2 more similar to Easler than it is to Green.

3 MR. L. SHEALEY: The Green case expressly overrules
4 Easler.

5 MR. ANTHONY: Well, it -- it overruled Easler on the
6 sentence, not on the fact that both charges were submitted.

7 MR. L. SHEALEY: It was reversible errors that the
8 judge declined to do what defense counsel asked, which was to
9 give an instruction that they can only consider one. That
10 means they can only decide on one. It doesn't -- it's not
11 like they could come back on two or three and then you decide
12 which to sentence on. That's -- that's not what the -- the
13 law wants. That's -- that takes it out of the jury's hands.
14 They have to be decided based on a simple rule that goes to
15 due process and double jeopardy. One homicide equals one
16 punishment. You only get a punishment if you get a
17 conviction. You get a conviction if the jury is allowed to
18 consider an indictment.

19 So the Green case makes it very clear and it's -- they
20 don't really buy into the argument about involuntary being a
21 separate mental state than a murder. It's just one homicide,
22 one punishment. It couldn't be more clear from the Green
23 case.

24 MR. ANTHONY: I don't -- I don't think that's what the
25 case says.

1 THE COURT: I think (inaudible) need to step off for
2 sandwiches or (inaudible) for lunch.

3 MR. L. SHEALEY: Yes, sir.

4 MR. ANTHONY: Yes, sir.

5 (Off the record from 2:30 to 2:34 p.m.)

6 THE COURT: Both homicide charges properly presented to
7 the jury. Appellant could not be found guilty of both
8 homicide by child abuse and of involuntary manslaughter,
9 which are the separate acts -- not separate acts, separate
10 charges of the homicide itself. Jury should have been
11 instructed depending on their view of the evidence, they
12 could find not guilty of both, guilty of homicide by child
13 abuse, or guilty of involuntary, but they may not find guilty
14 of both homicide charges. I think it's an -- it's an
15 either or.

16 MR. ANTHONY: I'd ask the Court if you go over to
17 page 9 to the --

18 THE COURT: That's where I'm at.

19 MR. ANTHONY: Okay. Well, if you look at the
20 last paragraph on page 9 and the start of the first paragraph
21 -- or the start of the last paragraph on page 9, the next to
22 last and start of the last, they explained that this is --
23 this is a ruling that is based on the facts of this
24 particular case. And in this particular case, you couldn't
25 -- those would be inconsistent verdicts. You couldn't be

1 guilty of homicide by child abuse and involuntary
2 manslaughter at the same time. But they go on to say at the
3 start of this line, paragraph on page 9: The situation here
4 should be contrasted with a homicide that would properly fall
5 within multiple homicide statutes.

6 In that situation, a jury may properly return a guilty
7 verdict on more than one homicide charge. And then they --
8 they talk about Easler and how that was a felony DUI and
9 homicide. And they say -- at the bottom of that paragraph
10 they say, "We overrule Easler to the extent it authorizes
11 multiple punishments."

12 So I would agree -- the State would agree that she
13 could not be punished for two crimes. But in this case where
14 you have a theory that is -- that is consistent with a guilty
15 verdict to both murder and homicide by child abuse, they both
16 ought to be submitted.

17 THE COURT: Yeah. But the language before that is
18 really clear. They could not find appellant not -- they --
19 they could from the evidence find not guilty on both. Guilty
20 as to one or guilty as the other, but not found guilty as to
21 both. Then they talk about punishments. You agree with me
22 on punishments. I think that language restricts. It's
23 either murder or -- or homicide by child abuse. She can't be
24 guilty of both. They can find her not guilty of both and
25 guilty of either, not both. I think that's -- that's clear

1 to me and makes sense to me that her conduct if believed, and
2 the facts by the State can support a conviction of murder or
3 homicide by child abuse, but not both.

4 MR. ANTHONY: Okay. I -- I would just argue -- I -- I
5 don't know why a jury couldn't, if they thought that she's
6 the one that inflicted the fatal injuries, why they couldn't
7 say, "This is a malicious killing and this is a -- a killing.
8 This is abuse with extreme indifference to human life." I
9 mean, those are not inconsistent things. There -- there are
10 cases where murder and homicide by child abuse have -- have
11 been submitted to the jury at the same time and it's been --
12 it's been affirmed.

13 THE COURT: Well, I may be wrong, but I'm sticking with
14 what my gut's telling me. It's --

15 MR. L. SHEALEY: That's telling the right thing. Maybe
16 those issues weren't raised, I don't know. This is a 2018
17 case. It's very clear.

18 THE COURT: I'm going -- I'd like -- or I'm going to --
19 and tell you all whether I'm right or wrong. I think I'm
20 right. I'm going to instruct the jury that the State's
21 presented facts and evidence there to consider and render
22 findings. They can find her guilty of murder or homicide by
23 child abuse or not guilty of both, so...

24 MR. L. SHEALEY: Okay.

25 THE COURT: That's what I want to do. That seems

1 logical to me considering State v. Green. All right.
2 Anything else we need to do before you all start (inaudible)
3 with the jury?

4 MR. ANTHONY: I mean, I've just -- we've just gotten
5 these jury charge requests. I have a -- the State would
6 object to Charge four because I -- I've just never -- I don't
7 think there's any basis for a specific charge on an
8 investigation. I basically -- I just haven't had time to
9 read most of these.

10 THE COURT: Yeah. Or by -- we can discuss these after.

11 MR. ANTHONY: Well, I -- I mean, I -- I'd like to know
12 what would be charged before I argue because I don't -- I --
13 I wouldn't want the Defense arguing things that the Court
14 later on decides not to argue or not to -- the Court decides
15 not to charge.

16 THE COURT: That's basically the only one I see. Well,
17 wait a minute. "Implicit bias," I'm not sure I've seen that.
18 All right. I think credibility -- investigation's taken up
19 in credibility of the witnesses, and facts, and they've got
20 to evaluate that all the way through. You all can argue that
21 in your closing certainly summarizing, but I don't believe
22 that's a requirement of an instruction. My direct and
23 circumstantial evidence charges is very -- very similar. All
24 the points are conclusively considered together. It does
25 that. I've never given the implicit bias instruction. I've

1 had talks about it and how it exists, but I've never given
2 that instruction.

3 MR. L. SHEALEY: It's always our first, Judge.

4 THE COURT: Uh-huh. Yeah. Maybe some other time. I'm
5 kind of inclined not to do that one.

6 MR. SHEALEY: Yes, sir.

7 THE COURT: Anything else? Pretty well in my charges.

8 MR. L. SHEALEY: I am fairly curious about your -- your
9 malice charge. Is that very much akin for State v. Burdette
10 here. What I'm trying to avoid, is a -- is on the malice
11 charge -- and I can articulate why, but I -- I --

12 THE COURT: Most -- well -- tell -- tell me what that
13 charge is. So -- I mean, sometimes I don't remember what the
14 case is, but I can remember the language.

15 MR. L. SHEALEY: The language -- it's from a 1957 case
16 where they ended up involving this language that basically
17 talks about reckless disregard and (inaudible) and wanton
18 recklessness. To me, it lessens the standard. In that case,
19 they had really a vehicular homicide case. It's -- it's a
20 very racist case. It names -- calls the defendants "Negroes"
21 who ran over a white lady that was crossing the road. And so
22 they decided to charge them with murder even though they knew
23 it wasn't intentional and they strained themselves to look to
24 other jurisdictions like North Carolina and Alabama to find a
25 lessened malice charge for murder. And they came up with

1 what I call "The booz on malice charge." But it does talk
2 about that wantonness, recklessness, disregard for others.
3 And -- and that to me is a lot different than hatred, ill
4 will, hostility towards another, which is more modern malice
5 charge, which is why I requested from State v. Burdette.

6 THE COURT: I know that Melissa sent me what she'd put
7 together. All right. And what were you trying to prevent?
8 Because I've got pretty well your language in here.

9 MR. L. SHEALEY: Well, the -- the problem may be
10 solved. I'm -- I'm trying to prevent a malice charge that
11 basically says, you know, doesn't necessarily import ill will
12 towards the individual, but signifies rather a general
13 malignant recklessness towards the safety of others,
14 condition of the mind, which shows a heart regardless of
15 social duty, and fatally bent on mischief. That is kind of a
16 hallmark.

17 THE COURT: That's not -- that's not in my charge.

18 MR. L. SHEALEY: Okay.

19 THE COURT: Malice can also be proved from conduct,
20 showing a total disregard for human life. That's in there.

21 MR. L. SHEALEY: Well --

22 THE COURT: Everything else is that you've asked for is
23 there. Almost verbatim. I don't think I picked up that
24 language from -- you say "moves on?"

25 MR. L. SHEALEY: Yes, sir.

1 THE COURT: That's the case you're calling it. I don't
2 -- I don't think I picked that up. Because I more or less
3 fashioned this last charge after the inferred malice went out
4 the window and we had kind of reconciled the charges with
5 that case. And that's where I got this one.

6 MR. L. SHEALEY: Yes, sir -- yes, sir. We're taking
7 out implicit bias, taken out credibility investigation.

8 THE COURT: Yeah.

9 MR. L. SHEALEY: And your Honor brought up any lesser
10 included, and I've been thinking it over, I mean --

11 THE COURT: I didn't mean to stir apart.

12 MR. L. SHEALEY: Well, I mean, I -- I think there is
13 evidence of the general unlawful neglect. I don't think it
14 poses any problem because it's not a homicide-based charge,
15 but it's -- I think there's certainly evidence of just that,
16 not that contributes to a death, but that -- so if there's
17 any evidence, it should be charged and we're asking that at
18 this time based on consulting with our team and our client.

19 THE COURT: So just an unlawful conduct charge?

20 MR. L. SHEALEY: Yes, sir. We may want to do -- yes,
21 sir. That's -- that's the only one I would add on top of the
22 instruction that I can't -- you have to pick between the
23 other homicide-based ones and -- and may behoove us to do a
24 technology check before we get the jury in.

25 THE COURT: Start working on that right now.

1 MR. L. SHEALEY: Yeah, it's a --

2 THE COURT: Good idea.

3 MR. ANTHONY: Well, we --

4 THE COURT: I don't think Mr. Anthony will be involved
5 in that. No offense.

6 MR. ANTHONY: Well, I -- I -- I'm going to have to be
7 to a degree, your Honor. Yes, sir.

8 MR. L. SHEALEY: It's not a big, long cord reaching all
9 the way to that podium --

10 THE COURT: That's not --

11 MR. ANTHONY: We would -- we would object to the child
12 neglect charge. I mean, I -- we don't think that's a lesser
13 included offense of anything. Yeah. I don't think there's
14 any law that says child neglect is a lesser included offense,
15 homicide by child abuse.

16 THE COURT: Well, and he said, "Unlawful" -- he said,
17 "Child neglect," I said, "Unlawful conduct."

18 MR. ANTHONY: Well, that's what I mean.

19 THE COURT: The -- the 20-year version.

20 MR. L. SHEALEY: 10-year version.

21 THE COURT: Unlawful conduct. It's 20, isn't it?

22 MR. L. SHEALEY: No, sir.

23 MR. ANTHONY: Well, there's a felony child abuse that
24 is -- I don't think it would apply because there has to be
25 some evidence of -- it -- it doesn't -- it doesn't apply when

1 the child doesn't die. It's just great bodily injury. And
2 then there's the -- the unlawful neglect for placing the
3 child just at --

4 THE COURT: Unreasonable harm or safety?

5 MR. ANTHONY: Yes, sir -- yes, sir. I don't -- I don't
6 think there's any law that -- that's a lesser included
7 offense, a homicide by child abuse. So I would -- I would
8 object to that being submitted.

9 THE COURT: All right. Mr. -- tell me one more time.
10 You've all not checked the technology yet, have you?

11 MR. B. SHEALEY: Not yet.

12 MR. L. SHEALEY: Not yet. I was waiting for the
13 arguments to be ruled on, but --

14 THE COURT: Unlawful conduct. Why -- why wouldn't they
15 get unlawful conduct, Mr. Anthony? Because --

16 MR. ANTHONY: Well --

17 THE COURT: -- I can see it both ways.

18 MR. ANTHONY: -- there's a couple of differences in the
19 statute for one thing, homicide by child abuse only pertains
20 to children under 11 years old. Whereas there is no age in
21 the child neglect statute. So that in and of itself would
22 preclude treating unlawful -- or treating unlawful conduct is
23 a lesser included homicide by child abuse. And also homicide
24 by child abuse does not have a -- a guardian, parent,
25 caretaker provision in it. It -- it applies to anybody. So

1 once again, there's two -- two -- two things that a jury have
2 to find to convict child neglect that they --

3 THE COURT: Two separate elements.

4 MR. ANTHONY: -- they wouldn't have to find to convict
5 a homicide by child abuse.

6 THE COURT: I think he's right. I -- I don't -- I
7 think it's got to be a -- a lesser included to get it. And
8 that's not a lesser included, those are the distinctive
9 elements.

10 MR. ANTHONY: I have a couple other things.

11 THE COURT: Okay.

12 MR. ANTHONY: On this third-party guilt charge, I don't
13 -- I mean, I know you can put in third-party guilt evidence.
14 I -- I don't know that you get third-party guilt charge. I
15 don't -- I -- I mean, I think that's -- the Court's going to
16 instruct on reasonable doubt, burden of proof. I mean, I
17 think it seems to me like a -- a third-party guilt charge is
18 basically something of a charge on the facts. And I -- I
19 would object to that. I also -- well, I'll -- I'll take
20 that. You -- I'll just shut up for a minute if you want to
21 give attention to that. I've got a couple other things.

22 MR. L. SHEALEY: We'd asked for the third-party guilt
23 charge, maybe it's not titled that way, but really -- because
24 there's so much evidence of another person committing the
25 crime in this case, even as conferred by the State, and the

1 fact that they've charged him with it, it more has to do with
2 the -- the understanding that just because someone else is
3 charged, it doesn't mean that they have to evaluate the
4 evidence differently. The burden of proof doesn't shift to
5 her. We don't have to then prove that he did it. So I think
6 that's more of the understanding that's important to this
7 case. Because they might get the wrong under -- assumption
8 that we have to prove that he did it. And we don't, just
9 because it has been discussed in the evidence of the case,
10 so...

11 THE COURT: I think I can deal with that on the burden
12 of proof. It's the State's responsibility to prove her
13 guilt. And that's the only issue before the jury. Not any
14 -- anyone else's guilt. But the -- Ms. Mullen's got nothing
15 to prove or disprove. She -- and she's -- you can always
16 give that in -- in her exercising her right to remain silent
17 as well.

18 MR. ANTHONY: And, your Honor, on Charge Number 10 --
19 the homicide by child abuse, submit -- submitted charge, I
20 don't know, I assume you have a homicide by child abuse
21 charge you would give?

22 THE COURT: I believe I do.

23 MR. L. SHEALEY: Is that an objection to something
24 specific, or...?

25 MR. ANTHONY: It is -- well, I -- there's one coming.

1 MR. L. SHEALEY: Oh, okay.

2 THE COURT: All right. My -- homicide by child abuse
3 says several things. She's charged with homicide by child
4 abuse, State must prove beyond reasonable doubt. Cause death
5 of a child under age 11 by abuse or neglect of the child,
6 abuse and neglect and act or failure to act, which causes
7 harm to the child's physical health or welfare. Harm to the
8 child's physical health or whatever means either inflicted or
9 allowed to be inflicted on the physical child's -- physical
10 injury, failed to supply the child with adequate food,
11 clothing, shelter, or health care. And this failure caused
12 physical injury condition to have caused the death or
13 abandoned the child causing the child's death. The
14 statements also prove the last element. Death occurred on
15 (inaudible) showing extreme indifference human life. That's
16 my instruction. That was borrowed from someone else.

17 MR. L. SHEALEY: Well, the reason why -- the one we
18 submitted is more appropriate is because it -- it defines per
19 the case law what extreme indifference to human life is. And
20 per the McKnight case, that is a mental state characterized
21 by a deliberate act culminating in death. So we think that's
22 more of a complete jury charge, very much in keeping with the
23 case law. And the jury is going to wonder what is extreme
24 indifference between human life and it's defined right in the
25 case law. So we'd ask for that -- that --

1 THE COURT: That -- that sentence that'll be added in?

2 MR. ANTHONY: And that -- that's what we object to. We
3 think you ought to just charge the statute. Statute is
4 clear, you all need -- you all need a definition for extreme
5 indifference. People know what that is.

6 MR. L. SHEALEY: Well, it's the same reason we have a
7 definition for malice. These are terms of art. They're not
8 just clear from the statute. So I want -- I think the jury
9 has a right to understand exactly what this means according
10 to our courts.

11 THE COURT: I think I give extreme indifference that
12 sentence. I think I give it to them. That seems reasonable
13 in the circumstances of the McKnight case. I think they get
14 that. And that's just one sentence that they might -- would
15 be adding. Was that last sentence in their
16 second full paragraph?

17 MR. L. SHEALEY: Yes, sir. Well, it's just the
18 definition sentence really. I think you had beyond a
19 reasonable doubt.

20 THE COURT: Right. I did.

21 MR. L. SHEALEY: So, yeah, that definition of extreme
22 indifference is part of that.

23 THE COURT: We do. That -- that one sentence.

24 MR. L. SHEALEY: Sure.

25 THE COURT: Is what I add. And I'll just type that on

1 mine.

2 MR. L. SHEALEY: Your Honor, I have one other thing
3 here.

4 THE COURT: Okay -- okay.

5 MR. L. SHEALEY: And I don't want to belabor this, but
6 I would like to hand up State v. Edwards on the issue of the
7 submission of the homicide by child abuse and murder to the
8 jury.

9 THE COURT: Okay.

10 MR. L. SHEALEY: Does your Honor have our request of
11 Charge Number 13?

12 THE COURT: I don't know.

13 MR. L. SHEALEY: It -- it's on the aiding and abetting.

14 THE COURT: I do.

15 MR. L. SHEALEY: Okay. I just -- so I assume you have
16 no problem in including that?

17 THE COURT: I hadn't really read -- I was reading mine.

18 MR. L. SHEALEY: Okay.

19 THE COURT: Because I don't do these very often. I do
20 other things so much more. It's getting hot in this room,
21 isn't it?

22 MR. L. SHEALEY: A little bit.

23 THE COURT: I mean, it's amazing. It's nice as it is
24 outside how warm this room's gotten.

25 MR. ANTHONY: You are not -- your Honor, I -- our --

1 our position is just that case. We think it would be
2 overruled by Green to the extent that she couldn't be
3 sentenced on both.

4 THE COURT: I agree.

5 MR. ANTHONY: We --

6 THE COURT: I agree that's your argument. I made my
7 ruling. Your record is protected.

8 MR. ANTHONY: And, your Honor, do you --?

9 THE COURT: Mention it again, I'm going to throw
10 something at you.

11 MR. ANTHONY: I'm done.

12 THE COURT: A very soft ball.

13 MR. ANTHONY: Do you have the aiding and abetting
14 charge you normally --?

15 THE COURT: That -- that's what I -- I've got mine
16 shorter. And then in defense of my law clerk, I told her to
17 put a mere presence charge in and she put a constructive
18 presence charge in. And that's not what I wanted. So I've
19 got to eliminate that from my charge.

20 MR. L. SHEALEY: Well, that -- that's why this charge
21 is good because it has the mere present language --

22 MR. ANTHONY: Right.

23 MR. L. SHEALEY: From Lewis -- and that's why we want
24 it.

25 THE COURT: Right.

1 MR. L. SHEALEY: Everything we've been arguing at the
2 directed verdict stage; the mere presence isn't enough. It
3 has to be an overt act.

4 THE COURT: Yeah. Let's -- let me hear from Mr.
5 Anthony. Because I -- I don't understand you what you've
6 asked for.

7 MR. L. SHEALEY: Yes, your Honor.

8 MR. ANTHONY: We would -- just -- if I could just have
9 a moment to reread this.

10 THE COURT: Okay. All right. What you got, Mr.
11 Anthony?

12 MR. ANTHONY: Your Honor, we don't -- I mean, if you
13 look at the aiding and abetting charge, there's in the
14 second paragraph, it seems like the second and third
15 sentences say pretty much the same thing. I don't know if --
16 you know, if the Court would prefer to use its own charge or
17 you --

18 THE COURT: I'm going to clean it up a little bit,
19 but...

20 MR. ANTHONY: We don't have any.

21 THE COURT: The mere -- the mere presence language
22 needs to be added to my charge. It was not in there. So I'm
23 going to -- I'm going to add it in there. The substance of
24 it'll be in there. I can't -- it is not going to be
25 verbatim because I don't introduce a -- to be convicted of

1 aiding and abetting, I always start the Defendant's charge of
2 aiding and abetting. In order for the State to stand a
3 conviction of aiding and abetting, it must prove 1, 2, 3.
4 That's how I instruct the law in that fashion. So I've got
5 to reward it to --

6 MR. ANTHONY: Okay.

7 THE COURT: -- be instructed the way I talk.

8 MR. ANTHONY: Okay.

9 MR. L. SHEALEY: Yes, sir. And is your charge going to
10 have "the important overt act must be committed" language.
11 It's part of the last thing in Lewis that's on the
12 second page. We respectfully insist of that being included.
13 I don't know if that's in your charge or not.

14 THE COURT: I hadn't put it in there yet, but I think
15 it's got to be in there.

16 MR. L. SHEALEY: Yes, sir. I agree.

17 THE COURT: That doesn't preclude the statement.
18 Arguing the facts as it sees it.

19 MR. L. SHEALEY: Yes, sir.

20 THE COURT: You can argue to their heart's content.
21 And so can you or whoever -- whichever one of you all three
22 are arguing -- oh, she's shaking her head. Four of you.
23 There's plenty in the room.

24 MR. L. SHEALEY: Joyner is going to close.

25 THE COURT: She just -- that's why I was pointing at

1 her and she gave me a -- a double shake.

2 MR. L. SHEALEY: Okay.

3 THE COURT: They call it practice. You'll get better
4 as you do it.

5 MR. L. SHEALEY: Okay.

6 THE COURT: You good to go?

7 MR. ANTHONY: One thing we -- the Court has not advised
8 Ms. Mullen of her right to testify, as far as I recall.

9 THE COURT: I guess not. The State -- the Defense has
10 rested.

11 MR. L. SHEALEY: Yeah.

12 MR. ANTHONY: But I -- I mean I -- I would think you
13 would -- that would be something that would need to be put on
14 the record.

15 THE COURT: Okay. Let's do that. Well, good -- good
16 afternoon now, you've been sitting in the trial for off and
17 on for more than a week, with a week off in the middle.
18 Certainly you've got three competent Counsel with the week
19 off in the middle of the Defense case order. You've had an
20 opportunity to decide whether or not you wish to make an
21 appearance and testify and -- and speak if you like -- answer
22 questions, have you not?

23 MS. MULLEN: Yes, sir.

24 THE COURT: And you've had certainly a lengthy time to
25 review that decision and speak with any of the three or all

1 three of your lawyers and counsel with them as to the
2 benefits and detriments of testifying or not testifying. And
3 you understand that the law requires me to -- I want to make
4 sure it's your decision and not something somebody suggested
5 to you that you should do or shouldn't do. Have you had that
6 opportunity to kind of review your decision of whether you
7 wish to testify or not?

8 MS. MULLEN: Yes, your Honor.

9 THE COURT: Are you comfortable with your decision?
10 You had the night to sleep on it?

11 MS. MULLEN: Yes, sir.

12 THE COURT: And your decision is to testify or not
13 testify?

14 MS. MULLEN: To not testify.

15 THE COURT: And you understand that I'll instruct the
16 jury that they're not to discuss your -- invoking your right
17 to remain silent. You realize that?

18 MS. MULLEN: Yes, your Honor.

19 THE COURT: Lawyers told you that I -- I presume.

20 MS. MULLEN: Yes, your Honor.

21 THE COURT: Okay. You -- and you certainly not been
22 under the influence of any alcohol, drugs, medications of any
23 type which influence your decision of this right to invoke or
24 not?

25 MS. MULLEN: No, your Honor.

1 THE COURT: Okay. Making that decision freely and
2 voluntarily?

3 MS. MULLEN: Yes, sir.

4 THE COURT: All right. Court will -- she's been so
5 advised of her opportunity to testify and she has freely
6 waived that opportunity. That was probably a good catch.

7 MR. L. SHEALEY: That was a good catch. Can I adjust
8 this technology real quick?

9 THE COURT: Sure.

10 MR. L. SHEALEY: Unplug registers. Any computers?

11 THE COURT: Mr. Anthony, did I speak out of turn?
12 You're actually going to use technology.

13 MR. ANTHONY: Yes. I -- I try to, your Honor.

14 THE COURT: Okay. Well, I -- I -- I was sort of
15 picking at you at first. I may ask for the technology check
16 and I figured you would be averse because you weren't going
17 to use it. You were going to use the old-fashioned method.

18 MR. ANTHONY: I -- I've tried to keep up with the
19 times.

20 THE COURT: Okay. Well, I -- I apologize for my
21 slight.

22 MR. ANTHONY: I -- I -- I appreciate that, your Honor.
23 No -- no offense taken. I -- I am what I am.

24 THE COURT: We all are.

25 MR. L. SHEALEY: Judge, can I have a two-minute

1 bathroom break while we're --?

2 THE COURT: You may.

3 (Off the record from 3:19 to 3:29 p.m..)

4 THE COURT: All right. You're ready?

5 MR. ANTHONY: State's ready, your Honor.

6 THE COURT: Bring in the jury.

7 (Jury enters room at 3:29 p.m.)

8 THE COURT: All right. Folks, we're -- we're at the
9 end. I apologize for that long delay. The lawyers and I
10 discussed my instructions, which I will give after the
11 closing summaries. We had some break (inaudible) that I was
12 operating a little bit slower. Not having Melissa be able to
13 help, thus the delay.

14 So here's what's going to happen. Both sides get an
15 opportunity to summarize their respective positions. The
16 State goes first, they summarize in full. The Defense
17 summarizes their position, second. After that the State gets
18 a brief opportunity to rebut. So State, Defense, then brief
19 rebuttal by the State. Likely we'll take a break shortly for
20 you all, stretch your legs and come back in and get my
21 instructions. That's depending on how long the lawyers
22 summarize. We'll wait and see. I don't put up time at all.
23 Now, do remember this, their summaries, this is not proof of
24 evidence. This is what the lawyer's talking about, what they
25 want you to believe they've shown you this. So take that

1 these are summaries for your consideration.

