

ORIGINAL
VOL II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

D. Garrison Hill, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DONNA LYNN PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2012-212663

RECORD ON APPEAL

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1 Q. During that weekend, was Child present?

2 A. Yes, he was.

3 Q. He was there the whole time?

4 A. Yes.

5 Q. Except -- you're a young girl. How old
6 were you at that time?

7 A. I was in the fifth grade at that time, so
8 about eleven.

9 Q. And at this time you were doing the things
10 that an eleven year old girl does; is that
11 right?

12 A. Yes, sir.

13 Q. Were you on your cell phone?

14 A. At the time I don't believe that I had a
15 cell phone.

16 Q. You talked on the phone?

17 A. Possibly.

18 Q. Well, when you say that you was there the
19 whole time, you don't mean that you saw him
20 twenty-four/seven?

21 A. No, sir.

22 Q. What do you mean?

23 A. I mean, I was present but I may not have
24 been right in the room all the time.

25 Q. But Child was there, right?

1 A. Yes, sir.

2 Q. And he was there the whole time? They
3 didn't go out to McDonald's or to the park or
4 anything of that sort?

5 A. No, sir.

6 Q. And Jamie was there the whole time that you
7 were?

8 A. Yes, sir.

9 Q. During that whole time while you were
10 there, describe how Child was, how he acted,
11 what he did, what did the little baby do?

12 A. Well, he -- he was fine. He acted like a
13 normal baby. He acted -- I have other nephews
14 and nieces and he acted as a normal kid, would
15 play around and play with his toys or -- just
16 like a normal baby would.

17 Q. Let me take you to Sunday morning. Were
18 you up when Child got up?

19 A. I do believe that I was watching cartoons
20 with him that morning.

21 Q. And how was he acting while he was watching
22 cartoons?

23 A. He was fine, alert, watching them.

24 Q. Do you recall the rest of the day, what
25 happened the rest of the day? Can you give us

1 a timeline on what happened?

2 A. I don't know the times. I do know that we
3 went to my sister's, Brandi's, that day.

4 Q. About what time was that?

5 A. Around noon or a little after noon, maybe.
6 I am not sure. I don't know the time, like I
7 said.

8 Q. Did you eat anything while you were at your
9 sister's house?

10 A. Some Beanie-Weenies.

11 Q. How long were you at your sister's house?

12 A. We were there for a few hours, I do
13 remember, because I remember whenever we did
14 leave that we went straight back to my house.
15 If I recall, we got his pajamas and then took
16 him straight back to Tasha's.

17 Q. When you got to Tasha's house, who was
18 there?

19 A. Tasha, Ava, me, my mother and Jamie and
20 Child

21 Q. And what happened? Did you all go in, or
22 did they just hand the child to her, leave, or
23 what?

24 A. We went in.

25 Q. How was he acting when he got to his

1 mother's? .

2 A. He was -- I remember that he was awake and
3 -- I don't remember if he walked in or not, but
4 I know that he was awake. He was kinda crying
5 and stuff but he didn't -- he seemed like a
6 normal kid, other than maybe coughing and things
7 like that. But he wasn't -- he didn't act sick
8 like he would have something that needed to
9 checked right away.

10 Q. How long were you in the mother's house,
11 Ms. Honeycutt's house? .

12 A. Just briefly, not but a few minutes.

13 Q. Is that the last time that you saw Child ?

14 A. Yes. And, uh, what really hurt and kinda
15 concerned me after all this was her shutting the
16 door to him and saying, 'This is the way I do
17 it.' And saying, 'I'll go back in there twenty
18 to thirty minutes and check on him to see if
19 he's done crying and stuff, if he is still
20 fussing.' That really upset me and stuff. And
21 then after the death of him, at the funeral and
22 stuff, no emotion from her -- like other people
23 have said, I seen that and witnessed that
24 myself. That really hurt me, you know, knowing
25 she was the mother of him.

1 Q. Did you recall stopping at Wendy's or
2 anything ---

3 A. I do believe that we did on the way back
4 home from my sister's house.

5 Q. Do you know if Child ate anything?

6 A. I don't remember him eating anything.

7 Q. How about drinking?

8 A. I can't remember.

9 MR. O'CONNELL: Thank you very much.
10 Answer any questions that the other attorneys
11 may have.

12 THE COURT: Cross examination?

13 SOLICITOR RICHARDSON: Yes, sir.

14 CROSS EXAMINATION

15 BY SOLICITOR RICHARDSON:

16 Q. Good morning.

17 A. Good morning.

18 Q. I'm sorry, Miss Phillips, how old are you?

19 Did you state that?

20 A. At the time?

21 Q. Right now.

22 A. Fifteen.

23 Q. At the time you were eleven years old?

24 A. Yes, sir.

25 Q. I guess I could have done that calculation.

1 That's why I went to law school, I can't count.

2 Now, let me ask you this -- well, where are you
3 living now?

4 A. With my mother.

5 Q. What is your mother's name?

6 A. Donna Lynn Phillips.

7 Q. And back when this -- back in 2008, were
8 you also living with Donna Phillips at that
9 time?

10 A. Yes, sir.

11 Q. And you stated that you were watching TV
12 with Child at some point in time; is that
13 right?

14 A. Yes, that Sunday morning.

15 Q. What else did you do that day, that Sunday?

16 A. I do remember going outside. As was said
17 before in someone's testimony, he was outside
18 playing on the John Deere little jeep.

19 Q. I'm sorry. What were you doing?

20 A. I went to my sister's with them, and I was
21 there -- as far as I remember, I went outside
22 and I was out there playing with him in the
23 yard, with the jeep, John Deere jeep-thing.

24 Q. And when you -- you were in the car when
25 y'all left your sister's house, is that right?

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1 A. Yes, sir.

2 Q. And at that time, y'all started noticing
3 that something was wrong with Child . That's
4 why you left your sister's house?

5 A. Well, he was fussy like a normal baby, like
6 whenever they are fighting sleep.

7 Q. Okay. What do you mean by "fighting
8 sleep".

9 A. Like any -- most babies that I've been
10 around, when they are sleepy -- most of the
11 time, they don't want to take a nap, would not
12 prefer to take a nap most of the time. But
13 they, uh, -- (pause) -- they just fight it,
14 like they don't want to go to sleep, they fight
15 against that, want to stay up and know what is
16 going on, be around everyone.

17 Q. You would agree that the reason that y'all
18 left your sister's house was because he was not
19 feeling well; right?

20 A. I wouldn't say he was not feeling well but
21 he was kinda fussy like he was fighting sleep.

22 Q. And have you spoken to Donna Phillips about
23 this case prior to this?

24 A. No, sir. I have tried to stay to myself
25 and think about it, because it has hurt me and

1 -- (pause), -- because he was like a brother to
2 me. He lived with us half of his life,
3 basically. So at the time, I didn't feel like
4 talking about it.

5 Q. So Donna Phillips has never said anything
6 to you about the case?

7 A. No, sir, she hasn't -- (pause) -- I don't
8 know if you're implying that she may have some
9 ---

10 Q. I am just asking if y'all have talked about
11 the case?

12 A. No, sir.

13 Q. Now, when you -- at some point in time, is
14 it fair to say that you got worried about
15 Child , when he was in the car?

16 A. I was not worried about him when he was in
17 the car. The only time that I did get kinda of
18 worried upset and kinda worried was when we were
19 at Tasha's house and she shut the door,
20 responded to him that way. That didn't seem
21 right to me at the time.

22 Q. Do you remember telling -- do you remember
23 talking to this detective here?

24 A. Yes.

25 Q. You do?

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1 A. (Affirmative nod).

2 Q. Do you remember telling her at that time
3 that he was in the car that he was wheezing?

4 A. Yes. He was kinda congested sounding but
5 it wasn't crucially like he needed to be seen at
6 the time, I don't believe. It didn't seem very
7 serious, like it needed to be checked right
8 then. It seemed kinda like a cold or something
9 maybe.

10 Q. Of course, you were eleven years old at the
11 time; right?

12 A. Right.

13 Q. And do you also remember telling the
14 detective that you were worried about Child ?

15 A. It has been four years and, no, I don't
16 remember. I may have been. I was very
17 concerned about the way that Tasha shut the
18 door, once again.

19 Q. Do you remember -- do you say that you do
20 or you don't remember telling Detective Burgess
21 that you were worried about him.

22 A. I don't remember. I may have.

23 Q. If I showed you something to refresh your
24 memory, maybe that would help you. Do you
25 remember giving a written statement?

1 A. Yes.

2 Q. I hand you -- (tendering). Is that your
3 written statement, your signature on the
4 signature line?

5 A. Yes.

6 Q. And do you see where it is highlighted
7 here?

8 A. (Reviewing).

9 Q. Does that refresh your memory a little bit?

10 A. Yes. I may have said that we were worried
11 about him because of the cough and he was
12 congested sounding. Yes.

13 Q. So you were worried about Child when y'all
14 dropped him off?

15 A. (Affirmative nod).

16 Q. Okay. Let me ask you this, you did state
17 that when you got him there that Latasha
18 Honeycutt took the child and put him in a room?

19 A. Yes.

20 Q. And you said that she closed the door?

21 A. Yes.

22 Q. And after that, did you see anything else
23 happen or did y'all leave after that?

24 A. We left very soon after that.

25 SOLICITOR RICHARDSON: Thank you for

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1 being here.

2 MR. DEJONG: Your Honor, may it please
3 the court.

4 DIRECT EXAMINATION

5 BY MR. DEJONG:

6 Q. Ms. Phillips, do you know Ronnie Anders?

7 A. Yes.

8 Q. Did you see him there this weekend of March
9 the 14th?

10 A. Yes.

11 Q. Do you remember what day that you saw him?

12 A. Sunday morning.

13 Q. Were you up when he got there?

14 A. Yes..

15 Q. Okay. Now, you lived with your mother at
16 that time; right?

17 A. Yes.

18 Q. On Saturday, how was Child acting?

19 A. Like a normal baby.

20 Q. Did he act any kind differently on Sunday
21 than he did on Saturday?

22 A. Not really. It didn't seem like he acted
23 any different. Maybe at the time he was going
24 home he sounded congested, coughed, had a cold
25 -- like I said before.

1 Q. Well, Sunday morning, do you remember about
2 what time that you got up?

3 A. I don't remember the time.

4 Q. But Child on was up when you got up?

5 A. Yes.

6 Q. Was Jamie up when you got up?

7 A. Yes, I do believe that he was.

8 Q. Understanding that you weren't on top of
9 your mother or Jamie or Jaidon all weekend, he
10 was there all weekend; right?

11 A. (Affirmative nod), yes.

12 Q. Okay. Now, do you know Renee Shelton?

13 A. Yes.

14 Q. During this weekend, did you see Renee
15 Shelton?

16 A. Yes, I do.

17 Q. Do you remember what day that was?

18 A. I believe that was Saturday.

19 Q. And was that Saturday morning or Saturday
20 afternoon, or do you remember?

21 A. I don't remember the time. I remember going
22 to my aunt's that day as well, but I don't
23 remember the certain timeframe.

24 Q. Who is your aunt?

25 A. Cindy Stephens.

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1 Q. Where did you live?

2 A. I don't know the address. In Liberty.

3 Q. She lives in Liberty?

4 A. Yes.

5 Q. And Ms. Shelton, where did she live?

6 A. Pickens.

7 Q. All right. Share with me now what Child
8 was doing Sunday morning when you got up?

9 A. Watching cartoons with me.

10 Q. Was he awake?

11 A. Yes.

12 Q. Did Child talk at this point in time?

13 A. I -- he wasn't very close to me at the time
14 when we had him then, this weekend he wasn't
15 very close to me, but I don't really remember
16 him talking much. He said like -- tried to.

17 Q. Do you know how long you watched cartoons?

18 A. I am not sure. Maybe an hour or two.

19 Q. During that hour or two that you were
20 watching cartoons, did he fall asleep or did he
21 stay awake?

22 A. He was alert, watching cartoons.

23 Q. Did he laugh or say anything about the
24 cartoons?

25 A. I can't remember.

1 Q. That was Sunday morning. Then sometime, I
2 gather, after lunch you left to go see your
3 sister?

4 A. Sister, (affirmative nod).

5 Q. Where does she live?

6 A. Fountain Inn.

7 Q. How long a drive, if you know, how long of
8 a drive or how long did it take you to get
9 there?

10 A. About forty-five minutes to an hour.

11 Q. On the way to your sister's house, was
12 Child awake?

13 A. I think he may have fell asleep.

14 Q. Do you remember when you got to your
15 sister's house, did anybody have any problem
16 waking him up?

17 A. No, sir.

18 Q. And once you got to your sister's house --
19 I guess I got the cart before the horse, but
20 once you got to your sister's house, did he wake
21 up?

22 A. Yes.

23 Q. What did he do after he woke up?

24 A. Well, we got him out of his car seat. He
25 woke up and then -- as I remember, we went in

1 and he was playing with my other nephew, Clay.

2 Q. Were they playing inside or outside?

3 A. Inside.

4 Q. Do you remember what they were playing
5 with?

6 A. No, I don't remember.

7 Q. Were they playing with toys?

8 A. They -- most likely, I do believe that they
9 were. I am not sure about that either.

10 Q. Did Child seem to have any problems
11 playing with your other nephew?

12 A. No. He was always willing to share, play
13 and be around other kids.

14 Q. Okay. Would you say that Child played
15 normal, that he played hard? What would you
16 say?

17 A. He played normal. He played like a normal
18 baby was.

19 Q. Did they play all afternoon?

20 A. I guess it depends on the timeframe. I do
21 believe that he was playing most of the time
22 that we were there, until the end when he kinda
23 got fussy like he was fighting sleep.

24 Q. Do you remember what time you left your
25 sister's house?

1 A. Like I said, I don't remember the times.

2 But it wasn't -- it was -- I know that we went
3 straight there, went to my house and got his
4 pajamas and went to Tasha's.

5 Q. When you got to your house -- your mother's
6 house, right?

7 A. Yes.

8 Q. When you got to your house, did Child go
9 into the house?

10 A. No, sir.

11 Q. So y'all went into the house?

12 A. I believe that it was me and my mother.

13 Q. Where was Jamie?

14 A. In the car.

15 Q. How long did -- if you know, how long did
16 you stay at your house?

17 A. Briefly, long enough to go in and get his
18 pajamas.

19 Q. And do you remember what time -- well, let
20 me ask me. When you left your house -- and that
21 was on Sunday evening, I guess. Correct?

22 A. Yes.

23 Q. Okay. When you left your house on Sunday
24 evening, where did you go?

25 A. We went to Tasha's.

1 Q. Do you remember if it was still daylight or
2 dark?

3 A. It was still daylight.

4 Q. I'm sorry?

5 A. It was still daylight.

6 Q. About how long did it take you to get from
7 your house to Tasha's house?

8 A. I don't know an approximate time but from
9 -- to, like, Pickens.

10 Q. Well, when you got to Tasha's house, was it
11 still daylight or was it dark?

12 A. It was daylight.

13 Q. How long did you stay at Latasha's?

14 A. Briefly. I don't know the time.

15 Q. Did you go inside Latasha's house on Sunday
16 evening?

17 A. Yes.

18 Q. Were you there when Child was in the house
19 on Sunday evening?

20 A. Yes.

21 Q. Did you -- once Child got into the house
22 Sunday evening, what happened?

23 A. He was kinda crying and fussy, as a child
24 would act when they're fighting sleep. And he
25 was -- he was awake and alert to everything that

1 was going on around him.

2 Q. Did you see him walk in the house?

3 A. I can't remember.

4 Q. When you were at your sister's house, you
5 all -- when you left to go to your sister's
6 house it was sometime in the afternoon; correct?

7 A. Yes.

8 Q. Did you eat while you were at your sister's
9 house?

10 A. Beanie-Weenies, I do believe.

11 Q. Did Child eat anything, that you remember?

12 A. I believe that he ate some Beanie-Weenies.

13 Q. While you were -- well, you went with your
14 mom and Jamie to pick Child up on Friday?

15 A. I don't remember. I don't remember that.
16 I don't know if I did or not.

17 Q. You don't remember the 14th?

18 A. I know that I was home on the 14th. I don't
19 remember if I was at school when they went to
20 pick him up or what, I don't remember that.

21 Q. Because you were in school at this point in
22 time, right?

23 A. I do believe, (affirmative nod).

24 Q. All right. Well, anytime that you were
25 with you -- sometime on the 14th or sometime on

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1 Sunday evening, did you see anybody give Child
2 any medicine?

3 A. No, sir.

4 Q. Especially did you see anybody give Child
5 any medicine while you were at your house?

6 A. No, sir.

7 MR. DEJONG: Thank you, Ms. Phillips.

8 MR. O'CONNELL: I don't have any
9 further questions.

10 THE COURT: Thank you, Ms. Phillips.

11 (WITNESS STEPS DOWN)

12 THE COURT: Yes, sir?

13 MR. O'CONNELL: I would like to call
14 Donna Phillips to the stand. Excuse me, Your
15 Honor. Elaine Simmons.

16 (WITNESS TAKES STAND)

17 SOLICITOR RICHARDSON: Your Honor, may
18 we approach?

19 THE COURT: Sure.

20 (OFF RECORD BENCH CONFERENCE)

21 THE COURT: Ladies and Gentlemen, we
22 are going to take a recess. Don't talk about
23 the case. Keep an open mind. Thank you very
24 much.

25 (JURY OUT @ 10:15 A.M.)

1 THE COURT: You may step down, ma'am.

2 BAILIFF: Jury is secure, Your
3 Honor.

4 THE COURT: We will take about a
5 five-minute recess. Thank you.

6 (BRIEF RECESS)

7 (DEFENDANTS PRESENT)

8 THE COURT: Mr. O'Connell, your
9 next witness is Ms. Phillips; is that correct?

10 MR. O'CONNELL: Yes, sir.

11 THE COURT: Ms. Phillips, have you
12 made the decision that you wish to testify,
13 ma'am?

14 DEFENDANT PHILLIPS: Yes, sir.

15 THE COURT: Now, you -- I am going
16 to go ahead and put you under oath right now,
17 then we will go it again in front of the jury.

18 (WHEREUPON DONNA PHILLIPS SWORN)

19 THE COURT: Ma'am, you indicated on
20 Monday that you weren't going to abide with my
21 ruling about the scope of the testimony. Is
22 that still your position?

23 DEFENDANT PHILLIPS: I didn't
24 understand.

25 THE COURT: On Monday, you said

1 that you were not going to abide by my ruling
2 that you could not testify about or bring up
3 anything about any prior DSS involvement. Is
4 that still your intention?

5 DEFENDANT PHILLIPS: I don't recall
6 saying that I wouldn't abide. I'll abide with
7 the truth.

8 THE COURT: So you understand that
9 the ruling of the Court in this trial is that
10 there is to be no mention, no suggestion, no
11 statement, no evidence whatsoever about the
12 fact that this child was in DSS custody before
13 or that there were foster parents at one or
14 anything of that nature. Do you understand
15 that?

16 DEFENDANT PHILLIPS: Can I ask you
17 one question?

18 THE COURT: Sure. But first I want
19 to know yes or no, do you understand what I
20 just said?

21 DEFENDANT PHILLIPS: Yes, sir, I
22 do.

23 THE COURT: All right, go ahead.

24 DEFENDANT PHILLIPS: It's important
25 to tell about the things that were said, as

1 far as -- in court, about Child being sick.

2 THE COURT: I don't know anything
3 about that. Do you know what she is talking
4 about Mr. O'Connell?

5 MR. O'CONNELL: Your Honor, ---

6 DEFENDANT PHILLIPS: It shows that
7 JChild was sick at the time.

8 MR. O'CONNELL: When the child was
9 returned on that Wednesday, the child was --
10 that the child was sick on that Wednesday.

11 THE COURT: Yes, sir, Mr. Harbin?

12 MR. HARBIN: It was my understanding
13 that the child was delivered to my client on
14 Wednesday. I am not certain why she is
15 speculating as to the health of the child when
16 she received the child on Friday. She would
17 perfectly be able to testify as to the time
18 that she was with the child, but anything else
19 would be hearsay. She has no ability to
20 testify about the medical condition of the
21 child until they actually received the child,
22 so I think it would be appropriate for the
23 Court to continue the limited instruction and
24 not get into some prior ---

25 MR. O'CONNELL: My client advises

1 me that -- she will only testify as to the
2 health of the child when he was received on
3 Friday to that Sunday.

4 MR. HARBIN: I would have no
5 objection to that.

6 MR. O'CONNELL: From Friday, when
7 you picked up the child.

8 DEFENDANT PHILLIPS: (Sidebar with
9 Mr. O'Connell), after that time that he was
10 returned. They called on that ---

11 THE COURT: I don't understand what
12 she's saying. Who is "they"?

13 DEFENDANT PHILLIPS: They called to
14 check on him that night.

15 THE COURT: What night?

16 DEFENDANT PHILLIPS: Wednesday
17 night. They called and asked if we wanted to
18 come get the car seat. James said if they
19 wanted to come get the car seat, fine, let
20 them borrow it. We can get another car seat.
21 If we needed to get another car seat, you
22 know, we would so that we could get the child
23 -- (emotional), that's all that I've got to
24 say.

25 THE COURT: I understand that there

1 was some testimony about the exchange of a car
2 seat, but what's the relevance of that to this
3 case?

4 DEFENDANT PHILLIPS: Because ---

5 THE COURT: I am not asking you. I
6 am asking Mr. O'Connell.

7 MR. O'CONNELL: Your Honor, when I
8 went over with my client about what was said
9 about the car seat, ---

10 THE COURT: What?

11 MR. O'CONNELL: The ---

12 THE COURT: Ma'am, this isn't going
13 to be some big surprise. Okay? I want to
14 know what you're going to say.

15 DEFENDANT PHILLIPS: We didn't have
16 a cell phone, and that's why he -- when he
17 came that day, because we didn't have a
18 telephone. If we didn't have a telephone, how
19 did they get in touch with us? Okay?

20 THE COURT: Okay. That's no
21 relevant. The testimony that you're going to
22 give, ma'am, -- the testimony that you're
23 going to give, if you want to testify, is
24 going to be limited to evidence that you have
25 about the condition of the child, statements

1 that were made and activities that occurred
2 after the child was returned to your son on
3 that Friday. Now, do you understand that?

4 DEFENDANT PHILLIPS: I can only
5 talk about Friday?

6 MR. O'CONNELL: Friday, Saturday,
7 Sunday. You can't talk about anything back o
8 that.

9 DEFENDANT PHILLIPS: I understand.
10 It kinds disappoints that the other ---

11 THE COURT: Ma'am, you understand
12 that you can't talk about DSS or ---

13 DEFENDANT PHILLIPS: Can I ask you
14 this, can I put it this way, that on Friday --
15 or on Sunday, -- be on Wednesday they said
16 that they wanted to come get the car seat.
17 Can I do that?

18 THE COURT: I am not sure what she
19 is ---

20 MR. O'CONNELL: I am not sure
21 either.

22 DEFENDANT PHILLIPS: I want to go
23 to Sunday, when he came to our house, he said
24 that we had -- we had no phone for him to get
25 in touch with. That's why he came to our

1 house, to tell us. He said that we didn't
2 have no phone.

3 THE COURT: I understand but I
4 don't think ---

5 DEFENDANT PHILLIPS: And what I am
6 saying is that he is lying because if we did
7 have a phone they wouldn't have had to call to
8 come get that car seat.

9 THE COURT: That is not something
10 that we are ---

11 DEFENDANT PHILLIPS: That's shows
12 the time period ---

13 THE COURT: Shows what?

14 DEFENDANT PHILLIPS: Shows the time
15 period of when we left the house. I don't
16 know if that -- that shows the time period.

17 THE COURT: I don't understand her.

18 DEFENDANT PHILLIPS: I feel like I
19 am being tied down every way. You don't
20 understand what I'm saying.

21 MR. O'CONNELL: Part of what she is
22 trying to -- I don't have any memory of any
23 telephonic conversation. There will be
24 testimony that upon EMS -- that the first
25 thing she did was to go to the hospital and

1 then she went to look for Jamie. But I don't
2 have anything about any lack of telephone
3 communication or anything, just that they went
4 from Point A to Point B. I am not sure what
5 the relevance is.

6 THE COURT: All right. The ruling
7 of the Court is that you can talk about
8 activities that occurred and what you observed
9 from that Friday when the child, Child , was
10 brought back to your son until the time that
11 -- from that point forward, you can talk about
12 things that are relevant to the case.

13 DEFENDANT PHILLIPS: One more
14 question, Your Honor.

15 THE COURT: Yes, ma'am?

16 DEFENDANT PHILLIPS: I've got a
17 timeline, too, that shows the investigation.
18 It's not DSS, it goes back to the home, how
19 many hours -- it shows ---

20 THE COURT: Is it something that is
21 written out?

22 DEFENDANT PHILLIPS: Yes.

23 THE COURT: I would have to see it.

24 MR. O'CONNELL: (Sidebar with
25 client).

1 THE COURT: He will give it to me.

2 MR. O'CONNELL: (Tenders).

3 THE COURT: (Upon review), so you
4 want to say, basically, Ms. Honeycutt was only
5 with the child eight and a half hours from
6 Wednesday to Friday?

7 DEFENDANT PHILLIPS: Right.

8 SOLICITOR RICHARDSON: I am not aware
9 of statements made to that effect, what
10 relevance that is to the case to take an
11 arbitrary date, like Wednesday, -- I'm not
12 sure but that's not the situation that we've
13 been trying to avoid.