2 MR. ANTHONY: May it please the Court?

3 THE COURT: Yes, sir.

4 MR. ANTHONY: When you start delving into this case,
5 it's a little bit -- a little bit different than some cases
6 we have because the charges against Ms. Mullen are a little
7 bit tricky. So I'm going to start off by talking maybe more
8 than I normally would about the charges that she's facing and
9 trying to -- try to give you some helpful way to think about
10 those.

11 She's charged with murder, and "murder" is defined as
12 the killing of another person with malice aforethought.
13 Either expressed -- expressed or implied means that you have
14 an intent to harm, inflict great bodily injury on a person.
15 Time you do that you have put -- have the thought in your
16 mind to do it. You know, it's -- it's not like maybe some
17 people think where you have this drawn out plan. It just
18 means that when you inflict the harm, you -- you thought
19 about it, your malice is -- is aforethought. And that's what
20 you have to find to convict somebody of murder.

21 Now, a little bit more complicated is this other charge
22 of homicide by child abuse. And homicide by child abuse is
23 causing the death of a child under 11 while committing child
24 abuse or neglect with the death occurring under circumstances
25 manifesting an extreme indifference to human life. And the

1 law defines abuse or neglect. Abuse or neglect is an act or
2 an omission by a person which causes harm to the child's
3 physical health or welfare. And then harm is something that
4 occurs when a person inflicts or allows to be inflicted on
5 the child physical injury.

6 So one: There's a couple of ways you get to harm. And
7 one of them is inflicting or allowing to be inflicted
8 physical injury. That is an act, okay? That is -- that is
9 what abuse is. So that the one way to get to homicide by
10 child abuse is through inflicting injury on the child, an
11 actual act of abuse.

12 But there's another way to get to homicide by child
13 abuse. And that is by failing to supply the child with
14 adequate food, clothing, shelter, or health care. And the
15 failure to do so causes a physical injury or condition
16 resulting in death. So that is homicide by child abuse.

17 By neglect, it means that you didn't do something and
18 that your failure to do whatever it is, not providing health
19 care, not providing food that led to the death. So in this
20 case, obviously we're talking about getting health care for
21 India. And -- and so our -- what we are arguing to you is
22 that when Ms. Mullen failed to get health care for India, she
23 committed an omission that led to India's death. We're also
24 arguing that she committed an act of abuse that led to
25 India's death. But there's -- there's two different ways you

1 can find her guilty of homicide by child abuse.

2 So I want to just look at these together for -- for a
3 minute. The law provides two ways to find homicide by child
4 abuse: Abuse and neglect. Infliction of the physical
5 injuries is abuse. And then -- then the -- failure to supply
6 health care is neglect. So what happens is, if you find that
7 Ms. Mullen inflicted the physical abuse on India, then you
8 have a basis for homicide by child abuse by abuse. And then
9 you also have a basis for murder. And it is up to you, the
10 -- the -- the Judge is going to instruct you. You can only
11 choose one of the two charges. So you would have to decide
12 which one of those two charges you think is most appropriate.
13 But if you find that she committed the abuse, then you have
14 -- have that option, either murder or homicide by child
15 abuse. If you find that she failed to supply the health
16 care, which is neglect, then it's homicide by child abuse.
17 It wouldn't be murder; it would just be homicide by child
18 abuse. But there's -- there's two ways to get the homicide
19 by child abuse.

20 So what I'm going to do is just to try to keep things
21 straight, is when I talk to you about this, I'm going to
22 refer to homicide by abuse, I'm going to refer to homicide by
23 neglect. I'm going to use both. I'm going to use the
24 homicide by abuse to talk about Ms. -- Ms. Mullen actually
25 inflicting the injuries on India. I'm going to use homicide

1 by neglect to talk about her failing to give her help. But
2 what I want you to understand is when I -- when I say that,
3 I'm talking about the same crime, homicide by child abuse is
4 -- is a crime that encompasses two different ways that
5 Ms. Mullen can be guilty.

6 So when I say, "Homicide by abuse," I'm talking about
7 one way: The infliction of injuries. When I say: "Homicide
8 by neglect," I'm talking about the other way: The failure to
9 provide health care. But it's all the same crime. It's all
10 -- it all falls under that rubric of homicide by child abuse.

11 So there's one other crime called "aiding and abetting"
12 homicide by child abuse. And I'll -- I'll talk about that
13 towards the end. I want to -- I -- I want you in thinking
14 about this it's more important to think about the murder and
15 the two ways to get the homicide by child abuse.

16 So in thinking about the task you have and trying to --
17 to figure out a way to talk to you about the task you have,
18 I'm reminded of this very old story. And it's a story about
19 the king who was presented with a problem. He had two women
20 who came to him with both of them claiming the same baby, and
21 he had to decide which woman the baby belonged to.

22 And the way this wise king dealt with this problem was
23 by making an order that they were going to split the baby in
24 half. And after he made that order, he watched the reactions
25 of the two women. And when he saw those reactions, he knew

1 what the truth was. He knew who the true mother of that baby
2 was.

3 So what we've done throughout this case is we have
4 tried to present you with Ms. Mullen's reactions to what
5 happened on May 27th, because those reactions in and of
6 themselves show homicide by neglect. They show Ms. Mullen
7 being indifferent to India's being -- they show her being
8 indifferent to India, they show her being neglectful of
9 India, and they show that she let her die, that she let her
10 get worse and worse until she passed away. So that's what
11 those reactions show. But if you dig a little deeper into
12 those reactions and you apply your common sense to them, you
13 see that she's not just neglecting India, but that she abused
14 India, she inflicted those injuries. And so she's guilty of
15 homicide by child abuse both ways from abuse and neglect, and
16 she's also guilty of murder.

17 And I'm going to -- I'm going to try to point out to
18 you here over the next few minutes the things you can see in
19 her reactions that let you know that she actually inflicted
20 these injuries on him. It's not just neglect, but it's --
21 it's homicide by abuse and it's murder. I may talk about how
22 -- use the -- use the word "clues," how there's -- there's
23 some clues in this evidence that if you put them all
24 together, you can be convinced beyond a reasonable doubt that
25 Ms. Mullen is the one who actually inflicted these injuries.

1 And so I want to just take a few minutes and go through
2 these reactions. Obviously, I can't go through everything
3 that you all have heard, but I'm going to try and just get
4 the highlights of these reactions and explain what they
5 demonstrate. So we're going to start with these text
6 messages. And what happened was, I'm going to start on the
7 22nd and that morning, Jackie got Dre's -- and I'm going to
8 have to -- can I get a little help? I'm going to have to get
9 this a little bigger so I can see it.

10 MR. B. SHEALEY: Is it possible to get a little screen
11 here? We don't have any.

12 MR. ANTHONY: Oh, we don't. Oh, yeah. Okay. Yeah, we
13 need -- well, we need a little break for that anyway.
14 Because the jurors need to see it.

15 THE COURT: They need to.

16 MR. B. SHEALEY: We turn them on.

17 MR. ANTHONY: Brian, can you come up and help me just a
18 second?

19 MR. B. SHEALEY: I -- I --

20 THE COURT: Yeah, those screens, all the older
21 courthouses don't have them. York has a very nice system and
22 it's -- it's really helpful to you all to have it right here.
23 I've got it right here. And the witness stand has it right
24 there. There's always somebody in each courthouse that knows
25 how to run the system, and it's kind of a requirement. They

1 need to be nearby if there's a trial going on. I always
2 think a 12-year-old is about the best.

3 MR. ANTHONY: Okay.

4 THE COURT: They -- they can run anything.

5 MR. ANTHONY: We're good now. Thank you.

6 MR. B. SHEALEY: I -- I didn't realize how I can't see
7 it right now.

8 MR. ANTHONY: Okay. Hold on one second. Okay. Give
9 me a second, please. I'm sorry. Okay. So the jury's got
10 their screens now.

11 MR. L. SHEALEY: Yes, sir.

12 MR. B. SHEALEY: Yes.

13 MR. ANTHONY: Okay. Awesome. Okay. So that morning
14 we start -- we're going to start on the -- the morning of the
15 22nd about 9:00. And you get this and -- and this is -- I'm
16 going to be going a lot from -- from these text messages.
17 I'm not going -- we're not going to go through every one of
18 them again. We're going to -- I'm -- I'm going to try to
19 just hit the highlights of them. Ms. Mullen is the green,
20 Mr. Williams is the blue. And she starts talking about
21 Mr. Williams' sisters what -- what she calls her "Aggravating
22 ass kids." And she -- she says that, "One of the kids is
23 annoying." And so when you move on, she starts talking about
24 India. And the top -- top one there is "India's been
25 screaming since she left. I don't know what" -- "what the F

1 got in to her."

2 And so if -- you see from these text messages that
3 there is a problem, like, not -- you know, there's -- and
4 India is annoying that morning. And so Dre had gone -- gone
5 to work that day. She's talking to him about enjoying his
6 first day at work. And then we know that at 2:26, Dre -- Dre
7 is home. And this is when Mr. Williams testified that India
8 appeared different. Because you can -- you can see him
9 saying, "Unlock the door to her." So we know he's home.

10 And then she is texting him at 3:40 -- 3:41. She's --
11 she's texting him talking about how they don't have any time
12 together. And so they're apparently apart. And she -- and
13 we know that they did have -- at least Mr. Williams had some
14 drugs at that point because she's telling him not to crush
15 another one until she gets off.

16 So then we move on in -- into the -- the evening. She
17 picks him up at 9:18. You can see where he's -- he's saying
18 he's at the food line and he's here. And then this is a key
19 thing because these are -- and the ones on the left are
20 Mr. Williams, and the ones on the right are Ms. Mullen. And
21 by 11:30 on that Friday night, you know, something is
22 seriously wrong with India. And these messages show up on
23 both their phones. Mr. Williams and Ms. Mullen go in until
24 after 4:00 a.m. And -- you know, Mr. Williams, he started --
25 he said that Ms. Mullen got his phone and started doing

1 searches on it. And you all may have thought, "Well, that
2 sounds a little convenient. He's putting the searches on the
3 phone off on her." But, you know, that -- that actually,
4 that seems a little convenient until you see how she spells
5 the word "consciousness." Notice she misspells -- Ms. Mullen
6 misspells consciousness almost every single time. And it's
7 that way on Mr. Williams' phone too.

8 So it's not so crazy to think that Ms. Mullen got
9 Mr. Williams' phone, started doing these text searches on it,
10 doing these web searches on it, and then went back to her
11 phone. Because you see that consistency of the misspelled
12 word -- the misspelled word "consciousness." And there's no
13 -- you can see what is going on in their house really clearly
14 from these text searches. I mean, look at -- look at this,
15 "How to perform CP" -- "CPE on the toddler, signs of a broken
16 neck in toddler, signs of a broken rib, floating in and out
17 of consciousness, getting beat up, how long do bruises on
18 face go away? If you keep" -- "if you beat someone so bad
19 and they keep waking up and moaning in pain and falling right
20 back to sleep, what does it mean?"

21 I mean, that's -- it's just hard to read. It's hard to
22 look at and think about what this poor, little girl is going
23 through to prompt this reaction from both these people that
24 they're on their phones asking these questions. And at this
25 point in time, there is just no excuse. There's no excuse

1 for not getting her help if that's what they're seeing. So
2 these texts go on, and then that next morning after he has
3 supposedly -- after Mr. Williams has supposedly inflicted
4 these fatal injuries on her child, she's telling him how much
5 she loves him. You know, "I love you, Dre. No, it's real
6 love." You know, now this is -- this is the person they want
7 you to believe inflicted these injuries on her daughter. And
8 this is what she's telling him the morning after they --
9 they've realized she is in so much distress. "Always has
10 been the way I feel" -- "always has been the way I feel about
11 you." "You right, it is." And they -- I'm going to skip
12 through these, but they -- they basically go through a
13 conversation where they're telling each other how much they
14 -- they love each other.

15 And then we get to Dre wanting to go get some medicine
16 for India. "So we're going to have to get some medicine that
17 puts her to sleep. You know, this is terrible. We can't" --
18 "can't afford for her to keep making the noise like this."
19 And of course, Ms. Mullen is like, "Yeah, sure." But she
20 doesn't want -- she doesn't want to be there alone with
21 India. She says, "The kids need to eat. I don't want to be
22 here with this." That's what she's calling India, "with this
23 by myself."

24 Then we have another text -- another internet search,
25 8:35 on Ms. Mullen's phone, "Eyes drifting upward and arms

1 tightening." And -- so we just move on. We get to a point
2 where they're looking for some money, and they start talking
3 about James, and I -- I imagine you all remember James, he
4 was a somewhat entertaining fellow who testified
5 last Saturday morning. They -- they need some money. So
6 they -- Audrevious asked if they could call James, and she
7 says, "Well, knows he's at Cracker Barrel. And I told him
8 I'm in Charlotte with India, that's why I couldn't do
9 breakfast." And so she says she's told him she's taken India
10 to the hospital, but sometime that day, while India is
11 whining and her eyes are drifting, because you see another --
12 another text search -- or another internet search, right
13 about the same time as she sends this to Mr. Williams, she
14 finds time to go by James's house or to James. And according
15 to what he wrote to her, she finds time to have sex with him.

16 Now, that could serve as the definition of extreme
17 indifference in a book, you know, having sex with your old
18 boyfriend while your child's dying. Even -- and he said,
19 like, "She told me that India was hurt. And I told her to
20 call the police. I told her to go" -- "go call the
21 ambulance." He said he told her that, and she didn't do
22 anything. You know, and that's -- that's what we mean by
23 homicide by neglect.

24 So now let's get back to Dre. She -- they once again
25 have some conversation about how much -- how much they love

1 each other. And so here we are at 9:39, and she says, "I
2 hope it doesn't make" -- "make you not want to be with me
3 anymore." That's what she's -- that's what she's thinking.
4 Now -- once again, this is a clue. You know, they want you
5 to think that Mr. Williams has just bashed India's head in
6 that she's worried. What is -- what's her reaction at 9:39
7 on that Saturday morning? She's worried that it -- it
8 doesn't make him not want to be with her anymore. Well, what
9 kind of sense does that make if he's the one that inflicted
10 the injuries? And of course, he's -- he says, "Why would I
11 say that? Why wouldn't I want to be with you anymore? We're
12 bound together for life." "God, I was hoping you'd say
13 that." "You knew I would." Then he says, "You knew I would.
14 I hoped."

15 So once again, this is not consistent with what you'd
16 expect if -- if Audrevious had inflicted the injuries. And
17 once again, here we go. We're getting -- we're getting
18 really punished. And she says, "Yes" -- "yes we are. Thank
19 you for remain" -- "remaining by my side. I couldn't go
20 through half of this without you." And that's what she tells
21 him. "Thank you for reminding" -- "remaining by my side."
22 Now, if Dre had been the one to injure India, do you really
23 think she'd be thanking him for staying by her side? Does
24 that sound like someone whose boyfriend has just fatally
25 injured her child? Or does it sound like -- like someone

1 who's thanking her boyfriend for covering up what she did to
2 her child? And this is one of the best clues right here.
3 This is one of the best signs that Ms. Mullen is guilty of
4 homicide by child abuse, and she's guilty of murder.

5 And then we move on to the next big part of this case,
6 and that is the pills, because she's -- she decides to get in
7 touch with Tia and says -- says -- Tia texted said she's
8 trying to grab some today. I told her -- and Audrevious
9 says, "Yeah, we need them bad." And she's like, "Yeah." So
10 while her child is unconscious and bruised and moaning in
11 pain, she's making time to have sex with her old boyfriend
12 and talking to Tia about getting some pills.

13 So as the morning rolls on -- and we're still on
14 Saturday morning, she goes out and -- and Dre wants her to
15 get some medicine. He says, "Get some pain medicine while
16 you there, something that will put her to sleep." Now
17 remember, she's leaving India and her other two kids at home
18 with the man she claims has fatally injured her daughter.
19 Once again, that's the clue. That's the sign that she's the
20 one who committed the homicide by the -- by abuse. Because
21 why in the world if a man had done that to your daughter,
22 would you leave your daughter with him? But if it's -- at
23 the very least, it's homicide by neglect, because if he did
24 it, how could you possibly justify leaving your kids alone to
25 the person who did something like that to your child?

1 So we move on, and of course, you -- you'll have all
2 these back in the jury room, but I -- I'm -- I cannot go
3 through -- I'm not going to go through all of them, but we
4 move on a little later into the morning, and apparently she
5 goes somewhere and she gets some tramadol, and along with
6 searching for the tramadol here on the next slide, you see
7 she got 50 milligrams of tramadol, and she does a -- a search
8 on her phone for tramadol. But then about an hour later, you
9 know, she's still trying to deal with India. So once again,
10 you have that odd spelling of unconsciousness, just like that
11 morning on Dre's phone. But she's got labored breathing and
12 unconsciousness. So she's still trying to figure out what to
13 do about India. And she gets home, and India -- this is at
14 3:42 on Saturday afternoon, she gets home and she's
15 screaming. So when -- when her child is screaming in pain,
16 her reaction is she wants Audrevious to shut her up. She
17 says, "Babe, she's screaming, you got to shut her up." So
18 this -- once again, this is the man that they want you to
19 believe injured the child, and she's calling him to try to --
20 to get -- get India to be quiet.

21 So now we move on. While India is screaming in pain
22 and going unconscious and experiencing labored breathing,
23 Ms. Mullen is looking for some more pills. So she talks now
24 at 3:46, she talks about getting pills from Keon, talks about
25 getting them from Keon or maybe getting them from Tia. And

1 once again, this is the kind of extreme indifference that
2 makes you guilty of homicide by neglect. And again, she's
3 going to leave India with the man they say hurt her in the
4 first place. And she's going to see -- and this is
5 important. She's going to see Keon who she -- she knows Dre
6 is jealous of. So the -- if you're cowering in fear of your
7 boyfriend, do you go see a guy that you know he's jealous of?
8 She doesn't seem too -- too reluctant to tell Dre, "Maybe
9 we'll get them from Keon."

10 So we move on to -- about 3:51 in the evening. And
11 she's -- once again, she's talking about leaving. He's at
12 the same spot last night. Want me to go real quick. So once
13 again, she's leaving India with a man that the Defense wants
14 you to think fatally injured India. And so that takes us
15 through Saturday.

16 And then, we go to Sunday morning. And Sunday morning
17 we go into the -- the big -- the big food fight that
18 Mr. Williams testified about. And it -- it starts out at
19 about 9:00 -- 9:22 with her threatening to put him in jail.
20 Now, she's not threatening to put him in jail. You'll have
21 this whole text communication back in the jury room. She's
22 not threatening to put him in jail because he's fatally
23 injured her daughter. Uh-uh. She's threatening to put him
24 in jail because he messed up breakfast. That's why she
25 decided he's -- he needs to go to jail. She'll call the

1 police or threaten to call the police over him mess --
2 messing up breakfast, but not over him apparently killing her
3 daughter. I mean, you -- you'll have this whole conversation
4 in the jury room and just -- just read through it. I mean,
5 does this sound like somebody who's frightened of Audrevious
6 Williams to you? And when you move on to the next slide, he
7 -- she talks about "Me and my kids ride on our way. You'll
8 never see us again." Once again, not -- not consistent with
9 what you'd expect from somebody who is scared.

10 So that was Sunday. And then we go to Monday. And on
11 Monday, she's -- she's trying to get back -- get back in the
12 Audrevious good graces, apparently. She's texting him
13 pictures. She texted him a picture of herself. She texted
14 him a picture of her and -- and -- and Dre Jr. And the
15 problem though is that India just keeps getting worse. I
16 mean, this is two days now that India has been up there in
17 that bedroom on that mattress dying. And she decides she
18 needs to get in touch with Antonio. You can see there at the
19 top those are calls to Antonio Martin because she has to
20 start figuring out what she's going to do if some -- if -- if
21 India doesn't make it.

22 And of course if you move on, she's back to her other
23 preoccupation, which is getting drugs. You know, here we are
24 at 9:41. Might as well find out one of these days if he sells
25 blues. You know -- so, you know, always -- always got time

1 to find some more drugs no matter what's wrong with your
2 daughter.

3 And then as we move through Monday, there's a call from
4 Asia Martin where Jackie tells -- this is the call Asia
5 Martin talked about where Jackie told Asia Martin that India
6 was a vegetable, and she's home, and there's nothing anybody
7 can do for her because she knows it's getting bad and it's
8 trying -- time to start trying to cover this whole thing up.

9 And then we get to Monday evening and it's 9:39, right
10 at the bottom, you've got a text. And once again, this is --
11 this is Ms. -- Ms. Mullen texting Mr. Williams, "Come feed
12 her, babe. She's breathing really hard. Like, why?" And
13 this is the text Dre talked about. Mr. Williams talked about
14 where he came upstairs and walked in and Jackleen was trying
15 to shut India up. But once again, she wants Dre taking care
16 of India. You know, she wants him in that bedroom. But they
17 want you to think that Dre's the one who hurt her. Well, if
18 she really thought that, why would she be telling Dre to come
19 up to the bedroom?

20 And so now we go to Tuesday morning and India is dead,
21 and it's time to really figure out a plan. So she tells Dre
22 here, you -- you see this text here at 12:49. She tells Dre
23 he's got to lay out of work, and that's her, she's calling
24 the shots. It's Jackleen who's coming up with the plan
25 because it's Jackleen who's responsible for the death.

1 And so we move on. And that afternoon, the plan turns
2 to Antonio Martin. And this is another -- you see these
3 calls up at the top to Antonio Martin. And this is another
4 very important clue because it stands to reason that if Dre
5 had killed India, he'd want to get rid of the body too. But
6 she's having to call Antonio. And that tells you that Dre
7 really wouldn't agree to help get rid of the body. Just like
8 he said, he wouldn't agree to help get rid of the body,
9 because if he was willing to help, Jackie would've never had
10 to call Antonio.

11 And once again, it also tells you who's in control
12 here, because Dre would've never brought Antonio into this.
13 That was one thing that any witness who knew them both said:
14 They don't like each other. They're -- they're both feeding
15 over the same woman. So once again, whose idea is it to
16 bring Antonio in? It has to be Ms. Mullen's. She's the one
17 calling the shots. She's the one covering up the death of
18 her child. And then when you -- this is really telling here,
19 the two texts she sends 6:44 p.m. "She's crying and throwing
20 up, or he's crying and throwing up. I just got the food."
21 Well, that's Mr. Martin, okay? Because she's just told him
22 his daughter is dead.

23 And Mr. Martin, he reacted like a normal human being.
24 You know, he started crying and throwing up. That's how
25 upset he was. But then once again, to show you who is

1 running things, look at this last text here 6:57 -- 6:57,
2 "Cousin's house if he asks where our homie went to." That's
3 her telling Dre what to tell Antonio about where India is if
4 he asked. "Cousin's house if he asked where our homie."
5 That's how she's referring to her -- her dead daughter that
6 Tuesday because she's woke up that Tuesday morning and India
7 was gone. And now we got to figure out what to do with it.
8 "Cousin's house if he" -- "if he" -- "if he asks where our
9 homie went to." Of course Mr. Martin later said that she
10 came off that when he got her to the house and he -- he --
11 she acts -- nudged towards that drawer where -- where India
12 was. But that was the initial plan. Tell him he's at Dre's
13 cousin's house, but Mr. Martin actually does what you expect
14 a decent person to do. He calls the police. And that leads
15 to -- to this -- this first encounter at the door. Let's see
16 if I can get this for you.

17 (Audio starts at 4:06:11 p.m.)

18 UNIDENTIFIED SPEAKER: Hey, how you doing?

19 MS. MULLEN: What's going on?

20 UNIDENTIFIED SPEAKER: Are you Ms. Williams?

21 MS. MULLEN: I am. How are you doing?

22 UNIDENTIFIED SPEAKER: We need to speak to you about a
23 -- you got some information about a baby, maybe stillborn or
24 something?

25 MS. MULLEN: Huh? Who is this?

1 UNIDENTIFIED SPEAKER: You know (inaudible)? You have
2 a daughter there?

3 MS. MULLEN: Yeah, I have a daughter right here.

4 UNIDENTIFIED SPEAKER: Are you (inaudible)?

5 MS. MULLEN: Yeah (inaudible). Jackleen.

6 UNIDENTIFIED SPEAKER: Jackleen Mullen?

7 MS. MULLEN: Yeah.

8 UNIDENTIFIED SPEAKER: Are you in town?

9 MS. MULLEN: Yeah.

10 UNIDENTIFIED SPEAKER: Where is your daughter at?

11 MS. MULLEN: I'm at -- my daughter is at my
12 grandmother's house.

13 UNIDENTIFIED SPEAKER: Where is that?

14 MS. MULLEN: That's in Monroe.

15 UNIDENTIFIED SPEAKER: Monroe, North Carolina?

16 MS. MULLEN: Yes.

17 UNIDENTIFIED SPEAKER: (Inaudible)?

18 MS. MULLEN: I (inaudible) yeah, I'm going there
19 tomorrow to get her because it's her birthday.

20 UNIDENTIFIED SPEAKER: Okay.

21 (Audio ends at 4:06:58 p.m.)

22 MR. ANTHONY: So now the police are showing up and she
23 calls -- she makes some calls you see here on the -- the
24 phone logs. She calls James a couple of times because that's
25 -- that's who -- who she met through the law firm. And then

1 here's -- here's the desperation starting to kick in. You
2 see this text to Cindy, saying: "I lied to the police, told
3 them she spent the night at your house. So if they call you,
4 please say she's there and I'm picking her up in the morning.
5 You won't get into any trouble." And then Cindy -- Cindy
6 responds, "Well, who's Dre?" So her -- her response -- her
7 -- her next plan is: "Well, let me see if I can -- can say
8 Cindy is -- got her." So after this conversation, the police
9 called Cindy and Cindy initially plays along and told they
10 want to FaceTime with India. And then they -- the police --
11 send the police to Monroe to Cindy's house and it becomes
12 clear she's not there. And so that leads to this
13 conversation.

14 (Audio starts at 4:08:07 p.m.)

15 UNIDENTIFIED SPEAKER: (Inaudible).

16 MS. CINDY: (Inaudible) calling me. Who is this
17 calling me?

18 UNIDENTIFIED SPEAKER: Okay. (Inaudible). Basically
19 the information that we got was supposedly there's a baby or
20 a child that's being hidden, that's been deceased.