14 THE COURT: Well, I understand the
15 timeline. Your fine lawyer, Ms. Phillips, is
16 certainly capable of making the argument
17 during closing arguments about the limited
18 contact without running the risk of opening
19 the issue of DSS, which frankly has been shut
20 off to ensure that everyone, particularly your
21 son and Ms. Honeycutt, receive a fair trial
22 without the jury being unduly influenced about
23 the previous investigation by a State agency.

24 So this, uh, -- this timeline from
25 Friday is of limited relevance. I think

1. certainly Mr. O'Connell can touch on that in
2. his closing argument (sic) about her work
3. responsibilities. It seems to be to be what
4. you're getting at. That is already in the
5. record. I find that any probative value that
6. it may have is outweighed substantial by the
7. prejudice.

8. All right. So, again, you understood
9. the testimony has got to be limited from the
10. time on Friday when the child was received by
11. your son forward? That there is to be no
12. mention of DSS, no suggestion of any prior
13. action(s) by any State agency regarding the
14. welfare of this child or the custody of this
15. child? Or of any prior court action? Do you
16. understand that

17. DEFENDANT PHILLIPS: Okay.

18. THE COURT: Is there anything
19. unclear about that?

20. DEFENDANT PHILLIPS: I want you to
21. explain to me how I can get testimony in about
22. how much I love this baby, what I've done for
23. him throughout all this. I worked for four
24. and a half years and -- two lawyers. I've
25. begged and prayed for this paperwork and

1 stuff, everything, and I've been shut out on
2 everything. I want to know how I can show my
3 -- they don't understand why I'm getting so
4 frustrated about all of this. It has caused
5 my family a whole lot of grief -- (emotional)
6 -- for murder! And my son, it's caused him --
7 (emotional), he couldn't remember this, he
8 couldn't remember that, (emotional).

9 THE COURT: Ma'am, nobody is going
10 to ---

11 DEFENDANT PHILLIPS: And we --
12 (emotional).

13 THE COURT: Go ahead.

14 DEFENDANT PHILLIPS: We're
15 innocent.

16 THE COURT: This isn't the time to
17 have these kinds of conversations. My ruling,
18 that you told me that you understood, and I am
19 going to repeat it, then I am going to get you
20 to repeat it to make sure that you understand
21 it. All right? My ruling is that your
22 testimony is going to be limited to things
23 that you observed, the activities that you
24 saw, heard or otherwise sensed from the time
25 that the child was brought back on that Friday

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1 until -- you know, from that point on.

2 DEFENDANT PHILLIPS: Okay.

3 THE COURT: You can testify about
4 that, but there is to be no testimony, no
5 reference to, no suggestion of, no hint about
6 any prior DSS custody or actions, court
7 hearings, or any other proceedings concerning
8 the custody of this child or actions taken
9 against the parents. Do you understand that?

10 DEFENDANT PHILLIPS: Yes, sir.

11 THE COURT: All right. Now I want
12 you to tell me in your own words what your
13 testimony is limited to.

14 DEFENDANT PHILLIPS: I am here to
15 tell them about my character, ---

16 THE COURT: I didn't say anything
17 about that. Wait a minute. Back up. What
18 you're doing is running the risk of not being
19 able to testify at all.

20 DEFENDANT PHILLIPS: Okay. I will
21 not ---

22 THE COURT: I want you ---

23 DEFENDANT PHILLIPS: --- talk about
24 anything prior. Other than Friday, I can't
25 talk about any of this. I can't talk about

1 anything prior to Friday, at all. Anything
2 prior to Friday.

3 THE COURT: Okay.

4 DEFENDANT PHILLIPS: I have to
5 leave DSS and all that out.

6 THE COURT: That's right. Any
7 activity by any State agency, DSS, ---

8 DEFENDANT PHILLIPS: State
9 agencies, guardians, ---

10 THE COURT: Law enforcement,
11 whatever.

12 DEFENDANT PHILLIPS: Law enforce-
13 ment.

14 THE COURT: Now, you mentioned
15 about Prednisone. Are you -- have you
16 understood all of our conversation here this
17 morning?

18 DEFENDANT PHILLIPS: I understand
19 what the Court is telling me, that I can't say
20 anything about -- I would ask the Court to
21 tell them to not try to trick me into saying
22 anything so you'd lock me up. I think that's
23 only fair.

24 THE COURT: Well, nobody is going
25 to mention that. If anybody mentions it,

1 there's going to be consequences because it
2 would be a violation of my Order and would be
3 contempt of court. That goes for everybody,
4 not just you. Do you have any problems
5 understanding what is happening here today?
6 Have you had any difficulty in understanding
7 my questions?

8 DEFENDANT PHILLIPS: No.

9 THE COURT: You're not under the
10 influence of any alcohol, drugs or medications
11 at this time?

12 DEFENDANT PHILLIPS: (No verbal
13 response).

14 THE COURT: I understand that you
15 told me that you took medication. I just need
16 to ensure that you're clearheaded.

17 DEFENDANT PHILLIPS: I understand
18 what you're saying. I don't understand why
19 but I know what you're asking me to do. I
20 know what you're asking me to do. I'll put it
21 that way.

22 THE COURT: Are you under the
23 influence of any alcohol, drugs or medication?

24 DEFENDANT PHILLIPS: No, I am only
25 on Prednisone. I can't take pain pills. I

1 took them for like for four and half years and
2 then at the hospital, with that last attack, -
3 - gosh, for two years, I haven't had anything.
4 I can't take anything for pain. I've never
5 wanted to take a lot of pills for pain. I
6 take my Beriva, my Lipitor, I take my inhaler,
7 my oxygen, vitamins sometimes, you know,
8 things like that. No drugs, no alcohol.

9 THE COURT: Okay, ma'am. I under-
10 stand. I know this trial is very important to
11 everyone. I'm just trying to ensure that it
12 is done fairly and that there are no improper
13 matters brought before the jury that would
14 allow them to focus on something other than
15 the real issues in this case. I am going to
16 vigilantly ensure that that doesn't happen.
17 So I appreciate your cooperation. Anything
18 else before we bring the jury in?

19 SOLICITOR RICHARDSON: No, sir.

20 THE COURT: Bring in the jury.

21 (JURY IN @ 10:51 A.M.)

22 THE COURT: Ladies and Gentlemen,
23 before we have the next witness, you may have
24 noticed that we have a new face in the crowd
25 today. That's Ms. Vivian Cross. She is the

1 court reporter that replaced Ms. Jenkins, who
2 is on vacation. So, just to explain that.
3 Mr. O'Connell, you may call your next witness.

4 MR. O'CONNELL: Thank you, Your
5 Honor, may it please the court -- Your Honor,
6 I would like to ask the Court, please, that if
7 I get tired standing if I may sit down?

8 THE COURT: Yes, sir.

9 MR. O'CONNELL: If you would please
10 take the stand.

11 (WITNESS TAKES STAND)

12 DONNA LYNN PHILLIPS, being duly sworn
13 to tell the truth, the whole truth and nothing
14 but the truth, testified, as follows:

15 DIRECT EXAMINATION

16 BY MR. O'CONNELL:

17 Q. Ms. Phillips, where do you live?

18 A. Sir?

19 Q. In what county do you live?

20 A. I live in Pickens County. I am a postal
21 worker of fourteen years, retired disability
22 in 2008.

23 Q. Were you born in Pickens County?

24 A. Yes, sir.

25 Q. I am going to take you back to the -- I

1 may say the date wrong, like most of us here,
2 but I think it was Friday the 14th, in the
3 afternoon.

4 A. Yes, sir.

5 Q. What occurred that afternoon that you want
6 to tell the jury about?

7 A. Okay. Friday, we got up kinda early that
8 morning. It's kinda hard for me to remember
9 the exact time. I know that it was probably
10 about ten or eleven when we headed towards
11 Ingles -- we want going to get out Child
12 We had not got to see him in like ten months.
13 We was going to see him. We went to Ingles.
14 I don't have a cell phone, I have only a home
15 phone -- at the time, the money situation -- I
16 was the oldest of five children and, uh, we --
17 we headed out toward Ingles and I think that I
18 had to go to the grocery store to get some
19 stuff. We called if we could get Child now
20 -- I kinda tried to talk him out of him, so --
21 being that it was ---

22 THE COURT: Hold on just a minute.
23 Ladies and Gentlemen, we are going to take a
24 short recess. Don't talk about the case, keep
25 an open mind.

1 (JURY OUT @ 10:56 A.M.)

2 DEFENDANT PHILLIPS: I'm not
3 referring to anything.

4 THE COURT: Ms. Phillips, you told
5 me under oath that you understood my ruling
6 and that it was clear to you. I don't know if
7 you think you're being cute or if you think
8 that you're going to outwit everybody around
9 you, but what you've done is violating my
10 Order. So you're in contempt of Court.

11 So I can do one of two things at this
12 point. I can go ahead and proceed with the
13 contempt or you can indicate to me whether
14 you're going to refrain from that conduct and
15 we'll bring the jury back in and you'll be
16 allowed to continue testify. But if tell me
17 that you're to make indirect references to the
18 child being moved around or not seeing the
19 child in months -- now, you just wait until I
20 finish. Okay? If you can't refrain from
21 doing that, you're not going to be able to say
22 another word from this witness stand. Do you
23 understand that?

24 DEFENDANT PHILLIPS: Yes, sir, I
25 understand.

1 THE COURT: We will handle the
2 contempt later on. Okay?

3 DEFENDANT PHILLIPS: I've got ADHD
4 and it's just kinda hard to ---

5 THE COURT: You understand what's
6 going on. I can tell from your demeanor.

7 MR. O'CONNELL: Your Honor, if I
8 may say it one more time, -- everything from
9 the 13th on, nothing backwards. Stop trying to
10 bring in other stuff. Stop trying to -- I
11 don't know if it is editorializing or whatever
12 you call it, but just state the facts from the
13 13th on. Your Honor, I would like that on the
14 record just to cover myself.

15 THE COURT: Well, you ask the
16 questions. Ma'am, you just answer the
17 questions and not go off on tangents.

18 DEFENDANT PHILLIPS: Okay, let's
19 just get to it. I'm going to try to -- I'm
20 just going to answer the questions.

21 THE COURT: If it happens one more
22 time, you're off this witness stand. Do you
23 understand that?

24 DEFENDANT PHILLIPS: Yes, sir.

25 MR. DEJONG: Judge, can I note my

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1 objection to her testimony for the record.

2 THE COURT: Yes, sir. Does anybody
3 wish for me to give any kind of instruction to
4 the jury?

5 SOLICITOR RICHARDSON: I do, but I
6 don't know what it would be.

7 THE COURT: Bring in the jury.

8 MR. DEJONG: I would ask that they
9 disregard the testimony, Your Honor, but I
10 have a little problem with that. That rings
11 the bell twice.

12 SOLICITOR RICHARDSON: I do have an
13 objection. There was no question and answer
14 that would complete a narrative, so if Your
15 Honor would instruct the jury that the witness
16 has been instructed not to testify *ad nauseam*,
17 to only answer the questions, I think that
18 alleviate any concern.

19 THE COURT: Just answer his
20 questions.

21 MR. O'CONNELL: Your Honor, I
22 appreciate what everybody is saying but
23 sometimes you have to ask a question that
24 includes a narrative. If everything was only,
25 'What happened next? What happened next?'

1 We would be here because then we'd have to do
2 every minute of almost every hour. I have
3 instructed my client to come to this court-
4 room, again, just to tell the facts about the
5 circumstances of that afternoon.

6 THE COURT: All right. Thank you.
7 You can bring the jury back in.

8 (JURY IN @ 10:59 A.M.)

9 THE COURT: You may continue, Mr.
10 O'Connell.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. O'CONNELL:

13 Q. Ms. Phillips, what happened after you
14 and Jamie Morris picked this child up Friday
15 afternoon, the 14th?

16 A. Okay. We got to Ingles. I tell him
17 'okay, to go ahead' because he was like 'I'm
18 going to get him.' He calls -- he gets on the
19 pay phone and he calls -- I don't know, he
20 called three or four times. I got onto him.
21 I said, 'Jamie, you can't just keep calling,
22 you know, aggravating, you can't just keep
23 calling them.' And he said, 'Mama, please let
24 me call one more time.'

25 So he had called Latasha Honeycutt

1 and, uh, he had, uh, spoke with her. Brandon
2 had told him one time that she was wanting to
3 pack a bag for him, you know, and that made me
4 feel good because, I thought, that's like a
5 mother would care, like she wanted to pack a
6 bag for the child. You know? That really
7 made me feel good because it made me feel
8 like, you know, that it was confirmed.

9 When he called her, she said sure, to
10 go ahead and get him but she didn't mention no
11 bag packing and stuff.

12 So Jamie got back in the car and he
13 didn't tell me that he'd called her. He said
14 "we can go get him now." I said, "Really?"
15 He said "Yeah."

16 So we go that way, because Jamie had
17 told 'em we didn't need no clothes, we had
18 everything -- except his tennis shoes. I had
19 bought him some little Nike tennis shoes that
20 were real nice and he wanted them to have
21 those.