21 MS. CINDY: Hidden?

22 UNIDENTIFIED SPEAKER: Yeah.

23 MS. CINDY: That's been deceased?

24 UNIDENTIFIED SPEAKER: Yes.

25 MS. CINDY: You guys, there's no dead kid here.

1 UNIDENTIFIED SPEAKER: That's what we're trying to
2 figure out.

3 MS. CINDY: I have two kids.

4 UNIDENTIFIED SPEAKER: Okay.

5 MS. CINDY: My son is right there, my daughter is with
6 my aunt.

7 UNIDENTIFIED SPEAKER: Okay.

8 MS. CINDY: And my mom.

9 UNIDENTIFIED SPEAKER: How old is your daughter?

10 MS. CINDY: She's four.

11 UNIDENTIFIED SPEAKER: She's four?

12 MS. CINDY: Yes. My daughter (inaudible) she four this
13 week.

14 UNIDENTIFIED SPEAKER: Oh boy. Okay. All right.
15 Well, that's what we're trying to figure out. We want to
16 make sure, you know, everything is good. We'll -- we'll be
17 out.

18 MS. CINDY: (Inaudible) immigration from my daughter's
19 father.

20 UNIDENTIFIED SPEAKER: I'm not sure (inaudible). What
21 -- what's the deal between two -- between you and him?

22 MS. CINDY: (Inaudible) that's it. I don't want him to
23 hear (inaudible) he's an asshole.

24 UNIDENTIFIED SPEAKER: Your baby's father?

25 MS. CINDY: Yes.

1 UNIDENTIFIED SPEAKER: Okay.

2 MS. CINDY: Everybody knows (inaudible) been writing
3 up, if you look at the records, that's just something that he
4 would do. Why would any -- why would any kid do that in
5 there?

6 UNIDENTIFIED SPEAKER: Right. Do you think he's just
7 saying so to get back at you because --

8 MS. CINDY: I understand who isn't like that though.

9 UNIDENTIFIED SPEAKER: No, I'm just asking if that's
10 correct. If that was him saying it.

11 MS. CINDY: Who also would say something like that?
12 You seen the kid's up there.

13 UNIDENTIFIED SPEAKER: (Inaudible).

14 MS. CINDY: What do you all want me to do? Break my
15 (inaudible) you all tomorrow when I go pick her up and I --
16 my -- my grandmother's 70th birthday and I (inaudible).

17 UNIDENTIFIED SPEAKER: (Inaudible).

18 MS. CINDY: Yes, I do.

19 UNIDENTIFIED SPEAKER: Okay. (Inaudible).

20 (Audio ends at 4:11:07 p.m.)

21 MR. ANTHONY: Okay. So there's that conversation with
22 the police. And of course then the next thing she does, and
23 you can see this on the call logs, is she starts calling
24 Antonio, and she doesn't know this, but Antonio is at the
25 Rock Hill Police Department because he -- he's called -- he's

1 done the right thing, called the police and told her -- told
2 him that he thinks a -- a dead child might be at Ms. Mullen's
3 residence. But you heard that call, you'll have it back
4 there in the jury room. I'm not going to play it for you
5 right now, but she calls him and wants to know "Why are the
6 police at my house?" And so things develop and they -- they
7 wind up talking to her again. Here's the next conversation.

8 (Audio starts at 4:11:44 p.m.)

9 UNIDENTIFIED SPEAKER: (Inaudible) North Carolina?

10 MS. MULLEN: My daughter.

11 UNIDENTIFIED SPEAKER: You drove her?

12 MS. MULLEN: Yeah. (Inaudible).

13 UNIDENTIFIED SPEAKER: (Inaudible).

14 MS. MULLEN: My daughter.

15 UNIDENTIFIED SPEAKER: (Inaudible) you -- you
16 personally drove the child up here in North Carolina?

17 MS. MULLEN: Yeah.

18 UNIDENTIFIED SPEAKER: Okay, so we can run the license
19 plate off that and see if the license plate going is up to
20 North Carolina -- to North Carolina. License plate reader
21 picks up going up there and (inaudible).

22 MS. MULLEN: Well, yeah.

23 UNIDENTIFIED SPEAKER: (Inaudible) why is he saying
24 that --

25 MS. MULLEN: Because he did that. (Inaudible) I am

1 with you.

2 UNIDENTIFIED SPEAKER: (Inaudible) vehicle, you know
3 how it got there you're going to say somebody else that's
4 (inaudible) weren't you concerned about where your child --

5 MS. MULLEN: I -- she is there.

6 UNIDENTIFIED SPEAKER: (Inaudible).

7 (Audio ends at 4:12:35 p.m.)

8 MR. ANTHONY: And of course this -- this whole
9 conversation is in -- but we won't -- we won't do -- run the
10 whole thing. And so things go bad, like, hold on.

11 (Audio starts at 4:12:40 p.m.)

12 UNIDENTIFIED SPEAKER: (Inaudible) North Carolina?

13 MS. MULLEN: My daughter.

14 UNIDENTIFIED SPEAKER: You drove her?

15 (Audio ends at 4:12:59 p.m.)

16 MR. ANTHONY: Okay. Wait, that's not that one.

17 (Audio starts at 4:13:08 p.m.)

18 MS. MULLEN: You said you would check the car.

19 DETECTIVE SMITH: The best I can do is see that you
20 drove up to North Carolina, but that may just look like you
21 took your truck. If your child just doesn't turn up, it's
22 just a murder case. We don't know where your kid is or how
23 she died.

24 MS. MULLEN: I'm not telling you lies. I don't know
25 what the hell you was talking about my kid being dead.

1 DETECTIVE SMITH: I want the 11-year-old.

2 MS. MULLEN: (Inaudible) is healthy.

3 DETECTIVE SMITH: I want the 11-year-old.

4 MS. MULLEN: I got two four-year-olds and a 2-year-old.

5 DETECTIVE SMITH: Okay Do you know where all are right
6 now?

7 MS. MULLEN: Yes.

8 DETECTIVE SMITH: Where's your four-year-old daughter?
9 One is at Cindy's house. So are you worried at all?

10 MS. MULLEN: I'm trying to tell you Cindy probably got
11 her at my aunt's house or something.

12 DETECTIVE SMITH: So you think your child is at
13 someone's house?

14 MS. MULLEN: Cindy has my kid.

15 DETECTIVE SMITH: Hello. (Inaudible).

16 MS. MULLEN: (Inaudible) I think so.

17 DETECTIVE SMITH: So you okay, you're not in -- with
18 trouble. Don't seem very worried about where this child is.
19 Hey, Cindy it's Detective Smith. She says that you have her
20 child and you are just afraid you're going to get in trouble.
21 You realize you only get in trouble if you lied to us without
22 having a child, right? Okay, so did you take her child
23 sometime somewhere? Did you go hide her child for some
24 reason?

25 MS. CINDY: (Inaudible).

1 DETECTIVE SMITH: Well, then where's her daughter? Then
2 where her -- where's this (inaudible)? Where's your
3 daughter? Where is your four-year-old? You're (inaudible)
4 abandonment and I'll go with murder during the next step.

5 (Audio ends at 4:15:27 p.m.)

6 MR. ANTHONY: And all those conversations, entirety of
7 them are in evidence. She -- we -- we edited those for
8 brevity. And -- but that's two different conversations. She
9 had two different conversations outside the house with
10 detectives and she kept telling them the very same lie. So
11 they arrested her and they took her to the police department,
12 and then they went and they did a search of the house. And
13 during the course of that search, they went back in the
14 bedroom. And there where that mattress is, if I leaned up
15 against that dresser, they opened up the bottom drawer to
16 that dresser and that's where they found India M. So
17 those are the reactions, okay? Those are the things that you
18 see from the way Ms. Mullen behaved from Friday morning
19 through Tuesday night while her child was dying, and then
20 eventually died.

21 So how do we -- what do we see here? What reactions do
22 we see here that let us know that she's the one who actually
23 inflicted the injuries? Well, first of all, she left him --
24 left India alone with Dre all the time, multiple times she
25 left India alone with the man that she says committed this

1 crime and inflicted the injuries.

2 She constantly told Dre how much she loved him. She
3 thanked him for standing by her. She treated him like
4 somebody who was doing something for her, not like somebody
5 who had assaulted her child, but like somebody that she owed
6 something to. Then when she couldn't get Dre to help her get
7 rid of the body, she went and recruited Antonio Martin to
8 help her get rid of the body, which is not what you'd do if
9 you weren't the one who inflicted the injuries.

10 And then -- and this is a reaction that's not there
11 that you would expect. There's never any mention that Dre
12 had hurt India. This is -- she -- she wants you to think
13 that Dre hurt her child, but yet in all these text messages,
14 all these reactions -- all these reactions are the exact
15 opposite. Nothing would ever indicate she's at least a bit
16 angry at Dre, she's at least a bit worried about having Dre
17 with her child, nothing like that. So all those things argue
18 for her being guilty of murder and her being -- her being
19 guilty of homicide by abuse, homicide by child abuse, by
20 abuse, whichever of those two charges you think is most
21 appropriate.

22 Then let's move on to the homicide by neglect. You
23 know, we -- if you have some doubt about whether she's the
24 one who inflicted the injuries, is she neglectful? You know,
25 did she fail to provide medical care that led to India's

1 death? Well, what do we have there? We have her searching
2 the internet for India's condition. We have her sending text
3 messages about wanting to keep her quiet. We have her
4 calling Antonio and Asia saying that India is a vegetable on
5 Monday, the day before India died. We have her constantly
6 being preoccupied with trying to get drugs rather than taking
7 care of her daughter.

8 We have her threatening to call the police on Dre or
9 something like messing up the oatmeal, you know, not -- not
10 for hurting her daughter, but for something completely
11 ridiculous. And she -- but she saw that as a basis to call
12 the police. Never a word about, "Well, I'm going to call the
13 police because of what Dre did to my child," even after her
14 friend told her that. After she went to Mr. Howerton's house
15 where she was safe, she had no -- no problems at all there.
16 And he told her, "You need to get help for India." And she
17 just ignored him and never did.

18 So all those things the homicide by neglect. I want to
19 just mention this lesser charge, the -- the aiding and
20 abetting homicide by child abuse. You'll have -- that's --
21 I'm -- I'm going to speak about that because it all depends
22 really on your view of the evidence. If you find that
23 Ms. Mullen is guilty of murder or homicide by abuse, if you
24 find that she inflicted the injuries on India -- I don't
25 normally tell a jury they need to find somebody not guilty,

1 but you should find her not guilty of aiding and abetting
2 homicide by child abuse because that would be -- you would be
3 saying, "Well, she inflicted these injuries" and you can't
4 aid and abet yourself, you wouldn't find her guilty of both
5 those charges. So if you think that she actually inflicted
6 the injuries, you wouldn't say that she's guilty of murder or
7 homicide by abuse.

8 On the other hand, if you think that she's guilty of
9 the neglect part of this and you convict her of homicide by
10 child abuse for being -- just for being neglectful, well, at
11 that point, if you -- if you believe that this -- these
12 injuries weren't inflicted by her, she'd be guilty of aiding
13 and abetting homicide by child abuse as well. But the key
14 thing is that she is guilty of homicide by child abuse
15 regardless. Either way, whether you find that she committed
16 the actual assault itself that led to India's injuries, or if
17 you find that she was neglectful of India, she's guilty of
18 homicide by child abuse, she did -- she committed acts or she
19 committed neglect that led to India's death with an extreme
20 indifference to human life.

21 So a couple other things to say just before I finish
22 up. The key thing is however you look at this case,
23 Ms. Mullen is guilty not just of aiding and abetting homicide
24 by child abuse, she's guilty of homicide by child abuse
25 itself. Whether you find that it's neglect -- by neglect or

1 whether you find that it is by abuse.

2 Now, the Judge will tell you, you do have to -- your
3 verdict in the case has to be unanimous. If you go back
4 there, though, and you have trouble reaching an agreement,
5 that does not mean you just have to throw your hands up and
6 find Ms. Mullen not guilty. If there's a -- a split among
7 you after you deliberate, you just need to let the Judge know
8 and he'll give you further instructions.

9 So I want to close by just going back to that story of
10 the king. There are three differences between that story and
11 our situation. One: Is that the baby in that story had a
12 parent who cared about him. He had a parent who was willing
13 to do what parents are supposed to do with their children.
14 He had a parent who was willing to give her life up to keep
15 him alive. India Martin's mother wouldn't make a phone call
16 to keep her alive. Her mama's boyfriend -- Audrevious
17 Williams, he wouldn't give India any help either. And do not
18 think for a second that we are condoning Audrevious Williams.
19 Mr. Williams is charged with homicide by child abuse, and
20 he'll be prosecuted for that. He will have his day in court
21 just like Ms. Mullen. But the evidence shows that Jackleen
22 Mullen killed **India M.** and if Audrevious Williams wanted
23 to come testify, and he wanted to fill in some holes in the
24 case, we let him do it. But that doesn't mean that we're in
25 any way excusing Audrevious Williams. Audrevious Williams

1 let India M. die just like Jackleen Mullen did. And he's
2 guilty of homicide by neglect. But it does not make sense to
3 think that Audrevious Williams inflicted those fatal injuries
4 on India. Jackleen Mullen did that.

5 The -- the second difference with the story is because
6 the baby who had a parent -- had a parent who cared about
7 him, he got to live. The king saw the real parent's reaction
8 and saved the baby's life. Well, it's too late to save
9 India's life. She's gone. You can't look at Jackleen
10 Mullen's actions and get Jackleen away from India. All you
11 can do now is examine Jackleen's reactions that weekend and
12 know what she did to India.

13 And the third difference is in York County, we don't
14 have a king. When we need a wise judgment, we have to go to
15 groups of 12 people. And we have to count on those people to
16 see the truth from the evidence they hear, and then speak the
17 truth about what happened. And you 12 people can't save
18 India's life, but you can at least bring justice for her
19 death. You can hold her mother responsible for beating her
20 to death, letting her die, and stuffing her in a drawer.
21 India's life should have been more than a little body in a
22 drawer, a check to a funeral home, and a hole in the ground.
23 And she would still be here on this earth with the rest of
24 us. That's what Dr. Riemer said. She would still be here
25 with us if her mother had cared enough to just pick up the

1 phone and punch in three numbers. And you all are the only
2 people -- the only people who will ever be able to give
3 justice for this terrible crime that Jackleen Mullen
4 committed against her daughter.

5 So my hope for you when you go back to the jury room is
6 that you will be wise judges, that you will see the truth in
7 Ms. Mullen's reactions, in this evidence that you've heard,
8 and that you will hold her responsible for the death of her
9 daughter. Thank you, all.

10 MR. L. SHEALEY: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. L. SHEALEY: All up. Thank you. You all sit down
13 there. I appreciate you all being here for it seems like an
14 eternity. You've done your job, you've listened to all the
15 evidence, you're taking notes, and respectful of the process
16 and the delays, and I hope -- hope we can say the same thing
17 that you feel we've been respectful of you all. But now it's
18 time to consider all the evidence. And Jackleen mother --
19 Mullen is a traumatized mother who's with an abusive man, and
20 that's a photo we put in evidence of the entire family there,
21 but for baby Dre -- that's India in the white, and AJ in the
22 blue, Jackleen Mullen dearly loves her children. You have
23 not heard any evidence to the contrary. She's not a perfect
24 mom. No one is coming here saying she's a perfect mom. She
25 had drug problems, had other issues. In this relationship

1 dynamic, much of which you heard from today in the form of
2 expert testimony, she has made choices to save her abuser.
3 She was a detriment of her child. There's no disputing that.
4 This case is not about what happened. We know what happened.
5 Something terrible, unspeakable happened to India M. [REDACTED]
6 This is case a about who did it.

7 I like to talk to juries about their role and their
8 responsibilities. Bring up one of my favorite movies from
9 the 1950s called "12 Angry Men." And it's literally just
10 what you guys are doing now. The black and white movie,
11 starring Henry Fonda, and it's the end of a murder case is
12 when that movie starts and it's all white guys back in the
13 smokey-filled room. As soon as they get back there, they --
14 "Quick, raise your hands. Guilty, right?" And they're all
15 said 11 to one, "Yes." But Henry Fonda, of course being the
16 star of the show, says, "Whoa, whoa, whoa. You heard the
17 judge. We've got our job to do. We have to deliberate." I
18 want to talk about this evidence with you and he and the
19 whole process of the movie is them evaluating the case, not
20 giving into a gut reaction, not giving into your passion,
21 your prejudice. We all have it. We all do. There's nothing
22 more prejudicial to think about than a four-year-old baby
23 girl in a drawer who's dead by blunt-force trauma. Ain't
24 nothing more prejudicial, ain't nothing more that causes
25 passion to level up in your heart.

1 I have a five-year-old son. I would die if he died
2 before me. These are -- these are very difficult subject
3 matters. So what I'm going to ask you to do is to evaluate
4 the evidence because that is your job. It just happens to be
5 so hard to do it with logic and reason, and not to be
6 overcome by passion and anger of the injustice that occurred
7 to India.

8 I'm going to ask you to do that, and the Judge is going
9 to ask you to do that in the jury charges and I thank you for
10 that because that is our process. Our Supreme Court says
11 that Jackie Mullen is clothed in a robe of righteousness and
12 that the only reason or way that that robe could be lifted
13 for innocence, that presumption, is if you find competent
14 evidence submitted by this Prosecution that proves her guilt
15 beyond a reasonable doubt.

16 This is not meant to be an easy thing, but she stands
17 here innocent. Regardless of what the State thinks about her
18 reaction, or her lies, they have never walked a step in her
19 shoes. Everybody's walk of life is different. They're going
20 to ask you to convict her of murder or homicide by child
21 abuse based on their "white man, middle-aged walk of life"
22 because it doesn't sit with them that she would lie, or that
23 she would look avoidant, or appear very high. We'll talk
24 about that more. But that is essentially half of the State's
25 case is they just don't like the way she presented. I never

1 walked a mile in her shoes. They have to present evidence
2 beyond a reasonable doubt.

3 And I like football and most people like football. So
4 I like to use a football analogy to help explain this. Proof
5 beyond a reasonable doubt is that the State, through its
6 attorneys, would have to drive their evidence and convince
7 you, as jurors, all the way almost through the outside of the
8 other end zone in order -- in order for you legally to
9 convict if you're doing your jobs, which I know you will.
10 Because if you have a doubt that's all that it takes for her
11 to stay innocent, which she is, it takes driving through the
12 end zone to lift that robe of righteousness.

13 This is the United States of America, this is South
14 Carolina. It took us a couple hundred years to get to our
15 legal system. It is designed to be the best in the world.
16 It is designed to be difficult to convict. The system would
17 prefer releasing a guilty person than the unjust conviction
18 of an innocent woman. It's designed that way. This is not
19 Pakistan where you make an allegation, someone stole some
20 bread, and then you just drag them into a -- into a
21 restaurant and chop off their hand, and that's -- that's it.
22 This is called "Due process." This is why we are better than
23 the rest of the world.

24 The State's theory is wildly disingenuous. They have
25 chosen -- it's not just that you happen to have charges that

1 sit here before you. They have chosen to arrest, indict, and
2 present to you that she is both the killer, but if you don't
3 like that, well, maybe she's just an aider and abettor,
4 please convict her.

5 All right. You heard what these charges carry through
6 cross-examination of Dre Williams. Homicide by child abuse
7 carries a minimum of 20 years to life in prison, if you can
8 convict her on this evidence. Even the aiding and abetting,
9 not that she's the principal actor, but that she aided and
10 abetted someone, that is a minimum of 10 years up to 20.
11 That's what Dre's facing. And so you know what she's facing.
12 And so you have to decide if the State have its cake and eat
13 it too - Prosecution sits well with you under our system of
14 laws and justice. Because it doesn't sit well with me.
15 They're so unsure. They want to have it both ways. She
16 killed her baby. "Hey, but if you don't think she killed her
17 baby, well she -- she helped Dre kill her baby." So they
18 called up a baby killer here as their star witness and -- and
19 they want you to digest that evidence and convict her because
20 of that? That's what they're doing. They want that to be
21 acceptable to you.

22 The Judge is going to charge you on what these charges
23 are. What I say is not law, but what I know that he's going
24 to charge you, I've tried to put the law on here as best as I
25 can. One of your options is murder, which is the unlawful

1 killing of another human being with malice aforethought.

2 "Malice" is a legal term. I hate legal terms because they
3 just don't make sense. But you have to understand it in --
4 in a nice boiled down way when you kill someone, if you're
5 the killer, in your heart, you have to have evil, hatred,
6 that's what malice is. Hostility. It's not panic, it's not
7 frustrated mom who just snapped, it's evil. It's walking up
8 to someone and pulling the trigger. That's malice. The
9 Judge is going to tell you what murder and malice is.

10 Now, I've got a bone to pick with the way Mr. Anthony
11 described homicide by child abuse to you. Homicide by child
12 abuse is a very specific statute designed to punish and
13 convict folks that are killing their babies through very
14 particular means. And you are -- this is just literally the
15 law, but I've highlighted things that I feel like were left
16 out. You're guilty of that if you cause a death of a child
17 who's under the age of 11 while committing abuse or neglect.
18 So it can be done through abuse, which is punching you in the
19 face until you have a (inaudible) that's abuse.

20 Neglect could be locking you in a closet for a week
21 until you die of thirst. That's the neglect. That's not --
22 that's something that you didn't do. I withheld something
23 from you. But all of those things, if you find them, have to
24 occur under circumstances manifesting in extreme indifference
25 to human life. So abuse or neglect, coupled with extreme

1 indifference, but he didn't give you the definition of
2 extreme indifference. The Judge will define that. That
3 means a mental state requiring a deliberate act culminating
4 in a death. It's not just having sex with a friend while
5 you're stressed out about what's going on. It's not just not
6 calling police. It has to be extreme indifference, a
7 deliberate act which results in her death. It's not
8 inaction.

9 He's describing to you inaction, and I'll tell you --
10 and you've heard evidence about why inaction is occurring,
11 but simply the inaction would have to be a deliberate act,
12 and it's not. So she is not guilty. Even if you thought she
13 was the perpetrator, even if you thought and you bought the
14 argument that a phone call could have saved her life, which
15 it could have, it's not a deliberate act which is culminating
16 in her death. It's not made to do that.

17 You'll hear that definition from the Judge. Aiding and
18 abetting, this is to have their cake and eat it too. Not --
19 she didn't kill her child, but if you want to believe the
20 "Have your cake and eat it too" thing, and then they want to
21 suggest that Dre did it, and she just aided and abetted him.
22 That's not the case. They haven't even presented any
23 evidence of that. Don't consider that. She's not guilty of
24 that.

25 There's something else they didn't tell you, but the

1 Judge will. Our principles of due process dictate and
2 require that although you are sitting here considering
3 three separate charges for this case, your options are this:
4 You can choose one of them if you find evidence beyond a
5 reasonable doubt, but you can't choose more than one. You
6 can certainly choose none because she isn't guilty beyond a
7 reasonable doubt of these particular charges.

8 She's guilty of other things: Being a bad mom, lying,
9 any number of charges they could have presented to you. So
10 you can choose one or none and that's just basic fundamental
11 due process in our country that Judge will give you that.
12 You need to consider that.

13 The entire case revolves around Dre Williams, a guy who
14 had this great prospect of life. He was a football star.
15 And I asked him directly, "And now you're babysitting the
16 legacies of other men. These children who don't belong to
17 you. You have no job." In the words of James Howerton, he
18 thought he was going to be somebody. He's talking about his
19 trophies and those things, and here he is. But what he does
20 have is motive to kill India, the means: his fists and
21 opportunity. And I'm going to tell you why. He's jealous.
22 You heard from the experts today, I'll go into them more.
23 That jealousy of other men creates a situation where he
24 becomes abusive.

25 You heard about jealousy today from the experts. He

1 desires her. He acknowledges his jealousy. He apologizes
2 for his jealousy. He lets his jealousy get the better of
3 him. It's true he's jealous. It's part of his motive. The
4 jealousy turns toward hatred to her. In his own words in
5 May, "You always make me beg and plead till my face turns
6 blue. Shake my head. I hate you so much because I need you
7 so much. This sh*t pisses me off. You" -- "you know that
8 you are mines and you are mines alone." This is that dynamic
9 that you heard about today. A controlling, possessive man
10 who is an abuser, who tries to be the god of this
11 relationship. And it creates frustration that he
12 internalizes, and that turns to violence. One of the most
13 ridiculous, crazy things that we heard in this trial was
14 anybody's attempt to try to say that these holes in this
15 house, that are clear fist holes, came from anybody other
16 than Dre Williams.

17 Nobody said this came from 4'11 Jackie. This was Dre's
18 room. These are his representations of anger in a moment.
19 This is how he expresses his anger in the moment. He told
20 you he -- he even -- he admitted to one hole at the old
21 trailer, like, "Just not all these other holes that were in
22 my room."

23 You've heard evidence of him choking and slapping. Her
24 grandmother testified she loves her daughter -- her
25 granddaughter deeply. She's not lying for her. She's

1 telling you what she saw. She feels guilty because she
2 thinks the idea was put in Dre's mind if you recall. She
3 feels like -- because when she witnessed Jackie being choked
4 after Antonio was at that trailer unexpectedly, when she said
5 "Dre as long as either Antonio or India in her life, you
6 always had this connection." She feels that way. I don't
7 think she put that idea in Dre's mind, but I think it was in
8 his mind.

9 Even Antonio Martin witnessed her busted lip or
10 bruising. Antonio Martin was a victim in this case, and he
11 testified, it was very strange. He had pending charges,
12 clearly hearing on the subpoena, wants to be helpful but not
13 that helpful. If he thought that Jackie killed his baby, you
14 would've seen an entirely different Dre Martin on that stand.
15 And in fact, I asked him about his interview with DSS after
16 this, and he reported he believes Dre Williams killed his
17 child. That came out. That was in evidence.

18 The text or -- replete with physical abuse from Dre.
19 The State wants you to think that Jackie's some kind of
20 manipulative mastermind. Dre abuses her. Grown man,
21 football prospect of 4'11 Jackie. But she -- as the experts
22 told you, it doesn't mean that she always acts completely
23 weak like a sheep. Sometime she defends herself, she pushes
24 back on him. She's assertive. She tells him, "It's been
25 three years and the only thing that turns me all the way

1 against you is when you put your hands on me." And he says,
2 "Yeah, I need to step up and stop putting my hands on you."
3 He directly on that stand told you that he never hurt her,
4 never touches her. Apparently, this is all just a
5 disagreement about bad oatmeal or something, right? Isn't
6 that funny? No, it's not funny.

7 You have it all. She loves him still. She wants him
8 to stop. She wants him to stop the abuse. "The kids don't
9 need to see that, Dre. Stop mistreating me." It's right
10 there when he tried to leave her, she accuses him and tells
11 him, "You tried to damn near choke me." And he says, "No, I
12 was just grabbing your arms." Kind of like how Dr. Callaham
13 -- doctor -- Therapist Callaham today said would see a lot of
14 grabbing victims by the arms. But yeah, he disputes
15 anything. This is just a disagreement about oatmeal. You
16 did not check your common sense at the door.

17 On the 24th, a very critical time, this is a time when
18 India would be in decline and you know from the text and
19 searches, she's not doing well. We brought this text to you:
20 "You're going to jail. And that's on my kid's soul." She
21 says, "Your f*cking parents are asking me questions like I
22 did something. I'm about to curse the f*ck out and take the
23 kids and walk to where we're going." Does it make sense that
24 that's about bad oatmeal? "Your parents are asking me
25 questions like I did something." No, she's covering for him

1 because she loves him. This is a toxic, broken relationship.
2 They're in a trauma bond as you heard today. They're dealing
3 with this terrible thing. She has nowhere to go, but yet she
4 will threaten him because why the hell shouldn't she in a
5 moment of anger? Because he has done something and she is at
6 least exerting some power to say, "I'll take my kids and
7 leave. Your parents are thinking I did something." And they
8 are trying to keep this quiet. They're probably naively
9 hopeful that somehow India would get better.

10 She will protect him, try to fix him as she loves him
11 in her broken -- broken way. Does not mean that she killed
12 her child or that is evidence of who did. Dr. Knight,
13 forensic psychologist, you may have wondered why we brought
14 her at first. And it's again, it's a simple concept. The
15 evidence the State is presenting is that you should convict
16 because she doesn't act how she should, according to John
17 Anthony. But again, they have never walked a mile in the
18 shoes of a six-year-old that was molested, of a teenage girl
19 that was raped, of a daughter who was emotionally abused by
20 her mom to the point of having no self-worth, who was
21 essentially abducted by her first serious relationship, who
22 was 19 years older than her, had a kid with, chronic,
23 physical, mental, emotional abuse that ends, and it's Antonio
24 Martin. I felt sympathy for him, but he also was an abuser,
25 chronic, physical, emotional abuse all the way to Dre.

1 Chronic, physical, emotional abuse.

2 That's why we wanted to tell you a little bit about her
3 trauma history. Because as Dr. Knight said, "It leaves a
4 person more vulnerable." I had a great childhood. My
5 parents did everything for me. I was not abused. I was
6 given the tools to succeed. I'm confident I'm not a
7 vulnerable person. All you guys have come in here from
8 different walks of life. You might have some of this, you
9 might not. But when we're set up that way, it makes you more
10 susceptible to being with someone like that. Because the
11 million-dollar question is: Why would you be with a guy like
12 that? Why would you protect him if he's hurting your baby?
13 Why would you not go to the police if he's hurting you? And
14 that's the answer. We are not cookie-cutter versions that
15 get spit out from some factory. We just all have the same
16 life. Therefore, we should all have the same reaction to
17 trauma in a terrible experience? But that's what the State
18 would want you to think because it doesn't sit well with her
19 that she's high (inaudible) and lying. But that's not
20 evidence that she killed her baby.

21 Becky Callahan, critically important witness who
22 testifies for the Prosecution numerous times, executive
23 director of centers that deal solely with domestic abuse.
24 She lives and breathes this domestic abuse dynamic. She
25 talked to you about -- Brian, my brother asked, "Why would

1 someone stay because of that trauma bond?" Because you are
2 under control. She talked about stages of tension, and
3 conflict, and then honeymoon. Mr. Anthony walked you right
4 through those stages of an argument. And then the next day,
5 she's sending him cute, little photos of herself in the
6 bathroom or a picture of his son. That's -- you're back in
7 the honeymoon day. It couldn't be more identical to what you
8 heard today as part of this abuse dynamic. But here's the
9 critical thing. There's no question that Dre Williams is an
10 abuser of her. But when you decide who did this, the
11 statistic is 70 percent an increase of abuse towards the
12 children, the man is abusing the woman. As you try to sit
13 here and evaluate who did this abuse, we know he's an abuser,
14 70 percent.

15 Now, the factors increase when you're dealing with
16 non-biological children of the abuser, the legacies of other
17 men that you're babysitting. Eight times as likely that he
18 would then perpetrate per the experts abuse on those
19 non-biological children, particularly if they're young, a
20 child of the opposite sex from that abuser, and have a
21 challenge like a disability, which we all know India M.
22 had.

23 Statistics paint Dre as the abuser in a neon sign. But
24 yet they want to say that you should believe that she is the
25 killer of her baby because she acted not the way they would

1 expect someone normal to act. He would also abuse AJ and
2 you've heard evidence of that. His means are his fists. You
3 have these photos in evidence. James Howerton is corky, is
4 funny, weird, not lying. He came over one day in the spring
5 of 2020 and little AJ who had a relationship with, who's also
6 four years old, older than India, but four years old, had a
7 -- as he called "a pumpknot" on his head, like a big goose
8 egg. He said, "I was bad, so daddy spanked me." And James
9 goes inside that trailer, he says, "Dre, you can't be hitting
10 the kids like this." And Dre in his rage punches this very
11 hole in that trailer, jerks AJ up by the arm, and drags him
12 down the hall. James told you how he said, "Jackie, you got
13 to get rid of this guy." She couldn't get out. She couldn't
14 get out for all the reasons you heard about that abuse
15 dynamic. She -- James Howerton, who went to the police said,
16 "Hey, you guys need to know what was going on. This is
17 relevant." And they basically ignored throughout this entire
18 investigation as they decided who they thought might be the
19 killer or not the killer, presented these holes that he took
20 while he was cleaning out Jackie's trailer, punch holes in
21 the bathroom -- he testified over India's death.

22 Dre is frustrated, washed out, junkie, former football
23 star who's now babysitting the legacies of other men. And
24 babysitting is frustrating. This weekend I went to a
25 wedding, a family wedding, and I was stuck in a small rental

1 house with my brother and his two kids who are nine and
2 seven, and my five-year-old, and other relatives. And
3 there's nothing louder than the -- these cousins getting
4 together. I'm accomplished, educated, calm guy who has had
5 no trauma in his life. I was losing it. I wasn't going to
6 hurt anybody, but I could sense the frustration. So someone
7 who maybe is less educated, less capable, or Dre, who's
8 babysitting the legacies of someone else's kid, who's also an
9 opioid addict, he's going to be frustrated. It's natural to
10 be frustrated, it's just what you do with that frustration.
11 It goes from natural to criminal. Here -- you have in the
12 text, "This baby girl" -- "this little girl's stressing me
13 out." He reports to Jackie while she's at work that AJ --
14 not his biological kid, pushed little Dre down the stairs.
15 She says, "Well, what'd you do?" "I popped him."

16 And you all believe that Dre's definition of popping a
17 child might be different than mine or yours. He wanted to
18 understand what the thought process was of a four-year-old.
19 India was also four. He's hitting a four-year-old and they
20 want you to believe he's not capable of hurting the other
21 non-biological four-year-old. The abuse cycles up in my
22 opinion. You think about May, he's now living back with his
23 parents. He's not working. This is a change. They're
24 really hard up for money. But she, as you've heard, India is
25 disabled. She has to do exercises to try to strengthen her

1 legs. And Jackie is asking about him while she is at work,
2 right? "I bet you're making her" -- "you're not even letting
3 her stand up. I bet you're keeping her sitting down." And
4 he -- he protests, "No, her ass is standing." Meaning I
5 guess that he's having her do exercise and she doesn't
6 believe it. So he sends her a pic. There's nothing more
7 revealing or heartbreaking to me in this pic where she's
8 standing, forced in a corner, so that she won't fall over,
9 right next to the drawer where Dre will eventually put her,
10 and Jackie says, "Okay babe, sad. Why did you move her?"
11 She's not happy about how he's positioning her daughter, but
12 she's also not calling the police. "She was getting on my
13 nerves."

14 Motive means opportunity. Opportunity. Let's talk
15 about that day that Dre, on May the 19th, as his frustrations
16 progressed, says that India fell. That's exactly what he
17 says. On the 19th, Jackie's at work, "Your daughter's so
18 hardheaded, f*cking fell and hit her damn face on the door by
19 the wall. Because she keeps moving when I'm telling her to
20 stand still. Now we had a big bruise to hide on her face.
21 Shake my motherf*cking head."

22 So remember Dr. Riemer? I asked her specifically this
23 -- this is going to be a bruise that's going to be present by
24 the time of her death. It's on the 19th. Are there any
25 bruises before India's body consistent with the fall?

1 Remember when I asked her if someone came to the hospital and
2 said, "Oh my baby fell and" -- "and you received India." No,
3 this is not consistent with the fall based on the pattern of
4 bruising. Those bruises were caused by blunt-force trauma.
5 But he's saying now we've got something to hide. Jackie's at
6 work at this point, she doesn't know how bad it is at that
7 point. He hasn't sent a picture of that.

8 On the 22nd, I agree it's a critical day. This is --
9 let's think about Dre. He's been in jail for a few months,
10 and he pops up in September and says, "Hey" -- because right
11 now, both people are charged the same way. Both people have
12 lied. But he wants to help this case because he's facing
13 life in prison and he is willing to lie. And he pops up and
14 says, "Oh yeah, Jackie's a terrible mom. Oh he's -- she's
15 rough. Let me tell you about this time when" -- "the one
16 time, an entire month of May when I went to work at FedEx,
17 and I came home and India was never the same. Guys, you need
18 to believe me. You need to believe me."

19 So let's talk about that day. It's a pretty normal
20 day. Jackie's very proud that he's going to this orientation
21 at FedEx. There's a picture of the Charlotte FedEx where he
22 went. But these frustrations that they keep wanting to point
23 out are normal childcare frustrations. "India won't stop
24 crying. Blah, blah, blah, blah, blah." "Oh, but have a good
25 day." You know, "Have a good day at your work, babe." But

1 Jackie is a single mom. This is nothing new to her. She's
2 dealt with these frustrations before.

3 She's also saying, "You're right on time. Have a good
4 day." She's frustrated. But it's almost insulting for the
5 State to say, "Hey, single mom, you seem frustrated;
6 therefore, you must have died. You're weak, you're a
7 killer." Frustration is normal. There's nothing in here --
8 I was frustrated like crazy. As I told you over the weekend.
9 There's nothing in here. She calms down. She's talking
10 about getting -- they're very poor. But she wants Dre's
11 sister to bring home some pizza because they don't have any
12 food.

13 And you can see by 1:31, the sister and Piper are there
14 and they're eating pizza. Again, narrowing the window when
15 this terrible abuse by Jackie could have occurred, because
16 this is her boyfriend. And yes, Dre gets back by 2:26 and
17 stopped and got a coffee, came back, and she's quickly then
18 shuttling off to her job at work. A much-extended period of
19 time where she's usually there by 3:30 or 4:00, work until
20 9:00 -- 9:30.

21 Let's play this game. Per Dre, this is when he came
22 home and found a child broken. Never the same. Is he -- is
23 there anything in these text messages that would indicate
24 that? Or in fact, is this the time when he's committing this
25 abuse on that child? He's bored, he's restless. He says,

1 "I'm bored as hell." She's saying, "I want to be with you."
2 They're talking about how they don't have money. They're
3 talking about hitting up various people for drugs. He's very
4 interested in seeing if Tia can get some blues. She's
5 saying, "Look, we don't have any money." He's trying to get
6 some money. He's trying to borrow some money. He's talking
7 about tattoos. He's showing her a clip of a tattoo. He's
8 letting her know that he finally had the opportunity to watch
9 John Wick 3. The State wants to talk about reactions, but if
10 Dre were credible -- and the State's case is entirely resting
11 on Dre, this is supposed to be when he's seen this broken,
12 poor child, that's not consistent with that. It hasn't
13 occurred yet.

14 And then he says, "I'm" -- this is pretty important to
15 me. But once out of this entire collection of records that
16 you have about texts, this is the only time you hear about
17 "Yaps," which is, it's been testified to -- by the police,
18 that -- that is ecstasy. So normally they're on opioids,
19 things that make you really mellow and dull your pain.
20 Ecstasy is a euphoric drug. It makes you lovey-dovey,
21 forget, and one said, "Particularly love your lover."

22 So right now, right as he's texting that he's -- India,
23 he's feeding her and she's -- she's nothing but ribs. She's
24 skinny. He's not saying, "Oh my god, this black eye you gave
25 her is never going away. Oh my god, Jackie, we should really

1 call the police." But he's with her. He's wanting -- he's
2 suggesting a drug that they never do. Why? I submit to you
3 because he is just done something terrible out of
4 frustration. He's thinking of ways to make her forget, to
5 distract her. "Let's do ecstasy." She says -- she sent the
6 text. "Why can't we just have a normal life?" Getting more
7 and more irritable in his search for drugs and he's saying,
8 "You know, I asked you" -- "I asked you, get money, get
9 drugs. Come on. F*ck it. We could just be sober." He's
10 unhappy. He testified that -- no, that was just an honest
11 desire and her -- his part to be sober that night. No. He
12 arrives. He picks her up. Nothing unusual until that sad
13 text early the next morning where he is telling her to keep a
14 pillow near her so she can breathe. She's loud. His lies
15 create doubt. He admitted to all these lies with a little
16 check mark on a paper. She's in Monroe. "I was working at
17 FedEx today. Everything I told detectives is all I know, I
18 didn't even know she had contact with her baby's father
19 today."

20 He told Detective Smith and the solicitor during his
21 9 September meeting he didn't drive with Jackie and Antonio.
22 That was something that was demonstrably provable from their
23 cell phones. Detective Felmet, who's probably still in the
24 courtroom, there he is, had all that data. Three months down
25 the road you're meeting, this is his big moment to be

1 truthful. The State should be interested in a truthful
2 account. As he's telling you about how terrible Jackie is,
3 the child she -- right at him to come up and watch her
4 smother her baby. He's still lying, and they can prove it.
5 They just don't care to. Remember when I asked him, I said,
6 "You're lying about the little stuff. So why should we
7 believe that you wouldn't lie about the big things?" He had
8 no answer for that.

9 The bloody pillow was a red herring. We went through
10 all this evidence of things that don't matter. But he didn't
11 know it didn't matter. He said he had his discovery. He
12 reviewed it with his lawyer. Everybody thought that this
13 pillow had blood on it. So what does he do? He says, "I
14 went up and I saw Jackie smothering her daughter. She
15 invited me up because she was crying and that's how blood got
16 on the pillow." Those were his words to Detective Smith, to
17 a solicitor as well. And he just took it. They didn't care
18 enough to know the results of that DNA testing at the time.
19 They didn't care enough to know because if they had, they
20 would know that that doesn't match. And they should confront
21 Dre and not sit there and take it. But the problem is, this
22 case comes to them with two people lying. They didn't care
23 to listen to anybody about the violence or the abuse. "So
24 how do we win? Oh, one of them is raising their hand and
25 wanting to cooperate. Okay, cool. Let's hear what you have

1 to say. That sounds good."

2 You, as jurors, deserve better. Dr. Riemer, science
3 doesn't lie. Cell phones don't lie. People lie. India died
4 of approximately two blunt-forced trauma events.
5 Specifically, there's no evidence of smothering by a pillow.
6 But then again, Dre thought that was significant because he's
7 trying to match his story to things that he thought mattered.
8 That's not the case. Someone beat this child to death until
9 her blank -- brain bled and caused pressure. Same man who
10 punches holes in walls, hits women -- if you're going to hit
11 a 4'11 woman, you will hit a four-year-old. They're not
12 consistent with the fall. There's no fall. Dre hurt India
13 on the 19th. It wasn't the fatal blow. And then in his care
14 again on the one day that he went to FedEx, that would be his
15 alibi, he tries to say Jackie did it, but really he did
16 something else again. She could have survived two to
17 five days.

18 This entire case is built on Dre. This is his
19 interview. I encourage you to listen to it. It's in
20 evidence. He's being treated as a suspect because he is.
21 They both lied to protect -- she to protect him, him to
22 protect himself. But we've given you an explanation about
23 the abuse dynamic and why she would lie for him. He's wiping
24 his phone. Don't forget that. He's coming into this with a
25 cell phone that he's wiped in an attempt to hide it. They

1 agreed to accept his lies even though they had no results of
2 a rape kit. Don't forget about that. We spent about two
3 hours of literal testimony that was unnecessary from the
4 collection of a rape kit swab, the chain of custody to Deputy
5 (inaudible) who thought some sexual assault had occurred to
6 the suspicion by Detective Smith who says, "I'm going to get
7 you for murder and sexual assault."

8 And then they agreed to talk to him, not even knowing
9 whether his semen would come back in India. That's how
10 little they cared for the truth. The DNA, that blood was --
11 which was not blood, the rape kit wasn't there, but they
12 didn't care. Can you imagine how this case would've turned
13 on its head if they had gotten that statement from Dre and
14 said, "Thanks for cooperating." And then a year later when
15 the rape kit comes back and his semen had come. Can you
16 imagine how that would be? But they didn't know. And they
17 didn't care enough to know, they just want to win. You
18 deserve better than that. You do.

19 Your job is to decide if the State has presented
20 evidence beyond a reasonable doubt that Jackie (inaudible) by
21 blunt-force trauma to her kid, that she had some neglect
22 while also having extreme indifference, a deliberate act,
23 whether she killed her baby or not. They don't even agree
24 that she's an aider and abettor. This is all about: Have you
25 found evidence beyond a reasonable doubt that she killed her

1 baby with the fists? 4'11 Jackie, who haven't presented one
2 shred of evidence of a history of violence by her against
3 India, against any of her kids.

4 MR. ANTHONY: Object -- objection.

5 THE COURT: Argue facts.

6 MR. L. SHEALEY: They have not presented that. I'm
7 arguing facts and evidence.

8 THE COURT: Don't argue with me. Keep your argument to
9 the jury summarizing, the facts have been presented.

10 MR. L. SHEALEY: They haven't tried to attempt to
11 explain why this would occur, that the evidence was all there
12 all along to explain why he would do this. Frustrated former
13 athlete, babysitting the legacies of other men, and the
14 doctors and scientists that provided you with statistics to
15 help fill in those gaps. Punch holes, choking, slapping,
16 who's in control? The evidence is not a light thing.
17 Mr. Anthony didn't once really talk to you about what
18 reasonable doubt means, the Judge will. Look at this chart.
19 It's a very good illustration. I didn't create it. Someone
20 smarter than me did.

21 MR. ANTHONY: I -- I'd object to the use of the chart.
22 I think the Court will be instructing on reasonable doubt.

23 THE COURT: The Court gets to instruct on reasonable
24 doubt. I'd give a charge that's been approved by the Supreme
25 Court. So I don't think we need another chart that I will

1 not use.

2 MR. L. SHEALEY: Well, it's demonstrative, Judge. I
3 think I'm allowed to use demonstratives.

4 THE COURT: I don't think you're on that. That's --
5 that's a -- your suggestion. That's the law. And that's not
6 the case.

7 MR. L. SHEALEY: It's not that you think maybe it
8 should go, maybe that there's an inference. You have to be
9 firmly convinced to the point that each and every one of you
10 has no doubt that she killed her child. That is the only way
11 that the veil is lifted for the robe of righteousness. It's
12 -- again, it's meant to be that way. They never walked a
13 mile in her shoes. I've explained to you the motives, and
14 the means, and the opportunity of a real killer.

15 THE COURT: Let's take that -- that slide down, please.
16 Thank you.

17 MR. L. SHEALEY: Hey, John Anthony at his work, he's
18 telling you that there's no deal for Dre, that he intends to
19 prosecute him. He intends to have his day in court. You're
20 citizens in this county, you can follow up on that. You have
21 a vote. But as much as we want justice for India, an
22 injustice for Jackie is not a just verdict. Justice can be
23 found for India through the prosecution of Dre Williams.
24 They have not proven this case beyond a reasonable doubt.
25 Provide justice for both India and Jackie.

1 THE COURT: Brief rebuttal.

2 MR. ANTHONY: Thank you, your Honor. I know the
3 Defense wants you to think that this whole case is about
4 Audrevious Williams. That's why my whole case -- well, I
5 just want you to think back to the hour or so -- almost an
6 hour I spent talking to you just a few minutes ago. Our case
7 is not about Audrevious Williams. Our case is about those
8 text messages between the two of them. And our case is about
9 her lying to the police and Antonio Martin, Asia Martin,
10 that's what our case is about. If you -- you know, when I
11 got up here a few minutes ago, I was trying to tell you what
12 the evidence that we had was that justified you finding her
13 guilty. And it is not about Audrevious Williams. I know
14 that's why they want to characterize it. That's just not
15 correct. And when you go back there and start talking about
16 it, I -- I think you'll -- you'll see that.

17 They -- they also just seem to have a problem with the
18 homicide by child abuse law. Because all he wants to talk
19 about is the doubt that she killed India, and Audrevious
20 killed India. He didn't do it. Well, there's plenty of
21 evidence that if she did kill India, she's guilty of murder
22 or -- or homicide by child abuse -- by abuse. But I heard
23 very little, very -- very little about the neglect. And I
24 know they don't like the law -- you know, the homicide by
25 child abuse law that gives two ways you can convict somebody.

1 But that's what it says. You know, the people down in
2 Columbia, they wrote this law about -- that prohibits
3 contributing to the death of a child. And it contributes --
4 it prohibits two ways. It prohibits it by actually abusing
5 the child, and then it prohibits -- prohibits it by letting
6 the child die. And that's what the homicide by child abuse
7 law says. And they may have a problem with it, but that's
8 what it says.

9 So if you find that she neglected India in a way that
10 led to her death with extreme indifference, then Ms. Mullen
11 is guilty of homicide by child abuse.

12 And they -- there was some argument about the extreme
13 indifference and they said, "Well, you've got to show that
14 there's deliberate acts of extreme indifference." Well, this
15 case is full of acts of extreme indifference. You know,
16 going to buy drugs while your child's up in your bedroom
17 dying, that's extreme indifference. Having sex with your
18 boyfriend while your -- your child's dying, that's extreme
19 indifference. Wanting to shut your child up while she's
20 dying, that's extreme indifference. So it's a little bit
21 ridiculous to say basically everything she did over that
22 three-day period while India was up there in the bedroom in
23 pain, going in and out of consciousness, moaning, all the
24 stuff that's in those texts, that's in those internet
25 searches, all of that are decisions. They're all decisions

1 that Ms. Mullen made to let her little girl die. And they
2 may not like the law. They might not like it. The law makes
3 that a crime. The law makes that a crime. And if you find
4 she did that, you need to convict her. You need to convict
5 her of homicide by child abuse.

6 I'm going to talk about just a couple more things.
7 Just want to hit on a few things they talked about. The --
8 the pillowcase. The pillowcase was taken from the bed.
9 India was lying on a mattress on the floor. That mattress
10 was later propped up against the drawer where India was. So
11 there's no real way to know that that's the same pillowcase.
12 You heard all this talk about how she's trapped, how
13 Ms. Mullen's trapped. Well, Ms. Mullen had resources. She
14 could get money from James. She could get money from
15 Quentin. She could get money from her grandmother. She did
16 not lack for financial help. There's even -- if -- and I'm
17 not going to go pull these text messages, you'll have them
18 back there in the jury room. But there's even an exhibit
19 where it is clear that Ms. Mullen have -- has the cashapp
20 card. And so Mr. -- Mr. Williams did not always have the
21 money.

22 And going -- talking about some of -- the fall -- the
23 fall on the 19th, well, this incident, the injuries India
24 sustained did not happen on the 19th. And that was a
25 Tuesday. And their internet searches don't start on the

1 late Friday night or early Saturday morning. That's when we
2 know that India was hurt three days later. And if she had
3 sustained the fatal injuries on Tuesday, that means she
4 would've lived over six days before she died. And that's
5 longer than Dr. Riemer said she could live after sustaining
6 the head injuries. Dr. Riemer said she wouldn't have lived
7 more than five days. And of course, when you look at those
8 text messages about that fall when Audrevious tells her that
9 India fell, Ms. Mullen's response is -- well, there's two:
10 "She's aggravating" and then "I don't care just give her a
11 bath."

12 And then on May 15th, when he had India stand in the
13 corner, if you look at that series of text messages, it's
14 Ms. Mullen who says that Mr. Williams is always giving her
15 the easy way out. She's saying, "He's the lenient parent."
16 And if you go now to the night of the 22nd, the only one of
17 the children that Mr. Williams comes -- complains about that
18 night is little Dre, his son. At 5:45, he says, "I'm sick of
19 Dre's ass. I really am." But he doesn't say anything about
20 India. He never says anything bad about her at all that
21 night. Whereas Ms. Mullen is saying that -- is saying -- is
22 that -- that morning Ms. Mullen is talking about how she's
23 crying and she can't get her to shut up.

24 Once again, you know, there's -- there's talk about the
25 fear that she's in. But you've got multi -- two occasions in

1 those text messages where she's saying that -- that she's
2 threatening to call the police on him.

3 And with these experts, you know, it -- it must be nice
4 with Ms. -- Ms. Callaham, the -- the expert who came from
5 Greenville. It must be nice to get paid \$250 an hour to come
6 over here and talk about a case that you don't know anything
7 about. Because this is not just some generic situation like
8 what she was talking about. She was talking about general,
9 generic domestic violence situations. These are -- this is a
10 particular situation that you have to judge. These are
11 two people who had their own relationship. And Ms. Callaham
12 can't -- can't say anything about that because she doesn't
13 know. She doesn't know anything about the case. She just
14 came over here and opined about domestic violence for about
15 45 minutes when she doesn't know anything at all about
16 Audrevious Williams and Jackleen Mullen.