22 So we went to -- (emotional, crying)
23 -- we went over to pick him up (emotional).

24 Q. Ma'am. Ma'am. Would you bring the
25 microphone closer to you?

1 A. We went and picked Child up that day and
2 -- I don't know, I just -- I don't know if
3 Latasha knew that we was coming, or if she
4 wanted to pack a bag or not, I just know that
5 when we got there -- I asked Jamie -- we were
6 wondering, you know, why the delay. And, uh,
7 Brandon never would come to the door when we
8 got out to knock on the door. But Jamie said
9 that he called her and I told him, 'Well, you
10 should've have done that. You shouldn't have
11 called her at work.' There was a little
12 conflict going on about things that had ---

13 Q. Just tell what happened when you picked
14 him up.

15 A. Okay. We went in -- we stood in front of
16 the door and we knocked and knocked, we
17 couldn't get nobody to the door. I didn't
18 hear no sound or anything. I couldn't hear
19 anything. And, uh, so we walked back away
20 from the house and we went and sat in the car
21 for a few minutes. Then we went back and
22 knocked, because we thought maybe he was using
23 the restroom or maybe -- things. We didn't
24 know. Is there a certain way that I need to
25 sit with this (microphone)?

1 Q. Tel us your story.

2 A. Maybe he needed to change the baby's
3 diaper or something. So we sat there, we went
4 back and we knocked again. Still no answer.

5 I guess that it was about, I don't know,
6 thirty minutes or so we tried to get him to
7 the door. I finally got to where I said,
8 'Jamie, let's just go.'

9 I'm not thinking -- I don't even think
10 that there would be a Court Order because I --
11 okay. I wasn't thinking, trying to -- (pause)
12 -- and, uh, I said 'Well, I don't understand.
13 If we got to see him, you know, ---

14 Q. Ma'am, did you pick the child up Friday
15 afternoon?

16 A. Yes, we did.

17 Q. How did you ---

18 A. We started to turn away from the door and
19 as we did, he finally opened the door. We
20 stepped inside, he let us inside. Child was
21 awake. You could tell that he was not -- had
22 not been sleeping, his eyes was alert and
23 everything, he was awake. But he just -- he
24 seemed to be fine, walking around in his
25 pajamas. He had some long-john pajamas on,

1 there was some little airplane and stuff, she
2 had some cute little pajamas on him. This is
3 --- I don't know, somewhere around two o'clock.
4 I'd have to see my paperwork to say for sure,
5 but somewhere around two o'clock.

6 You know, I think it was a little bit
7 after two when we went in. While we was in
8 there, I think Jamie went back outside at one
9 point to buckle up Child 's car seat, to get
10 it tight in there. We had it already but we
11 hadn't buckled it in.

12 So, uh, he, uh, -- while he was out there,
13 I asked Brandon -- I looked around and I
14 looked back towards the back bedroom, it's
15 down a hallway, and the bedroom that Child
16 stayed in was over here on this side
17 (gesturing). Like here is the door, you go in
18 -- you come in the door, you're sitting on the
19 couch and the hallway is this way and the
20 bedroom to where Child was out was right
21 where the front door had got kinda -- like
22 this, like an L-shape.

23 Child kinda come from the bedroom, you
24 know, walking when we come in. Jamie hugs
25 him, picks him up. You know? He had a little

1 pen/pencil thing in his hand. When Brandon
2 looked at me, I just said -- because I figured
3 that might start a fuss, you know, if he made
4 a big deal of it. And Jamie just said, 'Ooh,
5 JChild , you don't need this.' You know. So
6 he took the pencil.

7 I looked around and I didn't see no baby
8 monitors. I knew that they had an eight-week
9 old and I know that with my eight-week olds
10 that I always ---

11 Q. Ma'am, please don't reminisce on what
12 y'all did.

13 A. I'm sorry.

14 Q. What did you do after picking the son up.
15 What did you do then?

16 A. When I, uh, -- when we got him, we had to
17 get -- we had to get some clothes because he
18 had stated that we wasn't over ten minutes,
19 but Jamie -- I'd asked him if he could see Ava
20 (phonetic) -- he went back there in the back
21 bedroom and we had reasons that -- (pause) --
22 that he wanted to see Ava.

23 MR. DEJONG: Your Honor, could I ask
24 that she speak into the microphone. I am
25 having trouble hearing her.

1 THE WITNESS: He had reasons --
2 can I adjust it maybe? Would that help? Who
3 does this (microphone). Am I doing something
4 wrong.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. O'CONNELL:

7 Q. You're okay.

8 A. I can do this, I can breathe better with
9 that. Will -- I forgot the question.

10 Q. The question is, what did you do after you
11 picked the child up? After you picked the
12 child up, what did you do? Did you go home?
13 Did you go to Wendy's or McDonald's or
14 something like that? What did you did?

15 A. We stayed for a minute. I don't directly
16 remember going anywhere but home, because I --
17 I am pretty sure that we went straight home
18 because it was right at the time for my
19 daughter to get out of school. She's in
20 elementary. She come in shortly after we got
21 there, so we was kinda rushed about that.

22 Q. That evening, did you go anywhere or did
23 you do anything, or did you stay home?

24 A. I wanted to mention one thing about ---

25 Q. Ma'am, just answer my question, please.

1 A. Okay.

2 Q. That evening, where did you go? Did you
3 go anywhere?

4 A. (No verbal response).

5 Q. Did you stay home?

6 A. We stayed at home with Child . We took
7 him outside. We had construction going on at
8 my house. I had a tub in the back room that
9 was sitting outside, had a new one and I had
10 to have a wall took out -- it'd been out for a
11 while. So I had to put my bed in my
12 daughter's bedroom, so we had to kinda live
13 out of three rooms at the time since I was
14 doing work. That's the reason that I wanted
15 somebody to come by and look at my house, you
16 know, the law to come out there -- I asked
17 them 'please do come out there and look at my
18 house', nobody had come out there. So my
19 house had plywood up and down the walls and I
20 had to put stuff ---

21 MR. DEJONG: Your Honor, ---

22 DIRECT EXAMINATION CONTINUED

23 BY MR. O'CONNELL:

24 Q. Ms. Phillips, ---

25 A. Okay.

1 Q. So you had the child that night. Did
2 anything happen that night to make you think
3 the child needed any kind of help or anything?

4 A. No.

5 Q. Where did you go ---

6 A. We did notice just a little runny nose
7 that day; but, no.

8 Q. Okay. The next morning, where was Jamie
9 and the child, Child ?

10 A. (No verbal response).

11 Q. Saturday morning, where were they?

12 A. Saturday morning?

13 Q. (Affirmative nod).

14 A. Saturday morning. We were asleep Saturday
15 morning. We got up, ---

16 Q. What time does the child normally get up
17 at your house?

18 A. Oh, he woke up like clockwork, just like
19 my child, had a routine, wake up like clock-
20 work. He work up like clockwork on Saturday
21 morning. It's my recollection, I remember and
22 I know this because I am used to waking up
23 early myself, 5:45 most days.

24 Q. Okay. Saturday morning, what did you do?

25 A. Saturday morning?

1 Q. (Affirmative nod).

2 A. Okay. Well, we had planned on going to
3 Renee and my sister's house that day because
4 we -- I had rather stay at home with him but
5 on account of the construction I got him out
6 to whoever's house so that he wouldn't have to
7 -- so that he could get down and enjoy
8 himself. And everybody wanting to see him,
9 you know.

10 Q. Okay. Saturday ---

11 A. So we go, get up, we eat breakfast and
12 all. We started getting ready, preparing to
13 -- you know -- go and everything. I think that
14 I was on the bed and I was taking my medicine,
15 that's where I usually do -- I sit down on the
16 bed and I have this pumpkin, and I have my
17 stuff on the bed.

18 Jamie came in there and he sat him down on
19 the bed and I said, 'Jamie, why did you set
20 him down here? You seen me taking my
21 medicine.' I said, 'Lord have mercy.' And
22 I said, 'you know he's going to be grabbing,
23 because you know how children love rattley
24 bottles and stuff.'

25 And that's the first thing that he did, he

1 reached in there and grabbed a bottle. He
2 started to take it out of his hand and I said,
3 'No, no. Just let him hold it for a minute.'
4 And I said, 'Laura, go get him a toy.'

5 I had this little wooden toy like this and
6 it makes these little cranky sounds. She
7 found it and she brought it back to him. She
8 handed it him and gave the bottle back. That
9 was the end of that story, but he did reach
10 his hand down in that ---

11 Q. Okay. Was the child okay, acting like a
12 child -- a twenty-one month old child? He was
13 moving around, ---

14 A. He did except the nights that he woke up
15 -- like waking up with nightmares. He was a
16 little bit different in his behavior than he
17 was when he was -- he was a lot different in
18 his behavior than, uh, -- he'd cry, you know.
19 He'd wake up and he would start crying, and
20 he'd cry and cry. You couldn't hardly soothe
21 him. And -- and what I'm talking about is
22 that he would push away. He was so used to
23 being held, you know, but he would push away
24 from us. I couldn't understand that because
25 -- we'd seen that a couple times.

1 Q. Ma'am.

2 A. He woke up around -- probably around -- we
3 couldn't get him to sleep for -- he didn't get
4 to sleep until like 10:00 something, living
5 out of these two rooms. So it was probably
6 about ten before we got to sleep. We would
7 start trying to but we couldn't -- so it was
8 like, uh, he would -- he would wake up --
9 seems like it was around eleven or twelve and
10 he would have his frightened (sic).

11 He did that two nights. I don't remember
12 -- I don't recall. I'm pretty sure that it was
13 Friday night, that first night, because he
14 cried and cried so that we couldn't soothe
15 him.

16 I asked him, I hollered up from my bedroom
17 and -- Laura's bedroom -- and I hollered, I
18 said 'Son, do you want me to see if I can get
19 him quiet?' He said, 'Mama, he's not going to
20 be quiet for you if he's not going to be quiet
21 for me.' And I said, 'Well, let me just try.'

22 Q. Okay.

23 A. And, uh, so I got him. I have an
24 oversized chair. Jamie was right here on the
25 couch and the oversized chair is right here

1 across the living room. I got up in that
2 chair and the oversized pillow, I put one in
3 my lap and I laid him over in it and, uh, --
4 and I, uh, laid my little head down on his
5 head and I hummed to him -- (emotional) -- and
6 went off to sleep.

7 Q. Okay. Did you do anything ---

8 A. I said to Jamie, I said 'Jamie, you're
9 going to have to come over here and get him
10 because I can't pick him up, 'cause he's on my
11 legs.'

12 He said, 'He's going to wake back up.'

13 So -- but he come and got him.

14 No more than had I got back to bed he did
15 kinda rouse up and he cried for just a few
16 minutes, but he went right back to sleep then.

17 Q. What did y'all do Saturday afternoon?

18 A. Saturday afternoon?

19 Q. Yeah.

20 A. Did we go into Saturday morning? First we
21 went to Cindy's and then we went to Renee's.
22 He played at my sister's, Cindy's, home on
23 Sunday -- I mean on Saturday. Saturday when
24 we went over to Cindy's, he played over there.
25 He played with my niece. My niece, her

1 husband, my two nephews, her two children, my
2 sister, her husband and her son. He just had
3 a ball. Everybody. It was like he was
4 greeting everybody that weekend with open
5 arms. He was so loving, such a loving child.

6 Q. What happened Saturday night then?

7 A. I love him, and I miss him.

8 Q. What happened Saturday night?

9 A. Saturday night?

10 Q. (Affirmative nod).

11 A. We came home. We wanted to try to get him
12 to bed like his normal time. We thought that
13 maybe he will go to bed with us tonight.

14 Jamie wanted to cut his hair and he -- he
15 was all -- he wanted to cut his hair. He got
16 him in the bathroom and he had him standing on
17 the commode. I could see him, you know, and
18 he started cutting his little hair and he got
19 him -- he done a good job, it looked real cute
20 because it was kinda thin-like and it made it
21 looked thicker. I thought he looked so cute.

22 Q. Ma'am, did you ---

23 A. And he --

24 Q. --- give the child any medication?

25 A. No. I would never -- I was not raised

1 that way. I would never give a child any kind
2 of medicine that was not prescribed for them.
3 I would never give a child anything under the
4 age of two years old. Anybody in my family
5 has better sense than to give a child -- my
6 daughter, even now I won't let her have
7 aspirin and certain things, you know. I never
8 -- I didn't know when all this happened what
9 in the world happened. I -- we'll go on to
10 Sunday. I mean, you go on to whatever you
11 want to go on to.

12 Q. I just want you to answer the questions
13 about this pumpkin.

14 A. Okay.

15 Q. Could the child have got into the pumpkin?

16 A. Okay.

17 Q. Could the child have got into the pumpkin?

18 A. No, because I set it up on the top shelf
19 in my closet. When I got through taking that
20 medicine, that pumpkin went on that top shelf.