17 And then Dr. Knight talked about how she'd been -- how
18 Ms. Mullen's been traumatized. But you have to remember, her
19 opinion comes from Ms. Mullen, and Ms. Mullen's family and
20 her friends. Those are the people she talked to. She didn't
21 talk to Audrevious Williams' family. You know, she never
22 talked to Audrevious Williams' mom. She never talked to his
23 dad. She talked to Ms. Mullen and her family, and she talked
24 about, "Well, I have these reports and I write on these
25 reports." But you have to remember, what -- what did the

1 report say? The reports said, Ms. Mullen said something.
2 They weren't corroborated, independently-verified things.
3 They were just self-reports from Ms. Mullen.

4 And then she said, "Well, there was" -- "I knew there
5 was abuse between the two of them based on the text
6 messages." Well, you've got a lot of those messages. You'll
7 have pages of -- and pages of those messages back in that
8 jury room, and you can come to your own conclusions about the
9 nature of their relationship. But I would submit to you that
10 there is nothing in those messages and you haven't heard
11 anything, any evidence at all that would excuse Ms. Mullen
12 from the responsibility to take care of her child. You
13 haven't heard anything like that. There's nothing in this
14 evidence -- in the evidence that would make you think, "Oh,
15 she was just incapable of doing anything to stop her daughter
16 from laying up -- lying up in the bedroom dying on a mattress
17 over a three-day period."

18 And they talk about the fear that they -- they say she
19 -- she was in. Well, once again, in -- in the text messages,
20 there's two threats to call the police. There was also --
21 and I -- I asked Dr. Knight about this. About six weeks
22 before this incident happened, Ms. Mullen called the police
23 on Mr. Williams. And the report says -- and I asked -- I --
24 I asked Ms. -- Dr. Knight about this. The report said she
25 called the police because she wanted to sit in her car and

1 listen to music. And Mr. Williams had thrown a juice bottle
2 at her car. Now, they want you to believe she was too scared
3 to call the police to get help for her dying daughter. She's
4 too scared to do that. But six weeks before, she's not so
5 scared that when her music listening is interrupted, she'd
6 call the police on him.

7 Now, how crazy is that? Does that sound like a woman
8 in fear to you? Does that sound like somebody who's just so
9 terrified and so captive -- captive of -- such a captive of
10 this man that she just has to do whatever he says she can't
11 act on her own. She has no volition. She called the police
12 because he got on her nerves. And -- and now still wanting
13 to say, "Oh, well, she couldn't get help. She couldn't get
14 any help." That's neglect. That's a -- that is evidence of
15 extreme indifference towards her daughter.

16 There's a -- a message -- a text message that you're
17 going to have it -- it was on May 14th and it's one --
18 probably one of the truest things Ms. Mullen says in all
19 those messages. She's talking to Mr. Williams and she says,
20 "I will walk away if I have to. Don't confuse me with weak."
21 You'll see that. "Don't confuse me with weak."

22 Well, between the two of them, Ms. Mullen -- and this
23 is -- this is corroborated. This is what her friends said
24 when they testified last Saturday, "Between the two of them,
25 she's not the weak. She's the strong one. She's not the

1 dumb one; she's the smart one. She's not the one who goes
2 along, she's the leader." And when it came time to come up
3 with a scheme to figure out what to do with this
4 inconvenient, dead child upstairs, she was the one going to
5 do this evil. And once again, that's the clue. That is just
6 another clue as to who really killed India M. [REDACTED]

7 They talked about reasonable doubt. I will just say to
8 you, when the Judge -- the Judge will define reasonable doubt
9 for you. And he is not going to tell you about a football
10 field and he's not going to show you a chart. You know,
11 reasonable doubt is proof. Beyond reasonable doubt is proof
12 that leaves you firmly convinced of her guilt. It is not
13 proof beyond all doubt. It's not proof beyond the shadow of
14 a doubt. It is proof that firmly that this is (inaudible).
15 And I would submit, we have given you that in this case.

16 You know, there was -- the Defense attorney talked
17 about judging Ms. Mullen's lifestyle. Like, well, her
18 lifestyle was just different. Well, the -- ladies and
19 gentlemen, the law is the law. You know, we're not -- we're
20 a free country. You can pretty much do -- live however you
21 want to, but the law imposes certain obligations on us.
22 Something -- certain -- very basic in terms of obligations on
23 us. Like, we can't kill other people and we can't kill
24 children. And if we're responsible for a child, we can't let
25 a child die. You know, even if we're not responsible for it,

1 under the homicide or child abuse law, it's just a crime to
2 -- with -- be indifferent for the child and let it die. I
3 don't know. I -- I mean, I don't know when letting a child
4 die became a lifestyle choice. But it's not a lifestyle
5 choice, ladies and gentlemen, it's a law. Because that
6 little four-year-old girl had value and the law protects that
7 little girl. Unfortunately, her mama didn't protect her.
8 And now it's time for justice. It's time to hold her
9 responsible for her failure to do what the law requires she
10 do, as far as taking care of her child, and what -- what she
11 shouldn't -- what the law shouldn't -- the law shouldn't come
12 into play on this, but it does.

13 So -- so I would ask you, go back there, look at all
14 this evidence, think about -- think about the neglect part.
15 Think about how you -- you really didn't hear -- hear any
16 argument about the neglect part, the neglect part's easy in
17 this case. And I'd ask that you -- you hold her accountable.
18 Find -- find her guilty. Find her guilty of homicide by
19 child abuse. And if you're convinced she inflicted these
20 injuries, find her guilty of murder. Thank you.

21 THE COURT: (Inaudible) probably give a break.
22 (Inaudible) you know, I want you all to take a break for a
23 couple minutes. I want you to tell me this, my instructions
24 are between 20, 30 minutes. Do you all want to receive those
25 tonight, before tonight, or you want to come back in the

1 morning? You all will see, once you all start to deliberate,
2 take your time. We're going to be here waiting for you. I
3 don't want -- we spent eight days dealing with this case, not
4 including days we work here, we work hard. I don't want
5 somebody watching their watch and say, "I got to get home to
6 see (inaudible)." That's not something that we need to take
7 into (inaudible) or be in a hurry. But I want you all to
8 have the ample time you all need to review the evidence and
9 make a fair and just decision. So take a break. Let me know
10 if you will work on something tonight or you will come back
11 and I'll instruct you in the morning. And you deliberate in
12 the morning, okay?

13 (Off the record from 5:29 to 5:43 p.m.)

14 THE COURT: All right. We'll stop there. Remember
15 this, I'm not giving you my instructions, therefore if you're
16 not quite ready to deliberate, don't talk to anybody about
17 the case tonight. Don't do any research. Enjoy your
18 evening. See you back in the morning. Be here at 9:00.
19 I'll give you the instructions, make sure (inaudible). The
20 lawyers and the court reporter are kind of (inaudible) go and
21 do -- make sure everything that was introduced or admitted is
22 there. Once you all get that, then you all (inaudible) and
23 deliberate. All right. Very good. Enjoy your evening.

24 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED

25 5:43 P.M.)

CERTIFICATE OF TRANSCRIBER

I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 16 of York County, South Carolina, on November 13, 2023.

I do further certify that I am neither of kin, Counsel, nor interest to any party hereto.

May 2, 2025.



MARY RAGSDALE

Transcriber

1 CONTINUATION OF PROCEEDINGS - NOVEMBER 14, 2023.

2 THE COURT: Yeah, that's very nice.

3 MR. ANTHONY: Before we start back, I've got -- I have
4 one thing I wanted to just take up. When we were talking
5 about the charges yesterday in regards to the one homicide,
6 one punishment part of it, I -- my understanding was that we
7 were just talking about the murder and the homicide by child
8 abuse, and I didn't -- and may -- this may be just completely
9 my fault, but I didn't -- I didn't understand us to be
10 talking about the aiding and abetting charge. So I -- the
11 State's position would be that the aiding and abetting, and
12 the homicide by child abuse are not inconsistent verdicts.
13 The jury could find that she aided and abetted in the killing
14 and then is still guilty of homicide by child abuse based on
15 the neglect and failure to obtain medical care.

16 So we think that ought to be -- we don't think the jury
17 should be told that they can't convict of aiding and abetting
18 along with the murder or the homicide by child abuse. Like,
19 I -- my understanding was that we're going to be told, "You
20 can't convict a murder and homicide by child abuse, but you
21 could still convict of murder or homicide by child abuse and
22 aiding and abetting." So I -- I didn't know -- I wanted to
23 make sure that -- what the Court's understanding of that was
24 and then go from there.

25 THE COURT: Didn't you argue that differently in front

1 of the jury?

2 MR. ANTHONY: I did. I did because I --

3 THE COURT: Well, no, you said, "I don't normally ask
4 for a not guilty verdict --

5 MR. ANTHONY: Yes.

6 THE COURT: -- but this is --"

7 MR. ANTHONY: Yes.

8 THE COURT: That's what you did. I remember you saying
9 that.

10 MR. ANTHONY: I -- I did because I -- I just did -- was
11 not thinking about the aiding and abetting being thrown in
12 with the other two. And so I -- I just wanted to see how you
13 were planning on charging that and be -- and I'd like to be
14 heard on it depending on what your plan is.

15 MR. L. SHEALEY: It just seems very clear per the Green
16 case that one homicide -- a jury can have one homicide
17 punishment. Aiding and abetting is a different section of
18 the homicide by child abuse statute. So it is a homicide
19 punishment. So -- and keeping with Green, the instruction
20 that the Defense thinks needs to be had is that they can
21 select one of those three charges or none of them. It's a
22 homicide punishment.

23 MR. ANTHONY: Well, I -- I mean, if you look at the
24 Lewis case, in the Lewis case, the Defendant was convicted of
25 homicide by child abuse and aiding and abetting homicide by

1 child abuse. And it is -- there's two -- two theories that
2 -- that can be reached under. They're not -- it's not like
3 you're talking about a killing. Like, with murder and
4 homicide by child abuse under an abuse theory. You have to
5 say, "Well they found that this person" -- they found that
6 Ms. Mullen actually killed India M. [REDACTED] but the aiding and
7 abetting and the homicide by child abuse under neglect theory
8 are not -- they're not inconsistent.

9 MS. JOYNER: It's Smith.

10 MR. ANTHONY: I'm sorry. It's -- I said Lewis, I -- I
11 meant the Smith case. I meant the -- the Smith -- the Smith
12 case.

13 MR. L. SHEALEY: And your Honor has ruled on this.
14 We've heard this -- these arguments ad nauseam. I'm pretty
15 sure there's a rule about continuing to argue after you've
16 ruled.

17 THE COURT: All right. How much the Smith case's on
18 there?

19 MR. ANTHONY: I've got a copy of it for the Court.

20 THE COURT: I got Lewis, I got Green. We discussed
21 yesterday the -- not that one, but the other place in case we
22 were -- the Green -- the Glinyanay that was discussed not on
23 this particular issue, but -- all right. I don't believe we
24 discussed the difference between -- it was suggested that
25 directed verdict by the Defense that there was -- State's

1 whole theory was principal is Ms. Mullen, and the assisting
2 was Williams, and they argued that directed verdict was no
3 substantial evidence to show that she was an aider and
4 abettor, that was the directed verdict motion. And that was
5 argued twice, both at the end of the State's case and the
6 Defense's case.

7 Yesterday when we got in the discussion about Green, I
8 was analyzing murder and the homicide by child abuse, and
9 those are distinguishable. You can only -- you -- you have
10 to select, you can be not guilty of both or guilty of either
11 one, but not guilty of both. You can only be sentenced to
12 one. The State argued at that time murder and homicide by
13 child abuse or -- should be submitted to the jury and it can
14 be convicted of both, but the Court will just have to
15 sentence to one. And I disagree with that. I think it's
16 murder or homicide by child abuse or neither.

17 Reading the Smith case, there's evidence -- ample
18 evidence that it can be murder, or homicide by child abuse,
19 or aiding and abetting homicide by child abuse, or either of
20 the homicide offenses and aiding and abetting. That's not
21 simple, but I don't think we argued that ad nauseam. That --
22 that distinguishing issue I don't think I was presented. I
23 understand it, but I don't think it was presented yesterday.

24 MR. L. SHEALEY: Well, maybe that was quite a complex
25 issue. I was arguing that I just didn't realize you -- you

1 all weren't arguing that. The Smith case is a directed
2 verdict case from 2004.

3 THE COURT: Uh-huh.

4 MR. L. SHEALEY: The Green case draws this bright line
5 rule in 2018. So yes, that's a directed verdict case. It
6 got to the jury on both those issues and then as -- as our
7 Supreme Court does evolve. In Green, many years later, they
8 said you can only have one homicide punishment or one
9 homicide.

10 THE COURT: The aiding and abetting is not a homicide.

11 MR. L. SHEALEY: It's under the homicide by child abuse
12 statute.

13 THE COURT: It is. But it's distinguishable. That's
14 what Green says. They're -- they're -- they're
15 distinguishable.

16 MR. L. SHEALEY: Well, it's a homicide punishment, your
17 Honor, I don't know how else to call it. It's not just
18 unlawful neglect.

19 THE COURT: Well -- I mean, it's a homicide, it's a
20 minimum 20 aiding and abetting. It's a maximum 20 that's
21 distinguishable punishment by the jurors. That's their
22 intent that they're not the same.

23 MR. L. SHEALEY: Well, involuntary manslaughter only
24 carries at five years. So it's --

25 THE COURT: That's a lesser included.

1 MR. L. SHEALEY: It -- I understand, but it's -- it's
2 still a homicide punishment that reflects a different
3 culpability in the minds of our legislature. So it has a
4 lesser sentence, but it's still a homicide punishment. So
5 per Green, you can only select one, and I don't -- I can say
6 the same thing over and over again, and the Court may
7 disagree, but that's -- that's my reading of -- of Green.
8 Smith just isn't really on point and the Court has changed
9 its mind clearly since then about how we punish on these
10 cases.

11 THE COURT: No, it hasn't. I've not changed my mind at
12 all.

13 MR. L. SHEALEY: Not -- not you, Court, I mean, the
14 Supreme Court in my opinion, yes, sir.

15 THE COURT: Okay. I don't think that issue was
16 presented to me whether aiding and abetting stood on its own
17 or it was a -- an exclusive, independent charge one, or
18 charge two, or charge three. It's charge one: Murder, or
19 charge two: Homicide by child abuse. And then without an
20 and/or and or the offense of aiding and abetting homicide by
21 child abuse stands independently. All right. I want to
22 print my verdict form. You got that consistent with my
23 ruling.

24 MR. ANTHONY: And, your Honor, if -- if you plan on
25 telling them that they can convict of the aiding and abetting

1 alongside of the homicide by child abuse, I have -- we have
2 made a markup to the Defense request to charge that we'd like
3 the Court to consider. We -- we also have a proposed verdict
4 form we'd like the Court to consider.

5 THE COURT: You know, I'll see -- I'll look at it, but
6 I was working on this all yesterday afternoon and this
7 morning, and you all get me here at 9:00 and say, "Hey,
8 consider this. We've been working on it and didn't let you
9 know till you walked in the door." Let's see it.

10 MR. ANTHONY: All right. Thank you. There's the
11 charge and there's the verdict form.

12 THE COURT: Let's assume with mine, but I got a
13 signature line and a date. So your -- your verdict form is
14 very close to mine.

15 MR. ANTHONY: Okay.

16 THE COURT: Not identical. Mine's actually better.

17 MR. ANTHONY: Not surprised.

18 THE COURT: Oh, you should be. I've got something
19 similar to that in my jury instruction without the indictment
20 standing independently that -- that it covers exactly what
21 you're asking for to cover.

22 MR. ANTHONY: I mean, the -- the concern -- the concern
23 that we have about the -- the one homicide one punishment is
24 just (inaudible).

25 THE COURT: All right.

1 MR. L. SHEALEY: And just for the record on this issue,
2 your Honor, just looking literally at the homicide by child
3 abuse statute. Homicide, the guilty number one, abuse and
4 neglect or knowingly aiding and abetting, it's all contained
5 within the same homicide statute and then it lists the
6 homicide punishments. There's only one way to interpret
7 that. So per Green, it's one or none.

8 THE COURT: All right. I understand you all's argument
9 and Smith's case also quotes the exact law you just read to
10 me, on page 491 of the (inaudible) reporter, and it carries
11 on to page -- on that page it says -- or it quotes that exact
12 law, but there was evidence submitted to be considered by the
13 jury of Smith's conduct on both of those offenses. It's not
14 one act; it's just days of acts, is what the jury's been
15 presented. If something happened maybe on Friday or
16 Friday afternoon, or lack of medical care on Saturday,
17 there's a litany of facts testified as to what this child
18 endured over a period of days that the jury could consider
19 both of those. In my view, I think both of them go. I don't
20 think Green overrules Smith, it overrules Easler.

21 MR. ANTHONY: The -- the concern behind the charge I
22 handed up to your Honor is just we want -- the State
23 obviously would want it made very clear to the jury that if
24 they pick between murder and homicide by child abuse, that
25 they -- they don't find him -- find her not guilty of the one

1 they don't pick. We want it -- we -- we want it made very
2 clear in the charge that they just don't render a verdict on
3 the one they don't pick. And so that's what is behind the
4 charge we submitted and that's what's really behind the --
5 the verdict form, is just to make that abundantly clear to
6 the jury that they -- it's not a matter of you -- you think
7 it's homicide by child abuse, that means she's not guilty of
8 murder, is -- she's guilty of homicide by child abuse and we
9 just don't come back with anything on murder. And that's --
10 that's our concern for, you know, obvious reasons.

11 THE COURT: I -- I think you don't get that because if
12 she's found not guilty on murder and a hung jury on arrest,
13 then that precludes her prosecution on the murder. I don't
14 think you get it that way. You have -- you can have that.
15 The jury may decide it is not a murder and can't decide
16 anything else. Dude, you got a verdict on the murder and the
17 verdict -- murder's gone.

18 MR. ANTHONY: That's -- that's true. I just -- I -- I
19 be --

20 THE COURT: I think they -- I think they get it. They
21 get both. They don't have to decide both. They can decide
22 both. I -- I am having great difficulty with Judge Hall's
23 printer and Mel is running around trying to get it done. All
24 right. Bring in the jury. I'm going to work off my
25 computer. They've been back there long enough. This has

1 been a patient jury, folks.

2 (Jury enters room at 9:25 a.m.)

3 THE COURT: All right, folks, welcome. I'm going to
4 give you the jury instructions on how to manage what you've
5 heard and -- and what's your -- your task in sight of the
6 law. I apologize, I have to read some of it to you and I'll
7 be able to talk and teach some of it to you. So I kind of do
8 both, but I apologize for having to read, but the specifics I
9 only get right, so I read those. So, Ms. Ohlman, ladies and
10 gentlemen of the jury, State of South Carolina has charged
11 the Defendant Jackleen Mullen with the crimes. Can you all
12 hear me?

13 MR. L. SHEALEY: Yes.

14 MR. ANTHONY: Yes, sir.

15 THE COURT: Okay. Good deal. Is that better for you,
16 Ebony? All right. With the crimes of murder, homicide by
17 child abuse, and aiding and abetting homicide by child abuse.
18 You bear in mind, as I instructed you earlier, that she's
19 pled not guilty. And by that plea, she denies all of the
20 charges alleged in the three indictments.

21 Now, Ms. Mullen comes to court clothed with a
22 presumption of innocence, and this presumption of innocence
23 stays with her and continues throughout the trial, and
24 entitles her to a verdict of not guilty unless and until it's
25 dispelled by evidence satisfying you, the jury, beyond a

1 reasonable doubt that she is guilty of the offenses charged.
2 The State has the responsibility or burden to prove each and
3 every element of the alleged crimes beyond a reasonable
4 doubt. We'll discuss those later as to how you all evaluate
5 those.

6 Now, the constitution and law, which makes you, the
7 jury all, are the judges of the fact -- the finders of the
8 fact. That's you all's job. You all find facts from the
9 evidence. Now, that same constitution makes me the Judge of
10 the law. We kind of work together. You all got to do you
11 all's job when I'm doing mine, you all -- I make legal
12 decisions and rulings when you all make factual signs and
13 rulings, you all act independent of the Court, but we work
14 hand in hand.

15 Now, the constitution makes me the Judge of the law,
16 makes me the sole and only instructor of the law. And so you
17 must accept the law as I instruct to you this morning. If
18 you have a misunderstanding, a different understanding, or
19 different belief of what the law is, what it should be, you
20 must disassociate yourself with that misunderstanding and
21 accept the law as I'm instructing it to you today, even if
22 you disagree with it.

23 The General Assembly and Supreme Court hands the laws
24 down to the courts, and that's the law of South Carolina, and
25 that's my job to instruct you consistent with those

1 parameters.

2 Now, if I make an error instructing the law to you,
3 there's another time and there's another place that that
4 error could be considered, and if necessary corrected. For
5 our purposes today, you must accept the law as I'm
6 instructing it, so you nor I -- either one should be
7 concerned about what we believe the law ought to be, but only
8 concern yourselves with how I'm instructing to -- in fact be
9 currently.

10 Now, burden of proof is an important thing. The State
11 enjoys or is burdened with the burden of proof. A defendant
12 has no burden whatsoever, defendant's presumed innocent. A
13 defendant has to -- has nothing whatsoever to prove. A
14 person doesn't have to prove they're not guilty or disprove
15 they're guilty. The State has the responsibility of proving
16 the guilt beyond a reasonable doubt. If the State fails to
17 meet that high burden, then a defendant, like Ms. Mullen, is
18 entitled to a verdict of not guilty.

19 Now, as I told you, you all are the judges of the
20 facts. As sole judges of the facts, I'm not allowed to
21 suggest to you how I'd feel about the facts -- you all's job.
22 As judges of the facts, your primary duty and job is to
23 evaluate credibility, believability of any of the witnesses
24 and any of the evidence which has been presented to you.

25 Now, in passing on credibility of any of the witnesses,

1 you're considering their believability and you can consider
2 anything in your collective 12 lives' experiences is how you
3 evaluate believability or credibility of what's been
4 presented to you in this trial.

5 Now, you can consider several things that many people
6 do in their everyday lives. You may consider the manner and
7 appearance of any witness who testified. Was the witness
8 straightforward or hesitant in their answers? How did a
9 witness come to know the facts to which he or she testified?
10 What was her ability -- or his or her ability to recollect or
11 to know the facts to the questions and answers to which they
12 gave? Is there some reason a witness would want to give
13 testimony which would help or hurt one side or the other? In
14 other words, was the witness biased or prejudiced towards one
15 side or the other? Was the testimony of a witness
16 strengthened or weakened by another testimony or other
17 evidence? You as a group can believe as much or as little of
18 each witness's testimony as you deem appropriate and proper.
19 You can believe the testimony of one witness against that of
20 many or just the opposite. You can believe part of a
21 witness's testimony and disbelieve the rest. You can
22 consider a person's prior criminal record that a witness may
23 have had in determining that person's credibility and the
24 weight to be given their testimony.

25 Now the fact that testimony is not controverted does

1 not mean you must accept it as true. You still gauge the
2 credibility of the witness who presented that, and determine
3 the believability of the facts offered through that
4 testimony.

5 Now, our rules of evidence normally don't allow a
6 witness to testify as to opinions or conclusions. An
7 exception to that rule -- normally people are -- are provided
8 testimonies of what they saw, they smelled, what they did.
9 An exception to this exists for witnesses who we call "expert
10 witnesses." We had several witnesses qualified as experts,
11 and so a witness who by education and experiences become an
12 expert in some art, science, profession may state an opinion
13 as to a relevant material matter in this trial in which the
14 witness claims to be an expert. And they may also state the
15 reasons for that opinion. You consider any expert's opinion
16 receiving evidence in this case and like the other evidence,
17 give it the weight you think it deserves.

18 Now, I tell you that if you decide that the opinion of
19 an expert witness is not based on sufficient education or
20 experience, or if you conclude that the reasons given to
21 support the opinion are not sound, or you find the opinions
22 outweighed by other evidence, you consider the expert
23 witness's testimony just like you would any other witness,
24 give it no greater weight simply because they're an expert,
25 and you're not required to accept the expert's testimony and

1 opinion because it's not contradicted. I just tell you,
2 evaluate all the testimony, give it the weight you deem
3 appropriate, believable, and credible.

4 Now, as the sole fact finders, I've observed you all
5 watching and listening to the evidence presented very
6 acutely. Some of you took notes, in fact, I'm going to that
7 in a moment. But as you weigh evidence, weighing the
8 evidence is entirely a mental process. You don't put the
9 number of witnesses on a scale and say one side presented 10
10 and one side presented 4, therefore 10 to 4. You don't do
11 that. You weigh all the evidence that you heard and make a
12 decision on whether or not the State has met its burden of
13 proof. You weigh the evidence using your good judgment and
14 common sense.

15 Now, regarding the note-taking, I allow jurors, some
16 judges don't -- I don't know why, but they don't. I allow
17 note-taking in just about any trial whatsoever. Now, my
18 observations over the years, some people are better
19 listeners, some people are better notetakers. Jurors pick up
20 things in trial because there's 12 of you all who've watched
21 the entire trial, and maybe one of you is watching the body
22 language of a witness, and one of you is watching the
23 lawyers. You observe what you observe, you receive
24 information as you receive it, but I tell you, each of you
25 has an independent vote that weighs the same as the other. A

1 good person, good listeners, their recollection is just as
2 believable or weighs just as much as a notetaker's notes. So
3 a notetaker's notes, do not trump a good listener's
4 recollection. Everybody has an equal vote. Your verdict
5 must be unanimous so remember that. Don't defer to
6 somebody's notes because they happen to write it down. Some
7 people are auditory learners. They listen, they hear, they
8 see, you never know, but you all evaluate all of your
9 understanding. But the note-taking does not trump the good
10 listeners' ability or an observer watching body language.
11 You can use whatever you want in deciding the facts of this
12 case.

13 Now, we did go over this, the redactions that were
14 presented in some of the body cams and the recordings, and we
15 presented those, and just about all those redactions -- and
16 when they cut the recordings off, the lawyers agreed that
17 what was relevant was what was presented, and the things that
18 were not presented was not relevant. That was basically by
19 agreement. Now -- so certain sections of audio, and video,
20 and paper presented were redacted or edited out, and that's
21 basically due to the rules of Court. The lawyers know the
22 rules of Court and trying to comply with those. They worked
23 together to agree on what was presented to you by those
24 recordings. So don't speculate as to what may or not be
25 contained in the portions that were redacted. You're not to

1 hold those portions that were redacted against either party.

2 You got what you got.

3 Now in a trial, there's generally two types of evidence
4 which are generally presented: The direct evidence and the
5 circumstantial evidence. Direct evidence is testimony of a
6 person who has searched the claim, have actual firsthand
7 knowledge, eyewitness I saw thus and so.

8 Circumstantial evidence is a little bit different.
9 It's evidence based on an inference, not on personal
10 knowledge, or observation. Circumstantial evidence is proof
11 of a chain of facts and circumstances indicating the
12 existence of a fact. Crimes may be proven by circumstantial
13 evidence. Our law makes no distinction between the weight or
14 value to be given to direct evidence or circumstantial
15 evidence. But to the extent the State relies on
16 circumstantial evidence, all of the circumstances must be
17 consistent with each other. And when taken together, point
18 conclusively to the guilt of the accused, Ms. Mullen, beyond
19 a reasonable doubt.

20 Now, the circumstances merely portray her behavior
21 suspicious, the State's proof is failed. The jury's focus is
22 to determine whether every circumstance relied on by the
23 State is proven beyond a reasonable doubt, and that all the
24 circumstances be consistent with each other, and they point
25 to the guilt of the accused to the exclusion of every other

1 reasonable hypothesis.

2 Now, you as a jury, cannot leave the finding of a fact.
3 You cannot base it upon speculation, surmise, or conjecture.
4 I also tell you that our law makes no distinction between the
5 weight or value to be given to direct evidence or
6 circumstantial evidence. There's no greater degree of
7 certainty required of circumstantial evidence. I just tell
8 you this, weigh all the evidence you heard using your good
9 judgment, common sense, and after weighing all the evidence,
10 if you're not convinced of the guilt of Ms. Mullen beyond a
11 reasonable doubt, you must find her not guilty.

12 We keep talking about reasonable doubt. What's a
13 reasonable doubt? A reasonable doubt is the kind of doubt
14 which would cause a reasonable person to hesitate to act. A
15 reasonable doubt may arise from evidence which is in the case
16 or from a lack or absence of evidence in the case.

17 Proof beyond a reasonable doubt is proof that leaves
18 you firmly convinced of a person's guilt. Is the kind of
19 doubt which one can assign a reason, if the assignment can be
20 done reasonably, and firmly, and convincingly.

21 A reasonable doubt is a kind of doubt which makes a
22 reasonable, conscientious, honest person hesitate to act in a
23 matter of their own affairs. Now, I instruct you further
24 that a Defendant's entitled to every reasonable doubt which
25 may arise. And what that means, if any of you have a doubt

1 about anything during the trial, you're required to resolve
2 that in Ms. Mullen's favor.

3 Now, the very fact that you have a full and free
4 discussion on whether or not the State has proven guilt or
5 non-guilt does not act -- automatically create a reasonable
6 doubt in and of itself because you have a very full and
7 deliberate discussion. You must make a determination whether
8 or not a reasonable doubt exists as to her guilt. And if you
9 find the State's not met that burden, that -- of proof beyond
10 a reasonable doubt, then she's entitled to a verdict of not
11 guilty.

12 Now, criminal intent is an element of every crime that
13 must be proven by the State beyond a reasonable doubt.
14 Criminal intent as a matter must be determined by the jury
15 from the circumstances surrounding the situation. There's no
16 way to prove intent to a mathematical certainty. There's no
17 way medical science can dissect a person's brain and
18 determine what he or she had in mind.

19 Our law states that criminal intent may be inferred
20 from the circumstances which were shown to have existed both
21 before and after the act. That's how you, the jury, make the
22 determination of whether or not the element requiring intent
23 was present.

24 Criminal intent is a state of mind that operates
25 jointly with an act or omission in the commission of a crime.

1 I tell you that criminal intent is a mental state of
2 conscious wrong -- wrongdoing. It is up to you, as a group
3 of jurors, to determine what the Defendant intended to do
4 based upon the circumstances shown to have existed by the
5 State. The State must prove criminal intent also just like
6 it must prove the other elements beyond a reasonable doubt.

7 Now the specifics of the law, there are
8 three indictments. Now I have one verdict form that shows
9 the three charges, but there are three indictments. The
10 indictments are separate documents, but I'm not going to send
11 those back to the jury room.

12 One of the indictments is an indictment for murder.
13 Ms. Mullen is charged with murder. Under South Carolina law,
14 in order to sustain a conviction for murder, the State must
15 prove beyond a reasonable doubt that she killed another
16 person with malice aforethought.

17 Malice is hatred, ill will, or hostility towards
18 another person. Is the intentional doing of a wrongful act
19 without just cause or excuse. And with an intent to inflict
20 an injury or under circumstances, the law will infer an evil
21 intent. Now malice aforethought does not require that malice
22 exists for any particular time before the act is committed.
23 But the malice must exist in the mind of the Defendant just
24 before, and at the time that act is committed. There must be
25 a combination of the previous evil intent and the act itself.

1 Malice aforethought can be shown by either direct
2 evidence or facts and circumstances. Malice may be proven or
3 shown when a person speaks words of hatred, ill will for
4 another. Malice can be proved from conduct showing a total
5 disregard for human life. Now, the State must prove those
6 elements beyond a reasonable doubt to sustain that
7 conviction.

8 Now the second indictment: Homicide by child abuse.
9 Ms. Mullen is charged also by the State with homicide by
10 child abuse. In order to sustain a conviction for that
11 offense, the State must prove beyond a reasonable doubt that
12 she caused the death of a child under the age of 11
13 committing child abuse or neglect.

14 Child abuse and neglect is defined as an act or failure
15 to act which causes harm to the child's physical health or
16 welfare. Harm to the child's physical health or welfare
17 means the Defendant either inflicted or allowed to be
18 inflicted on the child a physical injury, or failed to supply
19 the child with adequate: food, clothing, shelter, or health
20 care and this failure caused physical injury or condition
21 which caused the death, or abandoning the child causing the
22 child's death.

23 Now, the State must prove also beyond a reasonable
24 doubt that the death occurred under circumstances showing an
25 extreme -- extreme indifference to human life. Extreme

1 indifference can be defined as a mental state characterized
2 by a deliberate act culminating in the death. Now --
3 instruct you on those two, you're to consider both charges.
4 You can find her not guilty on both or guilty of either, not
5 guilty of both.

6 If the State's proven its case on either one, that
7 would be your unanimous verdict. If the State's failed to
8 prove either of them, that would be your verdict. If the
9 State's proved neither of them, that would be your verdict.
10 They stand independently, but you consider them separately,
11 but you can only find her guilty of one or the other.

12 Now lastly, Ms. Mullen is charged with aiding and
13 abetting homicide by child abuse. In order for the State to
14 sustain a conviction for aiding and abetting homicide by
15 child abuse, the State must prove beyond a reasonable doubt
16 the Defendant knowingly, aided and abetted another person to
17 commit child abuse or neglect. And the child abuse and
18 neglect results in the death of a child under age 11.

19 Aiding and abetting is defined as to help, assist,
20 facilitate the commission of a crime, promote the
21 accomplishment thereof, helping, advancing, or bringing it
22 about, or encourage counsel or insight as to its commission.

23 To be guilty as an aider or abettor, the participant
24 must have knowledge of the -- of the principal actor's
25 criminal conduct. Mere presence at the scene is not

1 sufficient to establish guilt as an aider or abettor, even in
2 the company of one or more principal wrongdoers. This does
3 not alone make one an aider or abettor.

4 A person is guilty as an accomplice if he or she was
5 present at the scene of the crime, and intentionally or
6 through a common plan aided and abetted or assisted in the
7 commission of that crime through some overt act. To be
8 liable as an accomplice, the Defendant must have knowledge of
9 the principal's criminal conduct, associated herself with --
10 in participating in the criminal undertaking.

11 To convict a person of aiding/abetting, it is not
12 necessary that the identity of the principal be established,
13 nor must it be established that the principal has been
14 convicted. But the State must prove that the offense has
15 been committed. To be convicted of aiding and abetting
16 homicide by child abuse, an individual must be present when
17 the abuse occurs or is occurring, and there must be an overt
18 act committed by the aider or abettor that furthers the
19 abuse. "Intentionally" means willfully intending the result
20 which actually occurs, not accidentally, and not
21 involuntarily.

22 Now, as I told you, the indictments stands
23 independently, you can find not guilty on all three. The
24 murder and the homicide by child abuse, one of the two or
25 neither of the two. Aiding and abetting stands on its own.

1 Consider it solely, and consider each one. The State must
2 prove the elements beyond a reasonable doubt of all in order
3 to sustain a conviction.

4 Now, I instruct and emphasize to you the fact that
5 Ms. Mullen chose to not testify. That's not a factor to be
6 considered by you in any way in your deliberation, and you
7 consider the question of guilt or innocence. As I've told
8 you, she has nothing to prove or disprove. Her election to
9 take her right to remain silent is her right. Everybody has
10 that right. It's not to be considered by you in any matter
11 whatsoever.

12 A person accused has a constitutional right to remain
13 silent. And her assertion of that right must not be
14 considered by you in your deliberation. So I'm repeating
15 under your oath, you're not to draw any conclusions
16 whatsoever from the fact that she chose to not testify. The
17 fact that she didn't testify should not even be discussed,
18 it's upon the State to prove her guilt, not her proving her
19 innocence, or disproving her guilt. Burden remains on the
20 State all the way through.

21 Now, there were references made during the trial by a
22 few different witnesses regarding the custody status of
23 Ms. Mullen. A person's custody status is not relevant to the
24 issue of a person's guilt or innocence. It is not an issue
25 to be discussed by the jury in its deliberations whatsoever.

1 A person's custody status is no bearing on their guilt
2 whatsoever. The State has the burden of proving their guilt
3 beyond a reasonable doubt. So I remind you that you consider
4 the testimony and evidence which has been introduced at the
5 trial, and the State must prove this case beyond a reasonable
6 doubt.

7 Now, Ms. Mullen and other members of the jury, I remind
8 you, you all don't get to serve on juries very often. I
9 preside over jury trials very regularly. So this is part of
10 what I get paid to do. It's my job to instruct the law
11 consistent with South Carolina law to rule fairly and
12 impartially, and be assured that each side presiding --
13 presenting in front of me has a fair trial. It is incumbent
14 on you 12 to do the same. You all have taken an oath. It's
15 your job to reach a just and fair verdict consistent with my
16 instructions, consistent with your finds of the fact, and not
17 base your decision on anything outside the courtroom.

18 I told you when we started, everything you need to
19 decide this case, you'll get in the courtroom, you've gotten
20 presentation of facts and evidence from the two sides.
21 Evidence is here on this table. You've gotten my
22 instructions. I don't want anything outside of that to
23 influence your decisions. You all must reach a unanimous
24 verdict on these things.

25 So I'm going to put you back in the jury room. Now I'm

1 going to offer you something too. If you all want lunch, I
2 think I can talk to the clerk of court to do lunch again,
3 maybe somewhere different. If you want that, let us know
4 because remember it's a little lead time to get it done.

5 Secondly, once you start deliberating, it's your time.
6 If you all want a break, you want to step outside, remember
7 you can't -- I let people use their phones to make phone
8 calls to check on their family, or work, or whatever. But
9 you can't do any independent research. You can't do that.
10 So if you need to use your phone for anything, that's off
11 limits, you're under your oath not to do that. But I do
12 allow you to take breaks. You don't have to ask. You all
13 need a break? Take a break. But if 12 of you aren't in the
14 room, no discussions. 12 of you are, deliberate. Somebody
15 wants a break, use the restroom, need something else to
16 drink, it's you all's time. You do not have to send a note
17 to me saying: "Can we have a break?" You can send me a note
18 saying: "We're taking a break." That's fine. We're going to
19 be here. I'm going to do some other work with some other
20 cases while we're waiting. These lawyers are -- they'll find
21 something to do as well. So once you all start your
22 deliberations, deliberate. Need a break? Take a break. If
23 you want lunch, let the bailiff, know and the clerk's court
24 here will try to help you with that.

25 Now also, if something comes up, you got a question:

1 "Judge, we're not straight on the law of whatever it is."
2 Send me a note "Judge, will you give us instructions on the
3 definition of reasonable doubt?" That's a common one to get,
4 and I'll do that. In some cases, I will send you my
5 instructions on that issue -- the written instructions I've
6 just prepared for you. Some cases, I'll bring you back in
7 here, and I'll instruct you on the record. So the note helps
8 me talk with the lawyers to say, "Okay, here's the jury's
9 questions. How can we agree or how am I going to rule to
10 respond to it?"

11 So we consider that, and I make it a Court's exhibit so
12 it stays on the record because that's part of the record. So
13 if I -- you submit me a question, it comes about with a
14 sticker on it, you know that since I don't wind up and throw
15 it away, that question is now part of the record, and I get
16 to keep it.

17 Now, one question's not fair: "Why didn't one side or
18 the other call so-and-so witness or the other that we heard
19 about?" That's not a fair question. We got the trial, you
20 all got the testimony, and evidence is all you get. Why they
21 didn't call someone else? I don't know. And it's not
22 relevant. You got presented what you get presented, okay?
23 So normally, I send you back to the jury room and I tell the
24 alternates to go, but I don't have any alternates.
25 Everybody's a member of the jury. I got all 12 here. So I'm

1 going to put you in the back jury room -- oh, here's the
2 other offer: There's another jury room bigger than that one,
3 down the hall. A little bit of a -- not a far walk, but I
4 walk by it to go to my chambers. If you all want the bigger
5 jury room, I'll make that happen.

6 I would say it is a little better. Has a window, it's
7 roomier, has bathrooms, has a little kitchenette. It's a
8 good idea. I'll get you down there. It's -- you all will be
9 more comfortable there, in my humble opinion every time I go
10 in and I go, "Why don't we use this one?" But there's
11 six courtrooms on this floor. This one's just adjacent to
12 this courtroom. The one down there is not being used.
13 You're welcome to use it if you like, Ms. Ohlman, you just
14 tell the bailiff, "The judge said we can have the bigger jury
15 room," and they'll move you down.

16 All right. Now also write your questions down. I've
17 got inventory, the evidence, and the exhibits, until we do
18 that -- and the lawyers will kind of go through it very
19 quickly because they know what was introduced. Ebony knows
20 what was introduced. And then once they all agree on that,
21 I'll give you the verdict form and the evidence. That's when
22 you can start deliberations.

23 So while we do that, you all step in the jury room.
24 Now I've got to ask the lawyers about my instructions.
25 Forgot about that. So you all stay in this jury room until I

1 ask the lawyers, "Are we sufficient on the instructions?"
2 They listen very closely and are tuned into certain aspects
3 of the law, and if I skated over one issue, they're allowed
4 to say, "Judge, you kind of skated over that issue. Will you
5 go back and kind of do it a little more thoroughly?" Or
6 they'll say, "Judge, it's fine." Once I get that go-ahead,
7 then you all can either -- "Please move us to the bigger jury
8 room and show us the lunch menu." Take a break while we do
9 the evidence, okay? So you all step in the jury room and
10 I'll let you what -- know about our further instructions.
11 And don't begin your deliberation until you get the verdict
12 form. Ms. Ohlman.

13 (Jury exits the room at 9:55 a.m.)

14 THE COURT: All right. Jury is not in the courtroom.
15 Any suggestions, deletions, corrections, criticisms of the
16 jury instructions given from the State?

17 MR. ANTHONY: Your Honor, the only thing I have is I
18 still think the jury -- when they -- they heard the charge, I
19 don't think they're going to understand what they're supposed
20 to do. If they find Ms. Mullen is guilty of both the
21 homicide by child abuse and the murder, I think that they --
22 they very well might think that -- well, we found her guilty.
23 We think that the proof shows she's guilty of homicide by
24 child abuse and murder, but we're going to have to find her
25 not guilty of one.

1 THE COURT: Well, on my verdict form it has a clear
2 between those two.

3 MR. ANTHONY: Okay. I -- I -- I'd just like to -- I
4 don't need to be heard anymore.

5 THE COURT: Yeah.

6 MR. ANTHONY: I -- I would like to see that.

7 THE COURT: I'll -- I'll show you the -- the verdict
8 form. Mel's got it. I'm sorry, Jody's printed it right now
9 and you're welcome to look at it, but I have a clear, bold,
10 full cap between those two offenses. All right. Other than
11 that, Mr. Shealey?

12 MR. L. SHEALEY: Yes, sir. I think you're fairly clear
13 on that murder for homicide by child abuse, but again, I have
14 to take a section with decision to charge that they can find
15 murder or homicide by child abuse. One of those in addition
16 to the aiding and abetting aspect of homicide by child abuse,
17 I think the instruction violates the (inaudible) and Green,
18 and allows them to sentence for two homicide punishments for
19 one homicide.

20 THE COURT: I understand your position. I've ruled and
21 so respectfully your objection is noted, but we're going to
22 submit murder or homicide by child abuse, independently
23 aiding and abetting. All right. Soon as Jody gets a
24 printout -- it must be something about the thing I'm sending
25 because Renee was having trouble with it and Jody's having

1 trouble with it. Now just handwrite it out real neat. All
2 right. We're at ease. We can go off the record.

3 (Off the record at 9:57 a.m to 11:08 a.m)

4 THE COURT: All right. We're going to mark this as
5 whatever the next Court exhibit is, this -- this request.
6 And so the -- the foreperson did a nice job of outlining the
7 request and basically it's the verdict one of the three,
8 which is what the Defense proposed we sent, I declined to do
9 that. Or version two is murder, homicide by child abuse and
10 aiding and abetting. I believe the answer consistent with my
11 ruling is the second version, the bottom half of that letter.
12 Does everybody agree that that's what I instructed? Over
13 objection to the Defense. I don't want you to waive
14 anything.

15 MR. L. SHEALEY: Yeah. Well, over objection. I think
16 that's what you instructed, maybe just wasn't clear or maybe
17 they want further clarification, but --

18 MR. ANTHONY: I agree that's what you instructed.

19 THE COURT: Okay. Would you all agree --?

20 MR. ANTHONY: That's the bottom of the note.

21 THE COURT: Bottom of the note. Would you all agree
22 for me to respond by circling the bottom half of the note?

23 MR. L. SHEALEY: Yes, sir.

24 THE COURT: All right. Let's -- let's make a copy of
25 it and circle the copy, and keep the original out here as an

1 exhibit. You all okay with that?

2 MR. ANTHONY: Yes, sir.

3 MR. L. SHEALEY: Yes, sir.

4 THE COURT: Okay. And we'll make both of them
5 exhibits. So, Jody, can you make that happen for me? All
6 right. Once I do that, I'm going to send it back and we're
7 back at ease.

8 (Off the record 11:11 to 1:09 p.m.)

9 THE COURT: All right. Folks, I've gotten a note that
10 says "The jury says they've reached a verdict." And so I'm
11 going to bring the jury in. So I'm going to tell everyone
12 this, that the jury, in my humble opinion, has worked very
13 hard. They listened very tentatively. Lawyers have worked
14 hard, everybody's worked hard, so well-tried case. However,
15 if someone's not going to be able to keep their emotions
16 within, I don't want any reaction shown. Either verdict
17 could be whatever the verdict is. I don't want show of
18 emotion to disrespect this jury for their hard work. So if
19 you have any doubt as to whether you can maintain decorum,
20 please leave the courtroom before I bring them in. All
21 right. Bring the jury, please.

22 (Jury enters room at 1:10 p.m.)

23 THE COURT: All right. Ms. Ohlman, did the jury reach
24 the verdict?

25 JUROR NUMBER 178: Yes.

1 THE COURT: And was it unanimous?

2 JUROR NUMBER 178: Yes.

3 THE COURT: All right. Will you hand the verdict form
4 to the bailiff, please? He'll bring it to me. All right.
5 The verdict form appears to be consistent with the
6 instructions. So, Madam Clerk, you -- publish the verdict,
7 please.

8 THE CLERK: State of South Carolina versus Jackleen
9 Elizabeth Mullen, indictment 2020-GS-46-03890, homicide by
10 child abuse. We find the Defendant, Jackleen Elizabeth
11 Mullen, guilty. Indictment 2020-GS-46-01905, murder. We
12 find the Defendant, Jackleen Elizabeth Mullen, not guilty.
13 Indictment 2020-GS-46-01928, homicide by child abuse, aiding
14 and abetting. We find the Defendant, Jackleen Elizabeth
15 Mullen, guilty.

16 THE COURT: Any issue --?

17 THE CLERK: Signed, foreperson of the jury.

18 THE COURT: All right. Any issue for the jury,
19 Mr. Shealey?

20 MR. L. SHEALEY: I'd ask that they be polled, your
21 Honor.

22 THE COURT: All right. Madam Clerk, I want to poll --
23 poll the jurors and you'll call them by their juror number.
24 And the question is, "Is this your verdict, and is it still
25 your verdict?"

1 THE CLERK: All right. If all the jurors could please
2 stand? And once I call -- after I call, you'll be seated
3 after your number is called. I'll start with
4 Juror Number 178. Is this your verdict?

5 JUROR NUMBER 178: Yes.

6 THE COURT: And it's still your verdict?

7 THE CLERK: And it's still your verdict?

8 JUROR NUMBER 178: Yes.

9 THE CLERK: You may be seated. Juror Number 94, is
10 this your verdict? And is this still your verdict?

11 JUROR NUMBER 94: Yes.

12 THE CLERK: You may be seated. Juror Number 55, is
13 this your verdict? And is this still your verdict?

14 JUROR NUMBER 55: Yes.

15 THE CLERK: You may be seated. Juror Number 179, is
16 this your verdict? And is this still your verdict?

17 JUROR NUMBER 179: Yes.

18 THE CLERK: You may be seated. Juror Number 250, is
19 this your verdict? And is this still your verdict?

20 JUROR NUMBER 250: Yes.

21 THE CLERK: You may be seated. Juror Number 33, is
22 this your verdict? And is this still your verdict?

23 JUROR NUMBER 33: Yes.

24 THE CLERK: You may be seated. Juror Number 267, is
25 this your verdict? And is this still your verdict?

1 JUROR NUMBER 267: Yes.

2 THE CLERK: You may be seated. Juror Number 184, is
3 this your verdict? And is this still your verdict?

4 JUROR NUMBER 184: Yes.

5 THE CLERK: You may be seated. Juror Number 122, is
6 this your verdict? And is this still your verdict?

7 JUROR NUMBER 122: Yes -- yes.

8 THE CLERK: You may be seated. Juror Number 195, is
9 this your verdict? And is this still your verdict?

10 JUROR NUMBER 195: Yes.

11 THE CLERK: You may be seated. Juror Number 266, is
12 this your verdict? And is this still your verdict?

13 JUROR NUMBER 266: Yes.

14 THE CLERK: You may be seated. Juror Number 125, is
15 this your verdict? And is this still your verdict?

16 JUROR NUMBER 125: Yes.

17 THE CLERK: You may be seated.

18 THE COURT: All right. Jurors have been polled, still
19 a unanimous verdict. Ms. Ohlman, ladies and gentlemen of the
20 jury, this will conclude you all's service. I want you all
21 to step back in the jury room. I'm going to come back there
22 and speak with you in a moment, then you all will be free to
23 go. Now, the lawyers weren't allowed to talk to you. Many
24 times after trials are over, they may communicate with you.
25 You all are free to talk or not to talk. Totally up to you,

1 but I don't know whether they will or won't, but they might.
2 So step back into the jury room and I'll be right around
3 there.

4 (Jury exits room at 1:15:07 p.m.)

5 (Off the record from 1:15:14 p.m. to 1:33:27 p.m.)

6 THE COURT: You ready?

7 MR. L. SHEALEY: Judge, I think you should (inaudible).

8 THE COURT: Okay, that's fine. I was going to put them
9 back in the jury box.

10 MR. L. SHEALEY: Your Honor, I'm -- of course we're
11 going to renew all of our objections and motions. Will you
12 -- would you consider giving us 15 days to write post-trial
13 brief?

14 THE COURT: Absolutely. You may have 15 days.

15 MR. L. SHEALEY: Holiday and everything?

16 THE COURT: I -- I don't find that a problem at all.
17 You have 15 days.

18 MR. L. SHEALEY: Thank you.

19 THE COURT: I -- I -- somebody asked me about that
20 during screening, about, "Could you do that?" I said, "I'm
21 pretty certain you can." And you do it right now, and it's
22 -- it's very reasonable.

23 MR. L. SHEALEY: Thank you.

24 THE COURT: I tell you what, that's a good foreperson.
25 Look at that. She wrote the verdicts, printed her name, and

1 signed it for us. You told her?

2 THE CLERK: Yeah.

3 THE COURT: I'm giving her credit.

4 THE CLERK: Yes, your Honor.

5 (Jury enters room at 1:34 p.m.)

6 THE COURT: Yes. Got everybody? Okay. State ready to
7 proceed with sentencing?

8 MR. ANTHONY: Yes, your Honor.

9 THE COURT: Defense?

10 MR. L. SHEALEY: Yes, sir.

11 THE COURT: All right. Mr. Anthony, you got sentencing
12 sheets for me?

13 MR. ANTHONY: Yes, sir. I'm -- I'm handing up the
14 sentencing sheets and, you know, ready to be heard at the
15 appropriate time.

16 THE COURT: All right. Mr. Anthony, I'll be glad to
17 hear from you.

18 MR. ANTHONY: Your Honor, Investigator Beach is here on
19 behalf of the Rock Hill Police Department, and he'd like to
20 address the Court. I -- I will say that Investigator Smith,
21 as the Court knows, was the investigating officer. He had a
22 homicide class that actually -- he was supposed to start
23 yesterday and he did not go to that class yesterday because
24 we were still trying the case. But he left last night and
25 drove to Charleston, is in -- he's in his homicide class. He

1 had a -- a tremendous interest in this case. He and I spent
2 a lot of time talking about it and I know he will be ratified
3 by the verdict. But I do have Investigator Beach here on
4 behalf of the police department, and he'd like to address the
5 Court. Then I have a few things I'll advise the Court of it.

6 THE COURT: Okay.

7 INVESTIGATOR BEACH: Thank you, your Honor. As the --
8 the Prosecutor mentioned, you know, Detective Smith wasn't
9 able to be here for the sentencing part. He has made aware
10 of how things have been going on and from the police
11 department standpoint, we would like to thank the jury for
12 your hard work and your dedication.