21 Q. Was there any time that either you or
22 Jamie could have left the child alone where
23 the child could have gotten in the pumpkin?

24 A. No.

25 Q. In other words, ---

1 A. No, he couldn't even have gotten the
2 pumpkin if we had have left him alone; but,
3 no, we didn't leave him alone. We had him in
4 our eyesight the whole time. We had an evil
5 eye on him, the evil eye.

6 Q. Okay. Now, Sunday morning, I heard that
7 the child was up watching TV with your
8 daughter; is that correct?

9 A. Sunday?

10 Q. Sunday morning, the child was up watching
11 cartoons with your daughter; is that right?

12 A. Yes, sir.

13 Q. Okay. Was any ---

14 A. Sunday morning?

15 Q. Sunday morning, (affirmative nod). Was
16 anything administered to the child then? Any
17 kind of drugs, medications, anything.

18 A. When they were in there watching TV, I --
19 I woke up and -- actually he -- you know, I
20 just heard someone in there and I said, 'Who
21 is it? Who's up?'

22 Laura said, 'It's me.'

23 I said, 'What are you doing?'

24 She said, 'Me and JChild in here, sitting
25 watching TV.'

1 I said, 'You are? Well, what's Jamie
2 doing?'

3 And he said, 'I'm awake.' He was on the
4 couch.

5 I said, 'Okay.'

6 I think that they were watching Sponge
7 Bob. He loved Sponge Bob. He even made the
8 motions in some of these pictures, he had his
9 eyes turned sideways, you know. So ---

10 Q. Did somebody come over to your house that
11 Sunday morning, or -- did you see anybody?

12 A. (No verbal response).

13 Q. Did somebody come to your house to visit
14 you Sunday morning?

15 A. Yes.

16 Q. Who was it?

17 A. It was -- well, it was kinda like ten or
18 so, it was Ronnie Anders.

19 Q. Did y'all go outside and play in the yard
20 or such, or whatever did you all do?

21 A. Yes, we were out in the yard. We were
22 playing with Child on the John Deere. That -
23 - I kinda noticed and it kinda hurt me a
24 little bit -- he looked kinda sad because --
25 but he was on the John Deere.

1 Q. Did you go to anywhere around that, or
2 what did you do after that -- after he come
3 over there?

4 A. He -- sir?

5 Q. After Mr. Anderson, Anders or whatever his
6 name is, was there, what did you do then?

7 A. We were there and he went running around
8 the trailer. He loved that riding lawnmower
9 but we had to get him down because it was
10 right there at the ant hill, so we moved him.
11 We finally got him to come back in the house.
12 It was kinda warm.

13 So I fixed him an area -- a little area
14 rug because, see, I didn't have no flooring
15 down. I was fixing to put wood flooring and
16 stuff. So I had a rug laid out on the floor
17 and I put a little box there and -- Laura went
18 and got his PlayDoh. I was going to make him
19 a little man. He didn't like it. He didn't
20 like it because I got the PlayDoh and he got -
21 - he jumped up and he went running towards the
22 kitchen.

23 I told Jamie, I said, 'Don't run after
24 him, let him go.' I have heard, you know, if
25 they are having a little fit or something you

1 kinda let them go and sometimes they get over
2 it easier. He did.

3 He run to the kitchen -- but I said, 'keep
4 an eye on him.' So he stood up and he peeked
5 around the corner. He seen all this. He
6 peeked around the corner and about that minute
7 he come running back in there. By that time,
8 I'm the one that had the ball rolled up. I
9 handed him the ball because I couldn't get
10 nothing but the head done before he come back
11 in there. When he got that ball, he janked
12 and he throwed it and it bounced and Ronnie
13 went like (illustrating). It tickled Child
14 to death and we all got tickled, because we
15 started laughing about it.

16 Q. What happened after that?

17 A. After that, it was about twelve thirty and
18 we drove -- well, my daughter had called.
19 When she called she said that, uh, she wanted
20 to know if we could come over there. I said,
21 'I don't know, Brandi. I don't know.' I
22 said, 'I will have to let you talk to Jamie
23 about that.' Then he said that he didn't
24 know, you know. I am, like, so he went ahead
25 and he said, 'yeah.' So we decided that we

1 would go over there. Ronnie was going to go
2 with us, so he had called to see if his child
3 had -- by the way, Ronnie's got his grandchild
4 and ---

5 Q. Ma'am, please ---

6 A. He takes care of his. He's got custody.

7 Q. Please just tell us what happened.

8 A. He, uh, -- he -- (pause) -- we went right
9 -- we went on over there. We left at twelve
10 but Ronnie had to get back, he couldn't get in
11 touch so that he could make plans. So we went
12 on over to my daughter's house.

13 Q. And ---

14 A. It takes like -- I go on Pelham Road and
15 it takes like forty-five minutes on Pelham,
16 and they lived on the Fountain Inn exit, right
17 off the exit to Fountain Inn. There's a
18 church there, there's two apartment complexes
19 and they live in -- in both. But these
20 apartments, it takes an hour, approximately an
21 hour to get there.

22 On the way there, we all got in the car,
23 we all left at the same time and, uh, -- and
24 Ronnie, uh, left and went home. We left to go
25 there. As we were going out the door, we all

1 left. He went to ---

2 Q. How was Child at this time when you were
3 leaving out to go to your daughter's?

4 A. Fine. Fine.

5 Q. Okay.

6 A. Like I said, just a little runny nose.

7 Q. When you got down to -- did you stop
8 anywhere before getting down to your sister's
9 house?

10 A. Did we stop before getting -- no, I don't
11 -- I don't recall.

12 Q. What happened at the sister's house?

13 A. We was supposed to grill out and we got
14 over there and my daughter, she's got sporadic
15 arthritis. I have it. It inflames you real
16 bad. All of her dishes in the kitchen was
17 dirty. And he had chemo therapy and he
18 couldn't touch the dishes himself. She was
19 trying to work and -- and, uh, -- so I decided
20 that I would wash the dishes for them while I
21 was there, because I could see -- like their
22 little apartment -- to show you how -- to
23 demonstrate how their apartment is, so that
24 you'll know how we can see each other.

25 Q. Did you have anything to eat while you

t

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1 were there?

2 A. Yes, sir.

3 Q. What did you eat?

4 A. When -- did we have anything?

5 Q. (Affirmative nod).

6 A. No. Not while we was there, (negative
7 gesture). But Child did.

8 Q. What did Child have to eat?

9 A. He had some cereal, two different kinds of
10 cereal. They put it in a bowl and we sit it
11 on the coffee table. And she had fixed some
12 Beanie-Weenies prior and later on, maybe an
13 hour or so later I said -- you know, he had to
14 have a little something else, couldn't wait
15 that long. I said, you know, 'he needs
16 something else because we had eaten early.'
17 So she said, 'Do you think he would like
18 them?'

19 I said, 'I don't see what it would hurt if
20 you smash the beans up and stuff, you know.'

21 Q. Did he eat the Beanie-Weenies?

22 A. Yes, he did.

23 Q. Did he have any problem eating the Beanie-
24 Weenies, like throwing up, gagging?

25 A. Oh, no, he never got sick, never gagged

1 up, never nothing.

2 Q. While you were there at your sister's
3 house, did anybody give this child any
4 medication while at the sister's house?

5 A. No. Except that ---

6 Q. Okay. What time did you leave ---

7 A. Can I -- except some baby Equate Tylenol
8 later that evening, that Sunday.

9 Q. When you left the place, where did you go?

10 A. Well, can I finish saying this about
11 Sunday? About -- can I explain this? When he
12 ate, they went outside and they played for a
13 little while, playground. They put him on one
14 these rocking horses -- you know, like the
15 ones at McDonald's that they used to -- I
16 don't know if they've still got them but that
17 have got the hard springs, kinda? He sit on
18 that and they went out there and played with
19 him, that's what Jamie said.

20 They came back in -- it wasn't too long
21 after they came back in and I was still
22 washing dishes, I was still drying silverware,
23 I was still talking to because it's just a
24 little kitchen and you're right there at the
25 door to the living room and everything. He

1 started crying -- and this is how he was
2 fussy. Everybody says that he was crying but
3 they don't say how much he cried. He cried
4 and cried and cried. We couldn't console him,
5 we could not console him. He was crying. And
6 I thought, 'Lord, he must be sleepy, you know,
7 he must be sleepy.' That worries me, you
8 know, worry about his brain injury and his
9 behavior, you know, crying and waking up at
10 night and stuff.

11 So, anyway, they -- Jamie said,
12 'Reckon he's getting sick? Reckon he's
13 hurting?' Think we ought to give him some
14 Tylenol. And I said, 'Well, you know, I don't
15 see that it would hurt.' Because they said
16 that he felt, you know, a little hot. So they
17 did.

18 And when they brought him back in
19 there, Jamie had went -- they was
20 talking/discussing about how to give it to
21 him. I said, 'you just read the directions.'
22 Brandi has to give her baby some, but had to
23 give it smaller doses. So he had to read for
24 Child 's size, you know. So Brandi and Jamie
25 was all in there and they gave him, I think, a

1 bottle back in the bedroom -- Brandi took him
2 to the bedroom. Then they brought him back
3 into the room immediately. I felt his head
4 and I said, 'Well, he don't seem that hot to
5 me. You know, 'he don't really.' And I said
6 -- and Brandi said, 'He's not that hot' or
7 warm. And I said, well, you know, if he's
8 hurting maybe that will help him, you know.

9 Q. Then what happened? What did y'all do
10 next?

11 A. So he was still fussing, he was still
12 fussing, fussing and crying. I mean, it
13 wasn't fussing. Fussing and crying, the same
14 are the two.

15 Q. Did this fussing and crying -- in all
16 these years, I might know a little bit, not
17 all that much, but could this have been like
18 he was just tired?

19 A. Sure.

20 Q. Don't babies get, after they've up hours,
21 don't they get ---

22 A. Sure.

23 Q. What was the word that they were using the
24 other day? Cranky? Is that what the word
25 "cranky" kinda means to you?

1 A. (Affirmative nod), acting up.

2 Q. Acting up?

3 A. (Affirmative nod).

4 Q. And they don't want to go to sleep but
5 they have to go to sleep; is that right?

6 A. Yes.

7 Q. So y'all go back in the car, and what do
8 you do after you get back in the car?

9 A. We get back in the car. We decide to go.
10 I say, 'Jamie, we need to go. I don't think
11 that we need to stay because, you know, we've
12 got to get going down the road. It's time to
13 get him back home, plus getting close to his
14 bed time.' Excuse me for a second -- my mouth
15 is so dry.

16 So when we get in the car, Jamie sits
17 there. He grunts, he's crying and stuff. You
18 know, we start going down the road a little
19 piece and -- I don't know at what point, I
20 don't know where we stopped, at a light or
21 what, but he said something about his
22 breathing sounds funny. My son -- you just
23 have to know my son. He's like a worry wart,
24 I guess they call it -- like a hypochondriac.
25 He worries about every little thing because he

1 -- I could give you an example but I might
2 embarrass some people, but ---

3 Q. Ma'am, let me ask you, did you stop
4 anywhere before you got to your house? Where
5 did y'all go? Tell me what you were doing.

6 A. No. I was talking about that we were
7 stopping at the red light and he told me this.
8 I'm turned around looking, trying to look
9 back. He said, 'Oh, no, his jaw is shaking.
10 His jaw is shaking.' I looked back and I seen
11 it quivering and I said, 'Jamie, that's how
12 babies do when they cry. They will cry in
13 their sleep and their jaws will quiver.' Has
14 anybody ever noticed, you know, their baby,
15 their jaws quiver if they cry a long time
16 you'll see the little jaws quiver. My mama
17 told me about that one time because I seen my
18 sisters and brothers do that, you know, some
19 times if they were crying, their little jaws
20 would quiver or something.

21 Q. Did you stop anywhere after leaving ---

22 A. And -- sir?

23 Q. Did you stop anywhere after leave your
24 sister's house?

25 A. Yes. We did.

1 Q. Where did you stop?

2 A. And I'd forgotten about this. If I could
3 find, I might even could still find it -- like
4 it might be in a bag, because I save my
5 receipts. I save everything. I've got awards
6 that I saved for my children and everything
7 else. But, uh, we went to a Wendy's. We
8 hadn't eat, so we pulled in a Wendy's. It's
9 on White Horse. We come down by the Bi-Lo
10 Center and got through White Horse that way,
11 back towards Pickens. So, uh, I just -- I'd
12 say fifteen, twenty minutes at Wendy's drive-
13 thru, however long it takes to get, you know,
14 our food, you know.

15 And so we go straight on home. We don't
16 go nowhere else. We got the house. Child
17 was still sleeping. At the time, Jamie didn't
18 mention but I told him to prop his head up
19 when he starts acting like that. I said,
20 'He's been crying so long' -- Lord, children
21 do not blow their nose, you know? They don't
22 blow their noses. So I felt like it was the
23 drain (sic) going down into his chest and
24 making his sound wheezing. And I said -- like
25 I said, I was up front, the air/heat was going

1 -- I guess it was heat, because it caused on
2 the 15th. It was kinda cold in March. He --
3 (pause).