13 As far as the sentencing goes, your Honor, from this
14 investigation standpoint, one of the major things that stood
15 out to us, not only was the age of the victim involved, but
16 the perpetrator being her own mother. And not only the
17 perpetrator being her mother that caused her death, but the
18 reason she had physical ailments she did was because of the
19 mother's drug use and choices that she had made during the
20 pregnancy, and during that child's -- very beginning of that
21 child's life. From the beginning of the life through the
22 end, the Defendant, your Honor, has caused all of these
23 problems to this child.

24 She weighed on every investigator and I think she'd be
25 weighed definitely as you consider sentencing. For me

1 personally, being there when she was found by the other
2 investigators, FSU investigators were here in the room,
3 finding her in the drawer. I was there, her there,
4 estimations when her body was found at 4:58 that morning. I
5 took her from the coroner and laid her in the back of the
6 vehicle for her to be transported away.

7 Your Honor, this is a 4-year-old. I had a 4-year-old
8 at the time of this incident. This child could not take care
9 of herself apart from the parents that was around her. The
10 Defendant, your Honor, had isolated her from other people who
11 were able to help in that house. Some of the in-laws and
12 other people who were available, help was there. And yet she
13 chose not to have them assist her with things that were
14 needed.

15 From the police department, your Honor, this is one of
16 those cases that we -- we do not see -- things we do see,
17 this is one of the worst -- this is one of the worst of the
18 worst cases I've seen during my 13 career -- 13-year career
19 at the police department. I'll just ask you to please
20 consider all of those things and all the responsibility and
21 the four years of this child's life, the responsibility was
22 not handled to ultimately culminate -- culminated in her
23 death by the Defendant. Thank you.

24 THE COURT: Thank you, Investigator Beach.

25 MR. ANTHONY: Your Honor, I -- I'd also just say India

1 Martin has a paternal great aunt, Ms. Beard, who is on the
2 third row there on my right side of the courtroom. She's
3 been here pretty much throughout the trial. I was very
4 concerned about the case, and I advised her that she had a
5 right to speak. She's advised me she does not want to
6 address the Court, but I just -- just wanted to mention her
7 because she has been very concerned about this -- about this
8 case.

9 I was going to give -- would like to give the Court
10 Ms. -- Ms. Mullen's history. In 2014, she was convicted of
11 shoplifting and criminal conspiracy. She received a
12 probation sentence for that. In May of 2017, she was
13 convicted of child neglect and -- and that child neglect was
14 for cocaine usage during her pregnancy with India M.
15 She was convicted in October of 2017 of petty larceny. She
16 -- in -- in April of 2019, this was something I think was
17 brought to the Court's attention during the trial. DSS took
18 India M. out of her home for around six weeks for
19 malnutrition. And then India M. was placed back in the
20 home.

21 And then on May 25, 2020, Ms. Martin -- Ms. --
22 Ms. Mullen was convicted of forgery. She received probation
23 for that. And the -- the Court -- and I'm sure will recall
24 that day because that's the Tuesday that India M. died.
25 And on that Tuesday while her child was dead at her house,

1 Ms. Mullen came up here to the (inaudible) Justice Center,
2 went in a courtroom and pled guilty to the charge of forgery
3 and was placed on probation for that.

4 We do have -- just for the record, Ms. Joyner was able
5 to secure these -- the records of the indictments and
6 sentencing sheets for all these convictions. So I'd ask that
7 those be made Court's exhibit, just included in the record.
8 And, your Honor, obviously is -- as you heard from
9 Investigator Beach -- I mean, this is a case that I think is
10 -- has weighed on everybody on the law enforcement side and
11 on the solicitor's side. It's -- it is truly weighed on us
12 to have to try a case like this and deal with these facts.

13 And as -- as to the sentence, your Honor, I -- I know
14 -- I know the Court -- you have been a judge for a long time.
15 I'm sure you have an -- an idea of what you think the
16 appropriate sentence here is. I -- I do not know what that
17 is, but I would say from the State's perspective, she's --
18 she's looking at 20 years to life for the crime she was
19 convicted of. Appears 20 years to life.

20 The State believes that -- and -- and the Court may
21 think that more than this is appropriate, the State believes
22 that at least 40 years would be appropriate for this crime.
23 We -- we do not think that justice for India M. [REDACTED] is
24 anything less than 40 years. We would ask the Court to at
25 least impose a 40-year sentence. Thank you very much, your

1 Honor.

2 THE COURT: Yes, sir. All right. Mr. Shealey?

3 MR. L. SHEALEY: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. L. SHEALEY: And I agree with the State. This is
6 -- this is a very difficult case. You know, I'm a -- I'm a
7 defense lawyer. Just because I'm a defense lawyer doesn't
8 mean that contemplating, you know, defense of a 4-year-old in
9 a drawer makes it easy for me. But as always, our very
10 obvious defense was that, "She did not cause the death of her
11 child." And that was obvious throughout the child --
12 throughout the trial. She certainly, as clear from the text
13 and clear from her actions, didn't -- didn't go to police,
14 didn't get medical attention. We presented to doctor --
15 doctors to try to help explain that. The Court heard that,
16 the jury took it for what it was worth. She's had a very
17 difficult life. You know, she's experienced trauma. It's
18 not been easy. It doesn't -- it doesn't mean that not
19 everybody should 100 percent be stuck down a rabbit hole they
20 can never get out of. But this is the -- as I alluded to in
21 my closing, this is the -- the shoes that she walks in. She
22 had her first child with a man who was 19 years older than
23 her, and she was barely little more than a child herself.
24 You know, she did, and I know it was an interest to the State
25 from discussions with them, of course, her -- her history of

1 having the prior unlawful neglect of a child.

2 Now I've looked at those records and -- and India did
3 have cocaine in her system, but I don't -- I don't see a
4 medical connection that's been a rock-solid saying that is
5 why she had her disability. She was also being beaten at
6 that time by the child's father.

7 My child -- my 5-year-old came at 28 weeks for no
8 apparent reason and almost was just as disabled as India. So
9 I don't know that that can certainly all be laid at her feet,
10 but certainly, she was not -- yeah, she has a drug addiction,
11 as you heard from Dr. Knight, to dull pain. I don't know
12 that she ever -- she got treatment for it at some point, but
13 it's -- she and -- and Mr. Williams clearly were suffering
14 with all of that as this was cycling and going on. Jackie's
15 26 now, she's got support of her family who care about her
16 tremendously. Hired us in this case and been there every
17 step of the way. You know, the -- the way the verdict has
18 come back -- and this jury has worked exceptionally hard, we
19 all have, even though you didn't see it my way, but it -- it
20 -- it seems to be that they believe she aided and abetted
21 another person. And that's exactly what the aiding and
22 abetting statute -- you know, is, who committed this act.

23 But they've also found her guilty of -- of being the
24 principal. And as the way the State argued quite hard and --
25 and -- in their closing was that latching on certainly to the

1 neglect, which would be not seeking medical attention and all
2 of that. So if -- if that is the verdict and that is the
3 rationale of this jury, which it seems to be, then I think
4 she should be sentenced as an aider and abettor because I
5 don't know how you can believe she is the principal actor if
6 she's convicted as the aider and abettor, which would mean
7 they believe -- I think, that Audrevious Williams was the
8 principal person who committed the blunt-force trauma that
9 caused the death.

10 So I would ask the Judge -- your Honor, to consider
11 that. Otherwise, I don't know any other way to wrap my head
12 around the verdict. You know, I don't -- you might get mad
13 at me. I don't like to do this, but we -- you know, I
14 appreciate -- your Honor has tried a great case. I
15 appreciate your temperament. You made thoughtful rulings
16 even though some critical ones didn't go our way. But -- you
17 know, as part of your proper attempt to see if the two sides
18 can come together, you did reference a day ago what you
19 thought an appropriate sentence at that time was based on the
20 -- what you had heard. And at that point you heard
21 everything, but for the two final expert witnesses. That
22 sentence was very -- very near to the -- the mandatory
23 minimum. So to give now a sentence that would be
24 significantly greater than that, I don't -- you know, you've
25 heard her record, but you've only heard things that would

1 mitigate this case since then. You know, both experts
2 explained that the person with her diagnosis in that type of
3 relationship might not go to the police, might not leave,
4 might make choices that are antithetical to the health of --
5 of her child. So it's only mitigating that since you staked
6 out that sentencing position.

7 So I would ask you to sentence in line with that
8 position. Anything else would seem to only indicate that she
9 continued on with trial and therefore she needs to be taxed.
10 I know that's not how you would sentence, but because we've
11 had this moment, that's my duty to put it on the record.

12 MR. B. SHEALEY: Her grandmother (inaudible).

13 MR. L. SHEALEY: Her grandmother would like to address
14 the Court -- I think, on behalf of the family. Oh, and --
15 pastor, not grandmother, or both? Just pastor. Both? Both,
16 please if you'll allow it. Where would you like her to
17 stand, your Honor?

18 THE COURT: Right here beside you.

19 MR. L. SHEALEY: Okay.

20 THE COURT: Move that microphone over there close to
21 her, Mr. Shealey.

22 MR. L. SHEALEY: Yeah. Okay.

23 THE COURT: A little -- one on this side.

24 MR. L. SHEALEY: This one? Yes.

25 THE COURT: Yeah.

1 MR. L. SHEALEY: Yeah.

2 THE COURT: There we go.

3 MS. CONCEPCION: Okay. You have me for (inaudible)?

4 Okay. I'm here. Everybody knows who I am. I am Jackleen's
5 grandmother. I come here to say thank you all of you for
6 your decision you've taken whatever it is they (inaudible).
7 This is your -- how you're feeling. And also, so the Judge,
8 the decision he going to take it for now, for all this thing,
9 working hard for my -- my granddaughter, I say thank you so
10 much. And let me tell you how grandma I am. And I know my
11 granddaughter since she was a baby. Of course I love her.
12 Of course, I -- I am very proud. I just smile (inaudible).

13 Okay. I know she was a mother very young, but she
14 takes care for the children, her children, single mother.
15 It's not easy. It's not easy for no one. It's not easy. I
16 told you because I lived some situation, plus real domestic
17 violence, a small house. I lived in that situation. You see
18 where I leave my country running away from abusive man. You
19 see what I understand better. Maybe nobody here lived that
20 situation. I understand you -- I understand you. You see I
21 understand my daughter -- my granddaughter better. Single
22 mother. She have to take care of the children for food, take
23 care, cloth, shoes, everything. We are the father. Good,
24 thank you ind the house. Nobody enjoys the fathers. Nobody.
25 Nobody on this country take care having the mind -- the

1 father what they doing, nobody. Against Jackleen, the system
2 against the Jackleen. Everybody. From the falling tree,
3 everybody want to cut the piece, but know the people who know
4 Jackleen. She was good mother, believe me. With all my
5 heart I told you because -- because one day -- yeah, I saw
6 Jackleen, all the children, believe me. I was the first one
7 who is -- called the police to her. Believe me.

8 No matter how -- how -- how I love her no matter and
9 never does happen. When the -- when the India was -- when --
10 when the India was -- lose weight, was the doctor who say she
11 is overweight, he changed the -- the -- the food. And then
12 she lose weight. And then they say India is -- lose weight
13 -- overweight -- lose weight. And they take India from
14 Jackleen for three months. They put her in a foster care.
15 The people who know India and she know what -- she not
16 gaining weight only one pound in three months. I was beside
17 Jackleen every time when she was going to court, she fighting
18 for her -- her daughter back. Finally she have.

19 We are not talking about this one over here. Nobody
20 would, you know, this one over here. And in 2020, it is not
21 because India was in order for everybody how the lady say.
22 No. It's respect for India. 2020 was the worst day -- year.
23 I come to see my children over there and I can't go see --
24 can't go inside the -- the apartment -- the trailer where she
25 lives in -- in Utah because India have a hallway over here,

1 and we don't want it. I -- I -- I used to work like cashier
2 in 7-Eleven. I -- I -- I -- around with a lot of people. I
3 don't want to bring a virus from India -- to India, right?
4 It's not because India was no different from everybody.
5 India was no different from us.

6 Who (inaudible) India? The family. I don't have
7 family. It's me. No matter she's in heaven. I don't have
8 no daughter with us. I come into the trailer outside. I
9 bring my daughter something. I can't go inside because I
10 don't want India have a hallway here. I don't want it -- we
11 don't want change this. We didn't want India die.

12 Okay. Yeah. You have to quiet me because you know we
13 -- we take it next day over here, Judge. I pray to you for
14 my granddaughter. She wasn't the murderer. The situation --
15 situation day by day, marriage, hard, to be more little --
16 more little -- more little from this man. I want to say
17 nothing about him because you let me do -- tell something
18 about him, we not finish. He's -- he's -- you are...

19 MS. MUGABE: Good afternoon, your Honor.

20 THE COURT: Good afternoon.

21 MS. MUGABE: Good afternoon to the Court, the jury.
22 Thank you for your service. The Prosecution, this was
23 difficult. I chose to speak for India. I remember the day
24 the opening statement was given and they say India was a
25 child in the shadows. That was not true. I first met

1 Jackleen opposite where we -- I'm a local pastor. My name is
2 Gwen Mugabe. And at that time, India was in NICU over in
3 Columbia. So I first met India in hospital. I took the mom
4 and Antonio, and I met this little girl, but she introduced
5 India to me and it was very strange. I'm like, "India, what
6 a name?" And this childhood personality, I stand here, I
7 preached India's funeral.

8 And as I've journeyed this journey, I think all of us,
9 we experienced 2020 differently. It was a difficult season.
10 This is a child that came -- she had a trachea. That's what
11 the mom -- grandma was talking about. And Jackie is the same
12 age as my first born. My first born is very successful. As
13 you can tell, I'm a foreigner. You remember those days -- in
14 fact, the week that we buried India was the week George Floyd
15 died. And I remember there was a lot of noise in our nation
16 about how lives matter, particularly of my patina. But we
17 were burying a baby.

18 A few years back, I'd gone to a conference where I was
19 speaking and there's a mom who had a special needs child, and
20 I was showing her pictures of India, because India would be
21 in and out of hospital because of the situation. And Jackie
22 would be there. And my son was going to college, finishing
23 his first degree, doing his master's, moving on. And so as I
24 watch him -- and at this very same time, my other kid was
25 going into the military, just growing. This is a life that

1 is -- for India, we will never see. But like I say, India
2 had personality. In fact, at that point, the trachea was
3 gone. And she would come in. If you didn't greet India, she
4 would pick up an attitude. She wouldn't talk to you. She
5 would just do this number. This is India. I know this --
6 this trial was justice for India. But if we repaint, we
7 remain with a picture of someone who did not impact his
8 community. It would be a lie.

9 I remember my son came back from boot camp, and his --
10 and we tried to see India. What grandma was saying about
11 COVID, we used to just go into that trailer and see her. But
12 because of the germs, you couldn't go in. I heard a
13 prosecutor saying there were people who could have supported
14 the child, potentially, yes, but remember how it was. In
15 fact, India was in school at that daycare, but those people
16 were no longer able to see her.

17 As you have brought in the verdict, I'm so grateful
18 that it wasn't a murder verdict because I remember I would
19 always say to -- to Jackie, you know, "Part of raising a
20 child is discipline. If you don't discipline a child" -- but
21 Jackie didn't know how to discipline. She -- she didn't know
22 how to spank. And -- and you sit there and you see this
23 situation, you're like, "Lord, there's just no way." So when
24 the verdict came, it speaks to us on the responsibility of a
25 parent, because parenting is a lifetime responsibility. If

1 India was here -- I believe, Judge, I should want you to --
2 to remind you that she has two brothers, AJ and Baby Dre.

3 As far as I've watched this woman as a single mom --
4 yes, there have been cases with the law, but I'm talking
5 about one-on-one interaction with the -- her children. She
6 loved her children. There's no reason -- I mean, I -- I -- I
7 couldn't come in here and lie. I'm actually working on
8 making it to heaven, and liars don't make it to heaven. So I
9 wouldn't come here and lie. But I would say, Judge, as you
10 sentence, please consider those two boys. Their sister is
11 not here. But I hope you hear my voice on behalf of India.
12 I'm sure you're a father.

13 As I look at my sons growing in the community, as a
14 foreigner who has come into a land, that's been given
15 opportunities, I also know the trauma that we heard about
16 yesterday, that when abuse happens, you -- you don't think
17 straight. What -- what happened was wrong. India should be
18 here growing. We should be figuring out -- she was trying to
19 walk and doing those things and standing, maybe she would be
20 walking. Maybe we would be seeing different things. For us,
21 we have hope that we will see her again.

22 But as I stood today, I'm begging on behalf of Jackie
23 to say I've watched over the years, I've gone to see her, and
24 I've talked to her, and I think they say it even now when
25 they were talking about the PTSD (sic), it's not the same.

1 She's a different person. When someone has a need and they
2 don't get treatment, they don't do right. I just hope that
3 this experience will change things. As she has been
4 incarcerated, she's been teaching Bible studies. She's been
5 helping other women. She's been encouraging others. I just
6 hope and I'm just begging, Judge, that as you pass the
7 judgment, because you've been tasked with a very difficult
8 job, we ache for you, and throughout the trial, we've been
9 praying for you and the jury, because no one asked for this.
10 But it's your job. And as you do it, we trust that you'll
11 make justice. You will do the right thing and be lenient.

12 I -- when the Prosecutor began to talk about Solomon,
13 Solomon was wise, but he did things outside the box. Today,
14 I just pray and ask that there'll be that grace as you -- I'm
15 asking for mercy because there's nothing else that we can ask
16 for. I know the system does what the system does, but
17 there's a young mom with the young children.

18 And on behalf of the family, I also want to say thank
19 you to the Prosecution, to the jury, and to the rest of the
20 team. Thank you so much team. You've done an amazing job.
21 Trust that justice will be safe. Thank you again for giving
22 me the opportunity to speak.

23 THE COURT: Thank you, ma'am.

24 MR. L. SHEALEY: That's all from the Defense, your
25 Honor.

1 MR. ANTHONY: Your Honor, just so the Court will know,
2 she has 1,266 days in.

3 THE COURT: All right. Having listened to the entire
4 trial, prior record, comments, both the law enforcement,
5 Defense team, Prosecutors, sentence on the homicide by child
6 abuse is that she's -- Ms. Mullen is to be confined in the
7 Department of Corrections for a determined term of 30 years,
8 and that's concurrent to a 10-year sentence on homicide by
9 child abuse, aiding and abetting. She gets credit for 1,266
10 days earned thus far in pretrial confinement. That's not
11 what the State asked for. But considering her age, huge
12 mitigating factors, I decided not to go quite that high. But
13 85 percent of the 30 is a very lengthy time, about double the
14 rest of her -- what she's -- her age right now. I hope this
15 brings closure to all the families. That's the sentence of
16 the Court.

17 MR. ANTHONY: Thank you, your Honor.

18 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
19 2:07 P.M.)

CERTIFICATE OF TRANSCRIBER

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I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 16 of York County, South Carolina, on November 14, 2023.

I do further certify that I am neither of kin, Counsel, nor interest to any party hereto.

June 15, 2025.



MARY RAGSDALE

Transcriber

WITNESSES

RHPD

Witnessing Officer: Price

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Heather Bochenki
Foreperson of Grand Jury
Date: 4/14/2022

VERDICT

Guilty
Kathryn Ohlman
Kathryn Ohlman

Foreperson of Petit Jury
Date: 11/14/23

**DIRECT INDICTMENT
DOCKET NO. 2022-GS-46-01928**

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

APRIL 14TH, TERM 2022

THE STATE

VS.

JACKLEEN ELIZABETH MULLEN

INDICTMENT FOR

**HOMICIDE BY CHILD ABUSE
AIDING AND ABETTING**

SC Code: § 16-03-0085(A)(2)
CDR Code: 2357

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

1176

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on April 14, 2022, the Grand Jurors of York County present upon their oath:

HOMICIDE BY CHILD ABUSE (AIDING AND ABETTING)

Jackleen Elizabeth Mullen did, in York County, South Carolina, on or between May 22, 2020, and May 26, 2020, knowingly aid and abet another person to commit child abuse or neglect, and the child abuse or neglect resulted in the death of India M. [REDACTED] a child under the age of eleven, all in violation of Section 16-03-0085(A)(2), *Code of Laws of South Carolina* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JOHN C. ANTHONY
DEPUTY SOLICITOR

1178

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE

VS.

JAIL

ORIGINAL IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022-GS-46-01928

JACKLEEN ELIZABETH MULLEN

AKA: Jackleen Mullen

Race: W Sex: F Age: 26

DOB: [REDACTED] SS# [REDACTED]

Address: [REDACTED]

City, State, Zip: Rock Hill, SC 29732

DL#* [REDACTED] SID# SC02150075

A/W#: 2022-GS-46-01928

Date of Offense: 05/26/2020

S.C. Code §: 16-03-0085(A)(2)(B)(2)

CDR Code #: 2357

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: Homicide By Child Abuse (1) A. Dayeul Abetting

In violation of § 16-03-0085(A)(2)(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2357

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or 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:

/s John C. Anthony
Solicitor7116
SC Bar #/s Jackleen Elizabeth Mullen
Defendant/s Luke A. Shealey
Attorney for Defense75391
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 10 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$____; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2022 GS 46 - 3890☒ 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.

1266 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.

AMG

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 prmts. of	\$	Beginning	
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ 100
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$
§56-5-2993 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25
§14-1-213 (Drug Court Surcharge)	\$150		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114 (BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500		\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$

TOTAL \$ 125.00

Clerk of Court/Deputy Clerk: Angie Bryant

Court Reporter: DCRP

Presiding Judge:

Judge Code:

Sentence Date:

November 11, 2023

JUDGE,

CAN WE GET CLARIFICATION

ON HOW WE PICK CHARGES?

IS IT

① MURDER

② HOMICIDE BY ABUSE/NEGLECT

③ HOMICIDE BY AIDING & ABETTING

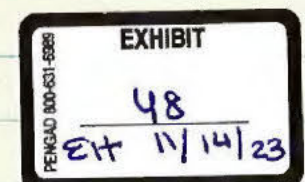
IS IT JUST ONE (1) CHARGE THAT
CAN BE SELECTED OR IS IT:

1 OR 2

&

3?

THANK YOU.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

IN THE COURT OF GENERAL SESSIONS
 SIXTEENTH CIRCUIT

State of South Carolina)

Indictment(s): 2020-GS-46-03890
 2020-GS-46-01905
 2020-GS-46-01928

v.)

JACKLEEN ELIZABETH MULLEN)
 Defendant)

1. Indictment **2020-GS-46-03890** (Homicide By Child Abuse)

We find the Defendant, Jackleen Elizabeth Mullen:

_____ NOT GUILTY

✓ _____ GUILTY

OR

2. Indictment **2020-GS-46-01905** (Murder)

We find the Defendant, Jackleen Elizabeth Mullen:

✓ _____ NOT GUILTY

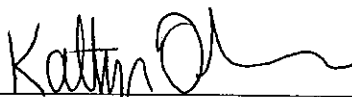
_____ GUILTY

3. Indictment **2020-GS-46-01928** (Homicide By Child Abuse Aiding and Abetting)

We find the Defendant, Jackleen Elizabeth Mullen:

_____ NOT GUILTY

✓ _____ GUILTY



 Signature, Foreperson of the Jury

This 14 day of November, 2023
 York, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

The State of South Carolina,)

vs.)

Jackleen Mullen,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

Warrant Number: 2022GS4601905;

2020A4620301292; 2022GS4601928

MOTION FOR NEW TRIAL

On November 14, 2023, Jackleen Mullen was found guilty at trial of one charge of homicide by child abuse and one charge of aiding and abetting homicide by child abuse. She was found not guilty of murder. Ms. Mullen was sentenced to thirty years for homicide by child abuse and ten years for aiding and abetting homicide by child abuse, with the sentences to run concurrently. At this time, defense counsel renews all previous motions and objections and respectfully requests that a new trial be granted in this case. Specifically, the denial of the following motions prevented Ms. Mullen from receiving a fair and adequate trial:

I. Mistrial Motion - *Riddle* Violation

Defense counsel, upon their notification to Sixteenth Circuit Solicitor's Office of their representation of Ms. Mullen, filed a motion on July 11, 2022, for the disclosure of evidence pursuant to Rule 5 of SCRCrm.P. On October 27th, 2023, the Defense provided a list of pretrial motions to the State which included a Motion to Produce and Compel Disclosure Pursuant to *Riddle v. Ozmint*.¹ In *Riddle v. Ozmint*, the Court held that the State committed a *Brady* violation in failing to disclose prior statements by a witness, along with a pre-trial visit to the crime scene by the witness, law enforcement, and the prosecutor. 369 S.C. 39, 631 S.E.2d 70 (2006). The

¹ Motion was filed on October 31, 2023.

Court stated that the burden is on the solicitor to disclose material evidence which is exculpatory or impeaching. *Id.* at 44 (citing *Gibson v. State*). In the *Riddle* motion filed in the present case, Defense counsel specifically requested “any updated reports, interview notes and conversations with [state witnesses] in preparation for their testimony.”

On October 13th, shortly before the start of Ms. Mullen’s trial, an undated and unsigned memorandum was provided by the State providing new information recalled by Mrs. Bernetta Williams, a witness to the incidents leading to this trial; namely, an alleged conversation from May 2020 that Mrs. Williams reportedly engaged in with Ms. Mullen following her arrest. In the three and a half years since Ms. Mullen’s arrest and subsequent trial, this memorandum is the only documentation provided by the State referencing any pretrial conversations the State held with Mrs. Williams.

From opening statements and through the testimony of several law enforcement witnesses, Defense counsel repeatedly referenced fist-sized holes and other damage to the walls of the home where the victim was discovered. Mrs. Williams was on the lease of the home, along with her husband, and had lived in the home for approximately seven years prior to the arrest of Ms. Mullen and Audrevious Williams. On her direct testimony by Deputy Solicitor John Anthony, there were no questions or testimony elicited regarding the origin of the damage inside the home. Upon cross examination, Mrs. Williams was questioned regarding the damage to the home and whether it was caused by Audrevious Williams, to which she stated that the damage existed prior to Audrevious Williams and Ms. Mullen returning to the home in late April of 2020. Upon further questioning, it was revealed that in a prior meeting with the Sixteenth Circuit Solicitor’s Office, Mrs. Williams was directly asked about the damage to the home, and she provided the State with the same information provided to Defense counsel upon her cross-

examination. At this time, the Defense moved for a mistrial given the State's violation of their duty to disclose prior material statements by a witness under *Riddle*.

While the State does not have a duty to anticipate a defense theory or disclose every comment made by every witness they interview, this was information specifically elicited by the Solicitor during one of multiple pre-trial meetings with Mrs. Williams, indicating that the State believed this information to be of importance. This information, revealed to the Defense only upon cross-examination, is the exact impeachment evidence that must be disclosed. As held in *Riddle*, "our judicial system relies upon the integrity of the participants" (*Id.* At 46). Similarly, "a prudent prosecutor will resolve doubtful questions in favor of disclosure." (*Id.*) (citing *Kyles v. Whitley*, 514 U.S. 419, 438 (1995).) The South Carolina Supreme Court has clearly indicated in *Riddle* that liberal disclosure of evidence to the Defense will be preferred over limited disclosure that is designed to "hide the ball" from the Defendant and her counsel. Finally, the *Riddle* Court, in citing *Whitley*, reiterated that the State's interest is not that "it shall win a case, but that justice shall be done." (*Id.*). Here it is apparent that the State's failure to disclose this meeting with Mrs. Williams and the crucial information elicited from her was an attempt by the State "to win."

II. Mistrial Motion - 403 and 404(b) Violations

On November 4th, 2023, during the cross examination of Defense witness James Howerton, Deputy Solicitor John Anthony asked Mr. Howerton about a specific sexual encounter with Ms. Mullen that occurred on May 23, 2020. The Solicitor then continued his line of questioning by impeaching Mr. Howerton with a since-deleted email referencing this specific sexual encounter that was never disclosed or provided to the Defense. It was previously testified to as part of the state's case that medically, the victim was suffering from severing brain bleeding at this time and was in need of medical care. The sole purpose of this line of questions was to elicit that Ms.

Mullen was having gratuitous sexual relations in almost celebratory fashion, with someone who was not even her boyfriend. Defense counsel timely objected to this testimony and immediately moved for a mistrial, which included additional grounds discussed *infra*. The mistrial was denied, and in its closing, the State similarly referenced this encounter multiple times, in violation of Rules 403 and 404(b), all over defense counsel's objection.

Generally, South Carolina law precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged. *State v. Beck*, 342 S.C. 129 (2000). This concept was first succinctly stated in South Carolina in 1923 in *State v. Lyle*, when the South Carolina Supreme Court articulated "the familiar and salutary general rule, universally recognized and firmly established in all English-speaking countries, that evidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of the particular crime charged." 125 S.C. 406, 118 S.E. 803, 807 (1923). The basic understanding of the holding in *Lyle* is that evidence of other crimes is not admissible purely to prove conduct in conformity therewith. *State v. Bailey*, 275 S.C. 444 (1980) (citing *State v. Lyle*, *supra*).

There are exceptions to the holding in *Lyle*, and SCRE 404(b), as the modern, codified expression of the *Lyle* rule, states the following:

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.*²

Even if a prior act is admissible as one of the above-listed exceptions to the *Lyle* rule found in SCRE 404(b), the prior act may still not be admissible because "[a]fter conducting a *Lyle* analysis

² (Emphasis added), see *State v. Fletcher*, 363 S.C. 221, 241 (S.C. Ct. App. 2005) (explaining that SCRE 404(b) is considered the modern expression of the *Lyle* rule).

and finding evidence both relevant and admissible as a prior bad act, the trial court must conduct a Rule 403, SCRE analysis to determine whether or not the evidence is unduly prejudicial.” *State v. Beck*, 342 S.C. 129, 136 (2000). SCRE 403 states the following:

Although relevant, *evidence 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.

(Emphasis added).

Finally, in *State v. Pierce*, 326 S.C. 176, 178 (1997), the South Carolina Supreme Court held that a prior bad act by the defendant toward her child in the year before the child’s death which seemingly indicated abuse was not “of such a close proximity to homicide by child abuse so as to overrule its prejudicial effect.”

In the present case, the State elicited testimony referencing the alleged sexual encounter between Ms. Mullen and James Howerton multiple times. This testimony was not provided to fit into any of the exceptions created *Lyles* and modern South Carolina case law; rather, it was elicited for its “shock value.” Because of the nature of the information and its clearly substantial prejudicial effect, the mistrial motion by the Defense should have been granted.

III. Mistrial Motion – Custody Status

On November 4th, 2023, approximately five days into the trial and during the Defense’s Case-in-Chief, Solicitor John Anthony knowingly and deliberately elicited testimony from defense witness James Howerton regarding Ms. Mullen’s incarceration status prior to and during the length of her trial. He specifically elicited testimony that Mr. Howerton had put money on her jail account as recently as the morning of his testimony. It is well established in both federal and South Carolina case law that shackling or wearing of prison garb in the presence of the jury

violates an accused's right to a fair trial.³ The essence of this anthology of cases is the “constant reminder of the accused's condition” is likely to affect a juror's judgment and antagonize the accused's right to a fair trial.

It is well established in both federal and South Carolina case law that defendants are not to be shackled in the presence of a jury, so as to reduce a bias in the deliberation process that would be antithetical to Due Process. *State v. Heyward*, 2023 WL 6475472 (S.C. 2023) (citing *Deck v. Missouri*, 544 U.S. 622, 626 (2005).)

Similarly, the U.S. Supreme Court determined in *Estelle v. Williams*, 425 U.S. 501, 504-5 (1976) that requiring a defendant to appear in “prison garb” is equally unconstitutional, as it creates biases in jury's mind that undermines the uniquely American concept of “innocent until proven guilty.” Requiring a defendant to clearly demonstrate her custody status during her trial, whether by appearing in shackles or jail clothing, or by elicited witness testimony, is to antagonize that defendant's right to a fair and impartial jury under the Sixth Amendment of the U.S. Constitution, Article I of the South Carolina Constitution, and an immense body of caselaw. The State's deliberate attempt to garner such testimony regarding Defendant's custody status before the jury has no different effect than requiring her to appear in shackles, in direct violation of these constitutional provisions.

Finally, in September of 2023, the South Carolina Court of Appeals again addressed this issue in *Reese v. State*, (2023 S.C. App. Lexis 109). In that case, Reese's codefendant's counsel commented on the co-defendant's shackling. Later, when Reese proceeded to the witness stand, her shackles were visible to the jury. The court of appeals found that even the brief view of the defendant being shackled, coupled with comments by counsel to the jury and the violent nature

³ *Estelle*; *Holbrook*; *State v. Heyward*;

of the charges, that the risk for prejudice to the defendant was significant.

In the present case, defense counsel elicited testimony that Ms. Mullen's codefendant was on bond and had a court ordered bond condition requiring his cooperation, with the purpose to impeach and demonstrate his bias. It did not serve to make it apparent to the jury that Ms. Mullen was incarcerated. The testimony elicited by the Solicitor was knowingly and deliberately done to demonstrate to the jury the custody status of Ms. Mullen. Each day of trial, extreme effort was made to ensure Ms. Mullen was dressed in plain clothes and no shackling or restraints were visible to the jury. At no point, prior to the Solicitor's improper comments, was the jury given any indication regarding the custody status of Ms. Mullen. It was clear error for the Solicitor to elicit such testimony, and the Defense promptly and appropriately moved for a mistrial.

The prejudice against Ms. Mullen was heightened by the fact that Ms. Mullen was on trial for violent charges. For the jury to be made aware that Ms. Mullen's codefendant was out on bond while Ms. Mullen was still incarcerated improperly suggested that Ms. Mullen was a greater threat or danger in her community.

On November 6, 2023, the court issued a written order stating that the motion for a mistrial was denied and that the court would instead give a curative instruction focusing on Ms. Mullen's socioeconomic status.⁴ However, during the court's jury instructions, the Court did not give the curative instruction as stated it would. Rather, the court specifically and repeatedly used the phrase "custody status" to the jury which only heightened the bias against Ms. Mullen created by the State, particularly given the amount of time that had passed since the improperly

⁴ The order stated it would give a curative instruction along the lines of "The testimony presented in the trial has presented a single mother, living from paycheck to paycheck, dependent of family and friends for financial support, receiving government assistance for her children, living in less than optimal living quarters, and perhaps other challenges. The substance of the curative would focus on the State's burden to prove its case with testimony and evidence which prove its charges and that the verdict could not be based on the defendant's financial and social status."

elicited testimony and the time of the jury instructions.⁵

Because of this deliberate line of questioning by the State, and the clear violation of Ms. Mullen’s rights created by the questioning and testimony, the Defense’s motion for a mistrial should have been granted.

IV. Mistrial Motion – Prior Involvement with Department of Juvenile Justice

On November 13, 2023, during Defense’s Case-in-Chief, Solicitor John Anthony knowingly and deliberately asked a Dr. Susan Knight, a defense expert witness if she was referring to a 2010 mental health evaluation conducted by “DJJ.” Defense counsel immediately objected and, again, moved for a mistrial. During this line of questioning it was unnecessary and superfluous to bring up the evaluation being performed by “DJJ” when Ms. Mullen was a teenager, and this line of questioning only served to highlight that Ms. Mullen committed crimes and was in custody as a youth. On October 31, 2023, defense counsel provided the State a list of pretrial motions which included a Motion *in Limine* to Preclude *Lyle* Evidence.⁶ The State stipulated to this motion at the start of trial and immense care was taken throughout the course of the trial to ensure this type of evidence was not elicited or admitted.

Lyle, as analyzed previously, plays an important role in safeguarding a defendant’s ability to present a thorough defense, and similarly works to ensure unnecessary biases are removed from trial testimony. The State’s reference to Ms. Mullen’s childhood encounters with the Department of Juvenile Justice, in violation of its earlier stipulation agreeing to avoid presenting such evidence, is a clear violation of *Lyle* and, more broadly, the ethical responsibility bestowed upon attorneys to ensure fairness at trial.

Although the Court was concerned about the “cumulative effect” of the testimony elicited by

⁵ Approximately ten (10) days passed between the testimony in question and the curative instruction.

the Deputy Solicitor, he still denied the motion for a mistrial. Due to this blatant violation of current case law and the State's own agreement, the mistrial motion made by the Defense should have been granted.

V. Limiting of Expert Testimony

On November 13, 2023, the Defense called Dr. Susan Knight to testify as an expert in forensic and clinical psychology. A summary letter of Ms. Mullen's trauma history and diagnosis had previously been provided to the State. At the Court's instruction, Defense provided the State with all materials she relied upon in forming her opinion, as well as her handwritten notes. During her direct examination, the State requested Dr. Knight's testimony be proffered in order to determine its relevance. The State sought to limit the scope of Dr. Knight's testimony claiming it did not fall under the SCRE 803(4) hearsay exception for treatment or *diagnosis*.

SCRE 803(4) codifies the long-standing common-law practice of allowing the statements made by a patient to his or her doctor regarding their condition to be admissible. This exception applies to statements so long as the statements made are for the purpose of medical diagnosis or treatment, describe medical history or symptoms, and are reasonably relied upon by the medical profession.

In *Glinyanay v. Tobias*, 436 SC. 137 (2022), the Court of appeals addressed the admissibility of statements made to a mental health professionals, rather than a medical doctor. During a family court proceeding, the court allowed an expert in parental alienation and a counselor for the minor children to testify to statements made by the minor children that "were specifically made for the purpose of medical diagnosis or treatment." The Court of Appeals begins their analysis by noting that it is commonplace in federal cases to allow statements made to a mental health professional to be admissible under 803(4). There are also additional tools at the court's

disposal to ensure that only “reasonably pertinent” information is admitted, in addition to cross examination.

In this case, Dr. Knight was retained by the Defense to evaluate Ms. Mullen for the purpose of assessing her trauma history, as well as to render a diagnosis. Although previously being diagnosed with classic Post Traumatic Stress Disorder, at the time of Dr. Knight’s evaluation, following medication and counseling, her diagnosis had reduced to “Other Specified Trauma and Stressor-Related Disorder.” In order to conduct a thorough evaluation, Dr. Knight reviewed the evidence in this case, prior medical and treatment records of Ms. Mullen, interviewed Ms. Mullen, and interviewed collateral sources. The Defense attempted to introduce statements made by Ms. Mullen during her life that directly related to her history of abuse from her mother and romantic partners. The purpose of this testimony was to support Dr. Knight’s diagnosis of “other specified traumatic disorder,” which was extremely relevant to the defense presenting an alternative explanation for Ms. Mullen’s behavior in the days before and day of India’s death. This testimony, coupled with expert testimony of domestic violence expert Becky Callaham, served to provide insight into why Ms. Mullen would have stayed with and not sought help if Audrevious Williams was abusing the victim. As Solicitor John Anthony stated in his closing argument, the State’s case for Ms. Mullen’s guilt was because of her “reactions.” Therefore, by the Court severely limiting the substance and nature of Dr. Knight’s testimony, although properly admissible under SCRE 804(3), the jury was unable to hear the full picture of her life leading to her diagnosis, and accordingly unable to properly understand Ms. Mullen’s “reactions” given her mental health diagnosis. This hamstrung the Defense in its ability to present a complete and full defense.

VI. Improper Jury Instruction

Ms. Mullen was charged with one count of murder under SC Code Ann 16-3-10, one count of homicide by child abuse under SC Code Ann 16-3-85 (A)(1), and one count of homicide by child abuse by aiding and abetting under SC Code Ann 16-3-85 (A)(2).

On November 13, 2023, after close of the Defense's Case-in-Chief, the Defense submitted request to charge number 12.⁷ This charge, consistent with the holding in *State v. Greene*, 423 S.C. 263 (2018), was requested to instruct the jury that Ms. Mullen could only be found guilty of one homicide punishment per homicide, and therefore, could chose to find Ms. Mullen guilty only of murder, or homicide by child abuse as the principal, or homicide by child abuse by aiding and abetting another. It initially appeared the Court agreed with the Defense that the holding in *Greene*, during argument on jury charges, but by the following morning prior to closing arguments, the State raised the issue again, and the Court reconsidered its position. The Court reasoned that although it would instruct the jury that it had to choose between murder and homicide by child abuse as the principle, it did not believe that homicide by child abuse as an aider and abettor was a homicide punishment, and accordingly it would instruct that could be considered by the jury in addition to the other two options. This is clearly error, and violates the holding from *Greene*, where principles of double jeopardy and fundamental fairness preclude anything other than one homicide punishment per homicide. Homicide by child abuse, the aiding and abetting variety, is clearly a homicide punishment, carrying a penalty of ten (10) years to twenty (20) years in prison, and is simply section (2) of the *Homicide* by Child Abuse statute, SC Code 16-3-85. In this case jury was allowed to consider, and ultimately rendered, two homicide punishments for one homicide.

⁷ Titled One Homicide, One Punishment

VII. Directed Verdict

The State's theory was that Ms. Mullen was the principal abuser of India Martin, assaulting her to the point of a fatal brain bleed, and then failing to provide her with medical care resulting in her death. The primary evidence that the State relied on was the testimony of her codefendant, Audrevious Williams, who testified to witnessing Ms. Mullen physically assault India, although not being present at the home when India initially "changed," and that he himself never inflicted any injuries to India. In addition, the State relied on several messages and internet searches between Ms. Mullen and her codefendant as evidence of India's deteriorating condition across several days.

A defendant is entitled to a directed verdict "when the *State* fails to produce evidence of the offense charged." *State v. Palmer* 413 S.C. 410 (2015) (emphasis added). At the close of the State's Case-in-Chief, the Defense moved for a directed verdict as to the charge of aiding and abetting homicide by child abuse. At that time, the State acknowledged that their theory was that Ms. Mullen was the principal abuser and that she failed to obtain adequate health care for India resulting in her death. In an effort to prove that theory, the State did not introduce any evidence or elicit any testimony to suggest anyone other than Ms. Mullen inflicted the injuries to India. And while the Defense, through cross examination, elicited testimony regarding Mr. Williams' violent tendencies in an effort to cast him as the principal abuser, he continued to distance himself and deny inflicting any physical injuries onto India. During motions for directed verdict at the end of the State's case, as well as the conclusion of the Defense case, defense counsel repeatedly cited *State v. Lewis*, 403 S.C. 345 (2013). There the Court of Appeals assessed that it was reversible error not to grant a directed verdict in a homicide by child abuse case, alleging adding and abetting, where the defendant was merely present. The Court there held that "mere

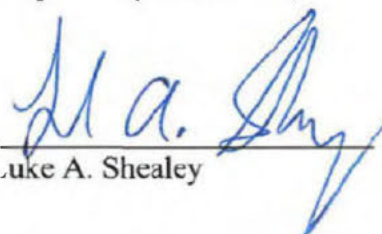
presence at the scene is not sufficient to establish guilt as an aider and abettor,” and that some “over act is required to be liable.” *Id* at 355. In *Lewis*, because Lewis was merely present, the Court determined there was not sufficient evidence to get to a jury. Even more significant than in *Lewis*, the State in the present case has not submitted any evidence attempting to prove Ms. Mullen was an aider and abettor, and instead presented evidence that she was the principle and Audrevious Williams was the aider and abettor. This distinction is even more dramatic than the facts in *Lewis*, and accordingly there is no evidence of aiding or abetting such that that charge could have been submitted to a jury.

VII. Cumulative Effect

Each of the foregoing arguments independently entitles Jackleen Mullen to a new trial. Additionally, should this court not find that each error on it’s own prejudiced Ms. Mullen, Defense counsel moves for a new trial because the cumulative effect of all of the errors raised by counsel has resulted in cumulative prejudice and cumulative violation of Ms Mullen’s right to a fair and impartial trial under the United States’ and South Carolina Constitution.⁸ The only remedy is for the court to grant a new trial.

For all of the aforementioned reasons, a new trial should be granted in this case.

Respectfully Submitted,


 Luke A. Shealey

This 30th day of November, 2023
 Columbia, SC

⁸ US Art. 6; SC Art. 1, Sec 14

FILED-RECEIVED
2023 DEC -8 AM 10:55

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

ANGIE M. BRYANT
STATE OF SOUTH CAROLINA C.C.P. & GS
YORK COUNTY, SC)

v.) RESPONSE TO MOTION
FOR NEW TRIAL

JACKLEEN ELIZABETH MULLEN) 2020 AG 0301293
DEFENDANT) Indi # 2020-GS-46-03890 / 2022-GS-46-01905
and 2022-GS-46-01928

I. Alleged Riddle violation

The Court correctly ruled on the Defense allegation that the State had not complied with the holding of Riddle v. Ozmint, 369 S.C. 39 (2006). As Ms. Williams' testimony concerning the timing of the placement of the holes in the wall neither served to negate the Defendant's guilt nor to impeach any prior statement or testimony by her, the State was not required to advise the Defense of its contents before eliciting it during Ms. Williams' redirect examination.

II. Mistrial Motion pertaining to sexual activity by the Defendant

Mr. Howerton's testimony concerning the e-mail he sent to the Defendant, stating he remembered having sex with her the day after her daughter had sustained her fatal injuries, was relevant to show that the Defendant acted with extreme indifference towards her daughter during the times alleged in the homicide by child abuse indictment. This behavior was not 404(b) evidence, but proof of the charged crime of homicide by child abuse.

III. Mistrial Motion pertaining to the Defendant's custody status

The clear implication of the Defense strategy to highlight the fact that her Codefendant, Audrevious Williams, had been released on bond was that, by contrast, the Defendant was in custody. Thus, a mention of the Defendant's custody status cannot be considered prejudicial when considered in the context of the Defense strategy to create an inference that the Defendant was still in custody because she had not cooperated with the State.

The Defense incorrectly alleges that the State elicited testimony from Mr. Howerton concerning the Defendant's custody status. In fact, Mr. Howerton was asked only if he was continuing to provide funds to the Defendant, to which he stated that he "drop[ped] money off at the jail sometimes." Mr.

Howerton was then asked if he placed credits in the Defendant's account the morning of his testimony. The State never made any inquiry as to the location where Mr. Howerton was providing the Defendant with money or the nature or location of the account in which he was placing credits. Mr. Howerton's testimony as to the Defendant's custody status was not elicited by the State, but was volunteered entirely by him.

Additionally, after the bench conference following the Defense objection to the volunteered testimony of its witness, Mr. Howerton proceeded to further comment unprompted on the Defendant's being located at the jail without any objection or Motion to Strike by the Defense. Under no assessment can any prejudice stemming from the spontaneous testimony of the Defendant's own witness be attributed to the State. Furthermore, any potential prejudice from this testimony is negated by the Defense trial strategy, which implied that the Defendant was in custody. see State v. Crowley, 349 S.C. 459 (2002) (reference to Defendant making call "from the jailhouse" before she was charged with the crime for which she was on trial insufficiently prejudicial to merit a mistrial).

IV. DJJ reference

During Dr. Knight's cross-examination, the State referenced a "DJJ" evaluation of the Defendant. No testimony was elicited concerning the meaning of the initials DJJ, the reason for the evaluation, or any prior criminal conduct by the Defendant. Given the de minimis nature of the reference, no inference of prejudice can be attached to it which would justify a mistrial or a new trial. see State v. Council, 335 S.C. 1 (1999) (inadvertent vague reference to prior record insufficient to merit mistrial). Any conceivable prejudice from this comment or from Mr. Howerton's testimony was cured by the instruction given by the Court that the jury should make no inferences pertaining to the Defendant's custody status. Furthermore, the juries' acquittal of the Defendant on the murder charge serves as an indication that the jury was not improperly influenced by irrelevant concerns and based its judgment solely on consideration of the evidence presented pertaining to each charge.

V. Expert Testimony

The Court properly limited Dr. Knight's testimony concerning statements made to her by the Defendant. SCRE 803(4) specifically provides that "the admissibility of statements [for purposes of medical diagnosis or treatment] made after the commencement of the litigation is left to the court's discretion." The Defendant's statements to Dr. Knight were made for litigation purposes and not for

medical diagnosis and treatment. The Court correctly refused to let the Defense subvert the hearsay rule through the inapplicable use of the 803(4) exception.

VI. Jury Instructions

The Court properly ruled that State v. Greene, 423 S.C. 263 (2018), did not preclude the submission of both the homicide by child abuse and the aiding and abetting homicide by child abuse charges to the jury. As held in Greene, when a homicide may fall within multiple homicide statutes, a jury may properly return a guilty verdict on more than one charge. Id. at 283 citing State v. Easter, 327 S.C. 121 (1997) (reckless homicide and felony driving under the influence both properly submitted to the jury as charges had different elements). As the evidence in the Defendant's case could lend itself to guilty verdicts for the separate offenses of homicide by child abuse and aiding and abetting homicide by child abuse, both charges were properly submitted to the jury. see State v. Smith, 406 S.C. (2013) (aiding and abetting homicide by child abuse is not a lesser included offense of homicide by child abuse).

VII. Directed Verdict

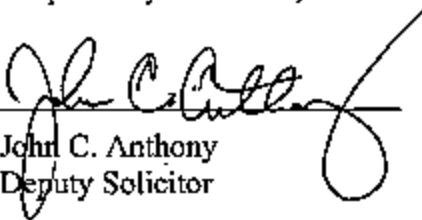
The record provides evidence of multiple behaviors by the Defendant from which a juror could find beyond a reasonable doubt that she acted with the intent to aid and abet her Codefendant in the commission of homicide by child abuse against India Martin. Specifically, the Defendant's internet searches on Saturday morning, May 23 demonstrate a knowledge of India's condition shortly after her injuries were inflicted. The Defendant's text messages with her Codefendant concerning the securing of medicine for India show her complicity in attempting to conceal India's injuries and deny her medical care. Her lies to the Rock Hill Police Department the night India's body was found support an inference that she had aided in the neglect leading to India's death. These actions are sufficient circumstantial evidence by which a jury could find the Defendant intended to aid and abet her Codefendant in committing homicide by child abuse by assisting him in neglecting India by denying her health care.

VII. Cumulative Effect

The Defendant has failed to show any errors in the conduct of her trial the cumulative effects of which would be the deprivation of a fair trial.

As the Defendant received a fair trial, her motion for a new trial should be denied.

Respectfully submitted,



John C. Anthony
Deputy Solicitor

York, South Carolina
December 8, 2023

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF GENERAL SESSIONS

ORDER IN A CRIMINAL CASE
WARRANT(S):
INDICTMENT(S):
2022GS4601905, 2022A4601293,
2022GS4601928

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1199
Aug 15 2024
SC Court of Appeals

State of South Carolina

JACKLEEN MULLEN
DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ State ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE

- ☐ **DECISION BY THE COURT AFTER HEARING.** This action came to a hearing before the court. The issues have been heard and a decision rendered. ☐ See below for additional information.
- ☐ **DECISION BY THE COURT AFTER STATUS CONFERENCE.** This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. ☐ See below for additional information.
- ☒ **MOTION:** ☐ GRANTED ☒ DENIED ☐ CONTINUED ☐ WITHDRAWN
- ☐ WITHDRAWN BY MOVING PARTY: _____
Signature of Moving Party
- ☐ OTHER:

IT IS ORDERED AND ADJUDGED: ☒ See Order of the Court below ☐ See attached order
☐ Formal Order to follow; to be prepared by: ☐ State ☐ Defendant ☐ Other:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

After thoughtful deliberation, the court respectfully denies the Defendant's motion for a new trial.

Circuit Court Judge

2154
Judge Code

Date

CERTIFIED TRUE COPY
2024 JUL 31 AM 11:27
ANGELA BRYANT
CLERK OF COURT
YORK COUNTY, SC

2024 JUL 31 AM 11:21

7-25-2024

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney’s box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE STATE

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



CLERK OF COURT'S OFFICE

Post Office Box 649; York, South Carolina 29745

RECEIVED

Aug 15 2024

SC Court of Appeals

July 31, 2024

Your letter has been received and the following action has been taken:

- ☐ Filed with your paperwork
- ☐ Copy sent to your attorney
- ☐ Copy sent to Solicitor's Office
- ☒ Copies of paperwork are included (Order Filed July 31, 2024)
- ☐ Your letter/motion is being returned per State vs. Stuckey and Foster vs. State.
All motions should be made through your attorney.

☐ Other: _____

Thank you.

Stephanie Neufus
 York County Clerk of Court
 General Sessions Division

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 29th day of July, 2026.

RECEIVED

Jul 29 2026

SC Court of Appeals