4 Q. Ma'am, did you go by your house?

5 A. Yes, that's what I am -- I got lost. We
6 went straight to the house and me and Laura --
7 Jamie said that he would stay out there since
8 Child was asleep, because I had to get his
9 pajamas out of the -- they had requested for
10 them back, I wanted to get his pajamas. I
11 went in there and I had to get his pajamas for
12 him. Then I went to use the restroom, me and
13 Laura had to use the restroom, we both did --
14 given another ten minutes or so, fifteen, I
15 don't know. We run back, I don't think it was
16 -- anyway, we run back out.

17 Q. Did you give the child any medications or
18 any kind of thing from your house at that
19 time?

20 A. No. He was asleep. He didn't go back in
21 my house. He was asleep.

22 Q. Let me ask you to look at these pictures
23 here. I believe they're already been entered
24 into evidence as Defendant's Exhibit 1.

25 A. Yes, this is Child .

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1 Q. I would like you to go through and
2 describe each picture to the court.

3 A. This is JChild on Sunday. I tell you the
4 reason that we can remember so well is because
5 of what he is wearing. We will just never
6 forget these days.

7 This is ---

8 SOLICITOR RICHARDSON: Your Honor, if
9 we could identify it for the court.

10 THE WITNESS: I will turn it around
11 for everybody.

12 MR. O'CONNELL: I would like to offer
13 these in evidence.

14 THE COURT: They're in evidence.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. O'CONNELL:

17 Q. Ms. Phillips, look at the pictures. Tell
18 me who took the picture and when they were
19 taken, only at this time.

20 A. Well, I don't know if Laura took them or I
21 took them. I am not quite sure if I took them
22 or if Laura took them. I just know that we was
23 all in there when we was taking them. I said,
24 'Get one of him now.'

25 Q. Please ---

1 A. If she was taking them.

2 Q. --- listen. Are those pictures from the
3 weekend?

4 A. Yeah, from our weekend with Child , our
5 last weekend with Child .

6 Q. Explain the pictures to the court.

7 A. Okay. This is Sunday. The reason that we
8 know it's Sunday is because Jamie always give
9 him -- he wanted to give him his first
10 haircut. That's the first haircut, because he
11 had his hair cut that Saturday night. I had
12 got him this little Buzz Lightyear pajamas and
13 -- and he had them on.

14 This one right here is Child on his
15 little John Deere that I had purchased for
16 him. He is kinda puzzled looking, he's kinda
17 looking like -- ain't he pretty?

18 And this one -- (emotional), I think this
19 was Friday when we carried him out -- yeah, it
20 had to be Friday. This back of the wagon, he
21 had two little things like his little security
22 blankets.

23 This is JChild Friday when we went to pick
24 him up. This is the little long-johns that he
25 had on.

1 Q. What is the next picture?

2 A. You can kinda tell ---

3 Q. Ma'am, just ---

4 A. Okay. This is Child Friday. Oh, he was
5 a bundle of joy, just full of life. He was
6 not a bit of trouble. It was nothing we could
7 get to console that baby.

8 Q. The next picture?

9 A. He doesn't matter if he cried ten hours,
10 because we loved him.

11 Q. Okay.

12 A. I can't show this.

13 Q. Why? Aren't those from the weekend?

14 A. I hate -- can I -- (whispering).

15 Q. Tell me why you can't show these?

16 A. These are -- (whispering).

17 Q. Okay. Which one are from the weekend.

18 SOLICITOR RICHARDSON: Your Honor,

19 I ---

20 MR. O'CONNELL: No, I am not
21 apologizing -- I am asking her -- may we ask
22 the court a question here? Would y'all
23 approach, please? Can we do this ---

24 THE COURT: Sure.

25 (OFF RECORD BENCH CONFERENCE)

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1 DIRECT EXAMINATION CONTINUED

2 BY MR. O'CONNELL:

3 Q. Okay. You were up to, I believe, -- I
4 think you've gone through all the pictures, is
5 that right?

6 A. Okay.

7 Q. Okay.

8 MR. O'CONNELL: Your Honor, I will
9 just put them up here as evidence.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. O'CONNELL:

12 Q. Okay, ma'am. Did you at one time have a
13 bottle of Tussionex medicine?

14 A. Yes, I did.

15 Q. Had some -- it's been suspended or
16 something like that?

17 A. (No verbal response).

18 Q. Let me show you the bottle?

19 A. That was mine.

20 SOLICITOR RICHARDSON: Objection,
21 leading.

22 MR. O'CONNELL: Your Honor, that is
23 State's Exhibit 41.

24 THE WITNESS: When I had this
25 medicine, I was brought to the police station

1 because they wanted to give me ---

2 DIRECT EXAMINATION CONTINUED

3 BY MR. O'CONNELL:

4 Q. Let me ask first. What is the fill date
5 on it? When did you get that medicine?

6 A. (Upon review), the date that I got it
7 refilled was -- I can't tell. I am so shaky.

8 Q. Would you be surprised if it says 1/4/08?

9 A. I know it was January 4th, that I've had
10 this bottle since January 4th. I had a lot of
11 coughing going on, working and stuff and all.
12 They would prescribe it to me. I sure can't
13 take it now, you know. Not with the breathing
14 state that I'm in now, I can't take it,
15 because it really shows down the respiratory
16 system bad.

17 Q. Did you ---

18 A. It ---

19 Q. Did you ever ---

20 A. I took just a dose. Did I ever?

21 Q. Did you ever give any of the medicine to
22 Child ?

23 A. No, I would never give this medicine or
24 any medicine to Child .

25 Q. Do you know if Jamie Morris ever gave that

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1 medicine to Child ?

2 A. No, he wouldn't. I know my son knows
3 better than that. Like I said, my whole
4 family, they had better sense. Nobody gave
5 Child anything ---

6 Q. How this medicine come into possession of
7 the Pickens County Police Department?

8 A. Well, Ms. Rita Burgess has called us in
9 for a test.

10 Q. Okay.

11 A. Then before that, the test, something ---

12 Q. Ma'am, just ---

13 A. We had to take, you know, -- they took us
14 in a big room, a big long room ---

15 MR. DEJONG: Your Honor, this ---

16 THE COURT: All right. Hold on.

17 DEFENDANT'S EXHIBIT

18 BY MR. O'CONNELL:

19 Q. How did it come ---

20 A. That's what I am getting at.

21 THE COURT: Hold on. There's an
22 objection. Come on up here.

23 THE WITNESS: That's what I am
24 trying to say.

25 MR. O'CONNELL: Ma'am, be quiet.

1 (OFF RECORD BENCH CONFERENCE)

2 THE COURT: All right, we are going
3 to take a brief recess, Ladies and Gentlemen.
4 Don't talk about the case, keep an open mind.

5 (JURY OUT @ 11:45 A.M.)

6 MR. O'CONNELL: Don't say anything.

7 THE COURT: Yes, sir, Mr. Dejong?

8 MR. DEJONG: Your Honor, my concern
9 and fear is that we are so far into this trial
10 that -- my impression is that Ms. Phillips has
11 "polygraph" on the tip of her tongue. We have
12 already talked about that.

13 THE COURT: Right.

14 MR. DEJONG: I am not saying that
15 Ms. Phillips is doing anything wrong.

16 THE COURT: Sure.

17 MR. DEJONG: I am just trying to
18 make sure that she understands that the words
19 "polygraph", "lie detector", "truth test" or
20 anything else is not supposed to come out. If
21 she wants to talk about the legal consultant
22 or this investigative -- something else,
23 that's fine. I just don't want the word
24 "polygraph" to come out.

25 THE WITNESS: I understand.

1 THE COURT: Do you understand that,
2 Ms. Phillips?

3 THE WITNESS: I understand.

4 MR. O'CONNELL: I just asked her
5 how this got to the Police Department.

6 DEFENDANT: I understand.

7 THE COURT: The other day I ruled
8 that was not to come out, so that still
9 applies.

10 MR. O'CONNELL: Your Honor, may I
11 go over and sit? I'm getting tired.

12 THE COURT: Okay. We will take a
13 break, a ten-minute break.

14 (BRIEF RECESS)

15 (DEFENDANTS PRESENT)

16 THE COURT: Bring in the jury back
17 in, please. Thank you.

18 (JURY IN @ 11:47 A.M.)

19 MR. O'CONNELL: Can I sit, Your
20 Honor?

21 THE COURT: (Affirmative nod), as
22 long as we can hear you.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. O'CONNELL:

25 Q. Ms. Phillips, after taking Child home,

1 what happened next on Sunday evening?

2 A. After taking the child home? Sorry, I
3 didn't hear you. Sorry. My microphone is not
4 working again.

5 Q. Sunday evening, when did you take the
6 child back to Ms. Honeycutt?

7 A. As we proceeded down the road, like I
8 said, we stopped at Wendy's, went by the home,
9 got his pajamas, we stayed there just a few
10 minutes, then we went to her house.

11 When we pulled up in her driveway, the
12 door, as I remember, was open -- the door,
13 they had a storm door on the trailer.

14 I got out first, me and Laura got out and
15 walked to the door because Jamie was getting
16 Child out. He was trying to keep from waking
17 him because he was asleep and so on.

18 We got -- we walked in and -- I asked
19 Tasha if we could come in and she said 'yeah.'
20 I said Jamie was getting Child out of the
21 car. She was feeding Ava when we come walking
22 in. She had her wrapped in a big brown robe,
23 like one of them king-sized robe, green or
24 something, whatever color, and the couch is
25 that kinda wavy-like material. She got Ava --

1 Ava seemed to be satisfied with her feeding
2 and she put her in her sling.

3 I asked her, I said, 'Can I use that
4 blanket to spread out?' I said, 'Jamie is
5 coming, you know', to put Child on it. She
6 said sure. So I reached down to reach for it,
7 and it was soaking wet, all over, like she's
8 broke out in a sweat or something. Anyway, I
9 laid him down across the -- I mean, I didn't
10 lay him down. Jamie laid him down across the
11 couch. I was sitting on one side. She came
12 back and sat on the other side.

13 Jamie kind of sat down and he started
14 telling her, you know, about he was worried
15 about his breathing. I'm like 'oh, good
16 gracious, would you stop this.' He kept
17 telling her about it, going on and on about
18 it. But we talked about that Child had had a
19 good day all day long. You know, he'd played
20 all weekend. We told her about the whole
21 weekend, how much we enjoyed it.

22 Then he was telling her about his concern.
23 I told her yeah, I was concerned too about his
24 crying because you know, because he was crying
25 and he could be getting sick. I never once

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1 said that he was congested. I said that he
2 sounded like he was a little wheezy, that he
3 sounded like he might be getting congested,
4 that his nose was running.

5 It was wrote down by Ms. Rita Burgess
6 that, several times, that there was one word
7 that made it a whole different story. God as
8 my witness, I put this hand on this Bible
9 today, that is the truth.

10 Q. Put your hand on the Bible and say that.

11 A. (Putting hand on Bible), God as my
12 witness, I figure the Lord knows I am telling
13 the truth today.

14 Q. Did you give the child Tussin, Tussionex
15 or whatever that stuff is?

16 A. No, I did not.

17 MR. O'CONNELL: Answer any
18 questions that the other attorneys may have.

19 THE COURT: Solicitor?

20 SOLICITOR RICHARDSON: May it please
21 the Court, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION

24 BY SOLICITOR:

25 Q. Ma'am, do you live in a house or a mobile

1 home?

2 A. I live in a mobile home.

3 Q. The same mobile home that you lived in
4 back in March of 2008?

5 A. Yes, sir, it is.

6 Q. How many bedrooms in that mobile home?

7 A. There's one, two -- two bedrooms. We use
8 the living room as a bedroom also.

9 Q. When Child was with you, where did he
10 sleep?

11 A. He slept with Jamie. And my couch -- it's
12 a let down couch. He didn't let it down
13 because it's real wide, and he wanted to be
14 close to be his son at night, he wanted to
15 cuddle him. He didn't feel the need to let it
16 down. He just wanted to hold him, you know.
17 Be right there, cuddle and sleep with him. So
18 he would cuddle -- he was real close where he
19 could hear him, you know. One night he said
20 he kinda stopped breathing twice, like he had
21 some kinda sleep apnea or something. He
22 almost quit breathing twice. He said ---
23 Q. Excuse me. What night was it that he
24 stopped breathing?

25 A. I think that was Friday.

1 Q. The first night that you had him?

2 A. Yes, I'm almost positive that was Friday.

3 I am positive that was Friday.

4 Q. Okay. And was it also Friday night that
5 he was have nightmares?

6 A. He had them both nights.

7 Q. And let's talk about Friday night. How
8 many times did he have nightmares Friday
9 night?

10 A. Around once or twice.

11 Q. I believe that you testified that ---

12 A. Being such a central ---

13 Q. Excuse me, ma'am. I am asking the
14 questions right now.

15 A. Okay. Sorry.

16 Q. I believe that you testified that he would
17 cry and cry and cry. Is that the way that you
18 characterized it?

19 A. He cried for a longer period of time than
20 -- well, sometimes -- some children cry more
21 than others.

22 Q. Ma'am, I am asking ---

23 A. It caused -- it's kinda hard to tell you.

24 Q. Excuse me, ma'am. My question to you was
25 specifically, did you testify that he would

1 cry and cry and cry? Did you not just testify
2 in front of this jury today?

3 A. I said that he cried for about two hours
4 or so Sunday.

5 Q. So ---

6 A. I don't remember how long he cried. But
7 he didn't cry Friday.

8 Q. Ma'am, the way that it works -- okay? I
9 want to ask a question, you answer it --
10 answer yes or no, then you have the right to
11 explain it. Okay?

12 A. I am trying to do that, sir.

13 Q. Okay. Now, ma'am, you testified when your
14 attorney was questioning you that he was
15 crying, crying, crying to the extent that you
16 could not solace him. Did you not?

17 A. Could not what?

18 Q. Could not soothe him?

19 A. Oh, no. We did soothe him. Not Sunday
20 until we got him in the car, then he was
21 soothed. But babies that know they are going
22 to soothed, when they're going home, going to
23 their own bed, most babies want their own bed
24 when they're sleeping and they're tired. He
25 was sleep and tried and wanted his own bed.

1 Q. Are you denying that you told this jury
2 just a few minutes ago that you could not
3 soothe him?

4 A. Do what?

5 Q. Are you denying that you told this jury
6 just a few minutes ago that you could not
7 soothe him when he woke up with those
8 nightmares?

9 A. I said that as far as the consoling -- I
10 did not say that. I ---

11 Q. Excuse me.

12 A. --- said that he was hard to console. We
13 had no problem with soothing him. I -- I told
14 you it didn't matter if we had to soothe him
15 ten hours, we didn't mind.

16 Q. Okay. The jury knows what you told them.
17 You also stated ---

18 A. I ---

19 Q. --- he was having difficulty sleeping?

20 A. Sir?

21 Q. That he was continually having difficulty
22 sleeping; right?

23 A. Continually having trouble/difficulty
24 sleeping?

25 Q. Yes.

1 A. One time each night, nightmares.

2 THE COURT: We're going to take a
3 brief recess. Don't talk about the case,
4 continue to keep an open mind.

5 (JURY OUT @ 12:21 P.M.)

6 THE COURT: All right. We are just
7 going to take a break. Ms. Cross (court
8 reporter) has someone that she needs to check
9 on.

10 THE WITNESS: I was just
11 wondering if you were going to ask me any more
12 questions.

13 MR. O'CONNELL: I can't talk to you
14 when you're testifying.

15 THE WITNESS: Oh, all right. I
16 was just wondering if you'd ask me a question.

17 (BRIEF RECESS)

18 (DEFENDANTS PRESENT)

19 THE COURT: Bring the jury on it.

20 (JURY IN @ 12:30 P.M.)

21 THE COURT: Mr. Richardson, you may
22 continue.

23 SOLICITOR RICHARDSON: Thank you.

24 CROSS EXAMINATION RESUMED

25 BY MR. RICHARDSON:

1 Q. Ma'am, I believe when I left off that I
2 was asking you about nightmares that the
3 child had Saturday and Sunday. Now, you also
4 testified that you went to your sister's
5 house; is that correct?

6 A. That's correct. On Saturday, (affirmative
7 nod).

8 Q. That's down in Fountain Inn, is that
9 correct?

10 A. My sister's house is in Liberty.

11 Q. Excuse me. Where did you go Sunday?

12 A. My daughter's house.

13 Q. To your daughter's house on Sunday?

14 A. Yes, and also Rita Burgess said that if
15 she wanted her -- that she wanted to get the
16 prescription records. And so she ---

17 SOLICITOR RICHARDSON: Your Honor, I
18 didn't ask her about the prescription records.

19 THE WITNESS: They never were
20 brought up. Those prescription records ---

21 THE COURT: All right. Okay, just
22 a minute.

23 SOLICITOR RICHARDSON: I move that be
24 stricken from the record. It's nonresponsive.

25 THE COURT: The jury is to

1 disregard that. Now, when somebody is
2 talking, please respect the other person and
3 don't talk over them. That goes for
4 everybody, every lawyer and every witness.
5 The court reporter can't keep up with it
6 and ---

7 THE WITNESS: Yes, sir.

8 THE COURT: Go ahead.

9 SOLICITOR RICHARDSON: Thank you,
10 Your Honor.

11 CROSS EXAMINATION CONTINUED

12 BY SOLICITOR RICHARDSON:

13 Q. Now, ma'am, when you went to Fountain Inn,
14 what time was that?

15 A. When I went to Fountain Inn?

16 Q. Yes, ma'am.

17 A. We left at 12:30, as I testified.

18 Q. And at some point when you were in
19 Fountain Inn, again Child started crying; is
20 that right?

21 A. Towards the middle part of the evening,
22 sorta, somewhat.

23 Q. In fact, your testimony was that he was
24 crying, crying again; isn't that correct?

25 A. No, I didn't say "again" on Sunday. I

1 said that he cried on the night that he had
2 the nightmares. No, he was happy other than
3 his nightmares them two days. Well, I can't
4 -- he was happy on them days. Except the two
5 nights that he had the nightmares, he cried a
6 little bit harder with it, but it wasn't that
7 bad. It weren't so bad that, you know, -- it
8 wasn't that bad at all. But he did cry for a
9 little bit and we did see a part of him that
10 we had not seen before, his sort of pushing
11 away, because he always loved to be cuddled.
12 He hummed a little song with me when I --
13 (pause)-- he hummed in the same tune that I
14 hummed. He was smart. He loved music.

15 Q. Ma'am, let me ask you -- you said pushing
16 away. That's what you were talking about,
17 that you couldn't console him. Right? That
18 he was pushing away. Right?

19 A. Pushing away?

20 Q. (Affirmative nod).

21 A. I don't know if it was just the -- I don't
22 know -- I don't know. Like I said, he was
23 just with us.

24 Q. You testified that he was pushing away,
25 right? That you couldn't console him?

1 A. He pushed away. Yes, he pushed away. He
2 didn't want to be held up close at times.

3 Q. Okay.

4 A. But he had -- he didn't want to be held up
5 close at times. He pushed away and he would
6 cry, but he came back to that when you loved
7 on him, laid there calmly, and you'd lay your
8 head down on -- I hummed to him and gently
9 showed him that love. Okay?

10 Q. And he cried two hours?

11 A. Yes. No, I didn't say two hours. No,
12 nope. Wait. I don't know how long he cried
13 that night. It wasn't no two hours. I don't
14 think so. This was on Sunday when he cried
15 for two hours. No, this -- when we said,
16 'This ain't good, we gotcha get him home, he's
17 sleepy, he's tired, he's been playing hard all
18 weekend. He hasn't got his sleep, on his
19 schedule, he needs to be...' -- so we carried
20 him home.

21 Q. Yes, ma'am.

22 A. Yes.

23 Q. Let me ask you, what you testified to is
24 that -- that at the Fountain Inn residence
25 that he was crying, crying, crying, getting

1 sick and that you couldn't console him, so you
2 took him home?

3 A. Well, Tasha and Brandon said that he cried
4 at their house, too, had nightmares there
5 too, each night. They said that he had
6 nightmares three nights that night and four
7 times the next night, which was Sunday night.
8 He had four times Sunday night, three or four
9 nights, one at three, one at four.

10 Q. My question to is, did you just testify
11 that he was crying, crying, crying and that
12 you couldn't console him, so you -- that he
13 was getting sick, so you left Fountain Inn?

14 A. (No verbal response).

15 Q. Yes or no?

16 A. I said that we didn't know what was going
17 on with him, is what I actually said.

18 Q. You said ---

19 A. I said that he could be getting sick. He
20 could be doing anything. We didn't know. We
21 didn't know. We'd seen nothing to the point
22 like it was danger signs, you know. Like when
23 you hold him, feeling congested -- you can
24 feel him congested in his chest, when his
25 throat was rattling and stuff like that, the

1 rattling, you can feel them. You can feel the
2 rattling in the chest. He'd been crying for a
3 while. He had all this congestion. His head
4 was down like this, when he was sitting in the
5 car seat when he went to sleep and his little
6 jaws started quivering and Jamie was like,
7 'Oh, he is wheezing.' I said, 'Good lord,
8 Jamie, he's got his head down. He's got his
9 head down. Raise it up and prop it up with
10 his little..' -- so he did, and that helped
11 some like, you know. But he still had this
12 little drainage. He said he was still kinda
13 sounding like that.

14 After he got to the house, he never did
15 mention him doing that at the house. I went
16 out to the car, he said that he was fine then.
17 You know, he seemed to be alright.

18 We got to the house, at Latasha's and he
19 laid there on the couch and he seemed fine
20 while he was laying there.

21 He woke up on his own. I did not wake him
22 up, Jamie did not wake him up. But he had
23 slept approximately two hours. He woke up on
24 his own.

25 He stood up on that couch and I -- I

1 reached to get him because he was between me
2 and Laura, Jamie and Latasha was in the
3 bedroom, all alone, and I didn't know what was
4 going on. I had asked him afterwards what was
5 going on and he said that they changed the bed
6 sheets, that she had changed the bed sheets
7 and ---

8 Q. Ma'am, this is not what I asked you.

9 A. I'm sorry.

10 Q. I am going to move on. Now, when you
11 spoke with Rita Burgess, you -- you remember
12 doing that, is that right?

13 A. When is that?

14 Q. This would be on the ---

15 A. I spoke with her several times on the
16 phone until I got cut off.

17 Q. Let me clarify. This was on April the
18 10th when you gave the written statement, do
19 you remember that?

20 A. April 10th ?

21 Q. Yes, ma'am, of 2008.

22 A. April the 10th, 2008? I don't recall that
23 day, no. You'll have to refresh me what went
24 on that day and then maybe I well, because
25 there were several days. There were several

1 days that I talked to you -- on the phone and
2 -- tried to get answers, wondering why you
3 didn't get all the prescription records from
4 everybody around. Wondering why they didn't
5 get the computer that was carried back to
6 WalMart. Wondering why they didn't get the
7 phone records.

8 Q. Ma'am, that is not my question. You gave
9 a written statement in this case, did you not?

10 A. What are you talking about? Which time?

11 Q. You filled out -- let he hand you this.
12 This is a State's exhibit. Do you recognize
13 that?

14 A. I will have to read it. (Upon review),
15 yes, this is one where I didn't have my
16 glasses. She insisted on writing it for me
17 and I -- I really needed to go get my glasses
18 and she insisted that it was -- but it was
19 after we had been told, for the first time,
20 that he had drugs in his system for an adult,
21 a lethal dose that was so strong that it would
22 kill an ox. Even one could see that in a
23 urine test. I don't see why Ms. Landis didn't
24 see. I don't know why they tested for
25 hydrocodone instead of hydromorphone.

1 Q. I am asking ---

2 A. You know, that don't make good sense to
3 me.

4 SOLICITOR RICHARDSON: Your Honor, if
5 I ---

6 THE COURT: Just answer the questions,
7 ma'am.

8 CROSS EXAMINATION CONTINUED

9 BY SOLICITOR RICHARDSON:

10 Q. Regarding that statement, ma'am, you told
11 Ms. Burgess at that time that you took the
12 child home, on Sunday, that you talked to
13 Latasha about him being sick. Do you remember
14 doing that?

15 A. (No verbal response).

16 Q. That's what you wrote?

17 A. I did what?

18 Q. You wrote in that statement that when you
19 carried him home, that being Child , on that
20 Sunday, that you talked to Latasha about him
21 being sick.

22 A. Of course I did.

23 Q. And ---

24 A. I didn't talk to them about him being
25 sick. I talked to her about he may be getting

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1 sick. You want me to -- I will tell you the
2 exact words that I said. Can I tell you the
3 exact words that I said? Okay.

4 When we got -- he got to crying and he
5 wouldn't let me hold him then because he was
6 waking up and you couldn't console him. He
7 went back to crying continually. Never
8 stopped. From the time that he woke up to the
9 time that we went out that door, he was still
10 crying.

11 And I think Brandon even said, he comes
12 in, he is still crying when he comes in. He
13 still fixes him a drink of something and he is
14 still crying. She says -- because Ava starts
15 crying, so she gets Ava. She gets Ava and he
16 gets -- he goes in there and gets Child .

17 Q. Ma'am, my question to you was what ---

18 A. And -- okay, okay, I will get to the
19 point, that point.

20 Q. My question to you is, you wrote that in
21 that -- excuse me. You said that to Rita
22 Burgess to put in that statement, and you
23 signed that statement; isn't that correct?
24 Yes or no?

25 A. I was in shock.

1 Q. Ma'am, ---

2 A. She was taking -- they had a recorder
3 there and she took notes on it and I was in
4 shock. I couldn't read it. When I got home,
5 I couldn't even see through it. I didn't even
6 know what it said until I got in jail. And I
7 told her, I said ten times, ten years, fifty
8 years from now, I can tell the same story --
9 over and over -- because it is a time that I
10 will never forget in my lifetime.

11 Q. Ma'am, ---

12 A. Never.

13 Q. Moving on from that statement, you stated
14 to Mike ---

15 A. I honestly ---

16 THE COURT: Let him finish asking
17 the question.

18 THE WITNESS: I'm sorry.

19 CROSS EXAMINATION CONTINUED

20 BY SOLICITOR RICHARDSON:

21 Q. You stated to Mike Warren (phonetic) that
22 you left medications on the bed, that you
23 allowed Child to play with those medications;
24 did you not?

25 A. No, I've never said no such a thing. I

1 said that he -- I told the court here what I
2 -- I told him exactly what I told the court
3 today, exactly. I said that I can remember it
4 word for word, it has never left my memory. I
5 have lived that day every day for four and a
6 half years, trying to get justice for my
7 grandson. I've not got records, I've fought
8 to get records in this case and they have not
9 -- they have not helped me. My own lawyer
10 said that his hands was tied.

11 THE COURT: Just answer the
12 questions, ma'am.

13 THE WITNESS: I don't feel like -
14 --

15 THE COURT: Ma'am, this is not the
16 time for that. Answer his questions. You've
17 got a lawyer that can ask you questions.

18 THE WITNESS: I'm sorry.

19 CROSS EXAMINATION CONTINUED

20 BY SOLICITOR RICHARDSON:

21 Q. So you -- ultimately you and Mr. Morris
22 take Child to Tasha's house that Sunday;
23 correct?

24 A. We take him there to go home.

25 Q. Yes.

1 A. Jamie, me and my daughter, Laura, who has
2 testified.

3 Q. At that particular time, you were worried
4 about Child , were you not?

5 A. (No verbal response).

6 Q. You were worried about his breathing,
7 worried about the way he was acting, were you
8 not?

9 A. Well, a little but not so much that, you
10 know, -- it wasn't so much until after I got
11 him there.

12 Q. Was it so much that y'all said that he
13 needs to go to the doctor?

14 A. Of course.

15 Q. So, so much that he needed to go to the
16 doctor. Let me ask you something, do you
17 trust Latasha Honeycutt?

18 A. He needed to be checked up on to see --
19 we'd never seen this behavior.

20 Q. Do you trust Latasha Honeycutt?

21 A. (No verbal response).

22 Q. Do you trust her?

23 A. I did.

24 Q. You trusted her that time?

25 A. I still don't know what's going on. Let

1 me tell you something. I am not the judge and
2 I don't judge her. I don't understand some of
3 her ways. I don't know if it was the guardian
4 -- they were doing drugs, and they were
5 worried about that. I don't know if Brandon
6 put something into Child 's mouth when he was
7 giving. -- because he told me that he'd threw
8 up. I don't know that that might not have
9 happened. I know that we didn't -- I was
10 thinking sometimes that it might have been his
11 brain injuries that made him die, because of
12 things. Brain injuries is a serious, serious
13 thing. He had two brain injuries. He bled
14 both times in his head, he was showing many
15 signs on that.

16 SOLICITOR RICHARDSON: Your Honor,
17 ---

18 THE COURT: All right. Nobody can
19 keep up with this back-and-forth. I've told
20 you several times to let them ask the
21 questions and you answer them. All right?
22 Do you understand that?

23 THE WITNESS: Yes, sir.

24 CROSS EXAMINATION CONTINUED

25 BY SOLICITOR RICHARDSON:

1 Q. My question was, do you trust Latasha
2 Honeycutt?

3 A. Yes, sir, at the time, I did. They were
4 doing good, they had a truck, they was paying
5 -- a brand new truck, they had kept their
6 home. I had doubts about the fosters --

7 nobody can take care of this -- I asked her if
8 she would only keep him and -- until we --

9 THE COURT: All right.

10 CROSS EXAMINATION CONTINUED

11 BY SOLICITOR RICHARDSON:

12 Q. JChild was taken to that home ---

13 A. He was to be under supervision.

14 THE COURT: Ma'am, you're not
15 letting him finish. Okay?

16 THE WITNESS: Okay. Sorry.
17 Go ahead.

18 CROSS EXAMINATION CONTINUED

19 BY SOLICITOR RICHARDSON:

20 Q. When y'all took JChild to the home, you
21 stated that he was taken into a room and that
22 the door was closed; right?

23 A. Yes.

24 Q. Let me finish my question. Because he was
25 crying? Did you see that? Is that what

1 happened?

2 A. Yes, sir.

3 MR. HARBIN: Judge, may we approach,
4 please?

5 THE COURT: Yes.

6 (OFF RECORD BENCH CONFERENCE)

7 THE COURT: Continue, Mr.
8 Richardson.

9 SOLICITOR RICHARDSON: Thank you.

10 CROSS EXAMINATION CONTINUED

11 BY SOLICITOR RICHARDSON:

12 Q. And you saw that happen, and it made you
13 uneasy; is that correct?

14 A. Yes, sir, it did. It did. It made me
15 very uneasy because she was smiling when she
16 said but -- I didn't know why she was smiling
17 when she said it. It made me so uneasy
18 because she was smiling and -- well, I can't
19 -- and she shut that door and -- (pause).

20 SOLICITOR RICHARDSON: Your Honor,
21 that's all the questions that I have.

22 THE COURT: Any further questions.

23 MR. DEJONG: I have no questions of
24 the witness, Your Honor.

25 THE COURT: All right.

1 MR. HARBIN: I have a few questions.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. HARBIN:

5 Q. I believe that you testified that you said
6 that you found out that Brandon -- I'm sorry
7 -- that Child stopped breathing twice that
8 weekend. Is that what I heard you say, that
9 he stopped breathing ---

10 A. I said on Friday Jamie thought he did.

11 And I, you know, 'oh, Jamie, ---

12 Q. I ---

13 A. --- that's' but -- somehow I felt bad.

14 THE COURT: Just a minute. Y'all
15 are interrupting each other. Okay?

16 Now, he asks the questions.

17 Ms. Phillips was answering it and you
18 interrupted her, so let her finish explaining
19 her answer and then you can ask your next
20 question.

21 Ms. Phillips, you just respond to the
22 questions. Okay?

23 THE WITNESS: Okay.

24 THE COURT: Don't go into any other
25 areas.

1 THE WITNESS: I felt so bad about
2 -- I forgot the question.

3 CROSS EXAMINATION CONTINUED

4 BY MR. HARBIN:

5 Q. My question was why didn't you think it
6 was important that your grandson stopped
7 breathing twice during the weekend?

8 A. I felt kind bad, you know, after I read
9 more and more and -- seen that apnea sometimes
10 is in the center of the brain and sometime --
11 with brain injuries, if one is having fright-
12 mares, it's hard to detect until you know your
13 injury and you know what's going on. Even
14 many times in a normal child that's normal but
15 they are having brain injuries problems and
16 stuff. They can only take certain medications
17 like immunizations/shots, different things
18 that they can't have, you know, that might
19 them to -- that might cause them -- that
20 causes respiratory failure and it will cause
21 them to start shut down their system and it
22 can cause them to die and stuff. There's
23 several several several things out there with
24 brain injuries. It's very very very very
25 important. It's something that people need to

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1 look at. Not to have a day without any
2 medical records, because she said that she
3 didn't have any medical records. She had to
4 wait to get them. Went hours without medical
5 records.

6 Q. Did you tell Latasha or Brandon when you
7 dropped Child off that he had stopped
8 breathing sometime during the weekend; yes or
9 no, please.

10 A. No, sir, because I didn't know. I didn't
11 think about telling them that. Jamie was the
12 one that was talking to her some. I was
13 thinking about the immediate thing, about him
14 crying, and I was worried and concerned about
15 her putting her in the crib and him crying. I
16 didn't want to walk out that door and him
17 crying.

18 And she said, 'Well, I can't do that until
19 I get his medical records.' And she said,
20 'No, I don't.' So he said 'Well, here, he
21 reached in his back billfold and he pulled out
22 his Medicare card and he handed it to her.' I
23 was standing there and I said, 'Yeah', I said,
24 'Tasha, he may be getting sick. He may feel
25 -- he may have an ear infection or something.'

1 You know, upper respiratory because they
2 said both them had upper respiratory. So I
3 thought -- you know, it could be that and them
4 just starting up. And, so, uh, I -- I was
5 concerned about him mentioning the folders.
6 You know, he had been with them as long as he
7 had been. You know? I'm like -- I just felt
8 like not having a child for ten months, that
9 they should be sued. You know. I couldn't
10 directly -- and see if she couldn't comfort
11 him first. That did bother me, her standing
12 there at that door ---

13 MR. HARBIN: Your Honor, may we
14 approach again?

15 THE COURT: Yes, sir.

16 (OFF RECORD BENCH CONFERENCE)

17 THE COURT: Ladies and Gentlemen,
18 we are going to go ahead and break for lunch
19 at this time. Please be back in the jury room
20 at two o'clock and we will resume the case at
21 that time. Thank you.

22 THE WITNESS: Jamie. Jamie.

23 (JURY OUT @ 12:45 P.M.)

24 THE COURT: All right. You have
25 again intentionally and willfully violated my

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1 clear Order. You're in contempt of court.
2 You're not going to be allowed to testify any
3 further in front of the jury. We'll impose
4 sentence on the contempt at the end of the
5 case. You're taken into custody. Your bond
6 is revoked. Thank you very much. We will
7 resume at two o'clock.

8 (DEFENDANT PHILLIPS INTO CUSTODY)

9 (LUNCH RECESS)

10 (DEFENDANT MORRIS PRESENT)

11 THE COURT: Good afternoon.

12 Anything further before we continue. Mr.
13 Harbin?

14 MR. HARBIN: Yes, sir, Your Honor.

15 In light of the testimony -- I do not want to
16 make this Motion but I feel like I have to.
17 Judge, I think that I need to move for a
18 mistrial. At the beginning of this trial, I
19 made a Motion for severance. The concern at
20 that time was pretty much what has now
21 happened.

22 THE COURT: Wait a minute, she's
23 not in the courtroom. Ms. Phillips.

24 (DEFENDANT PHILLIPS INTO COURTROOM)

25 THE COURT: All right. Everybody

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1 have no questions for Ms. Price.

2 MR. DEJONG: Just one, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. DEJONG:

5 Q. Which hospital did you see Ms. Honeycutt
6 in?

7 A. Greenville.

8 MR. O'CONNELL: No questions from
9 us.

10 THE COURT: Thank you, Ms. Price.

11 (WITNESS STEPS DOWN)

12 MR. HARBIN: We would call Kayla
13 Roper, please.

14 (WITNESS TAKES STAND)

15 KAYLA ROPER, being duly sworn to tell
16 the truth, the whole truth and nothing but the
17 truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY MR. HARBIN:

20 Q. Could you tell the jury how you know
21 Latasha Honeycutt?

22 A. Latasha is my brother's girlfriend.

23 Q. How long have you known Latasha?

24 A. I would say a good six years.

25 Q. Did you have an occasion to see Latasha on

1 the day that Child went into the hospital?

2 A. Yes, I did.

3 Q. Can you tell us the first -- do you
4 remember the first moment that you made
5 contact with Latasha, or went to ---

6 A. Yes, my brother actually called me that
7 morning. He was really upset. He said that
8 something had happened to Child, that they
9 were going to the hospital and he wanted me to
10 come and get Ava, come and babysit Ava.

11 I got in my car. It took me -- I hate to
12 say it, but it probably wasn't even five
13 minutes to get there because I was speeding to
14 get there.

15 Q. Do I understand you correctly that Brandon
16 called you, was this immediately after Brandon
17 had discovered Child ?

18 A. Yes.

19 Q. And how -- did you see -- who did you see
20 when you got to the house? Did you see EMS,
21 did you see police officers ---

22 A. EMS was leaving right as I went in, as I
23 was pulling into the driveway.

24 When I got out and went into, Tasha and
25 Brandon was there. Both of them were very

1 upset, Tasha was shaking, she looked like she
2 was more in like a state of shock than
3 anything. She was getting Ava's stuff
4 together.

5 As I was standing there, I can't remember
6 if it was a man or a woman that came up and
7 they asked had they gave (sic) Child any kind
8 of medication. Tasha looked up and said no,
9 they hadn't.

10 MR. O'CONNELL: Objection, Your
11 Honor.

12 MR. HARBIN: Let me rephrase the
13 question for you.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. HARBIN:

16 Q. Did you see Latasha or Brandon hand over
17 anything to the EMS worker?

18 A. Yes, I did.

19 Q. What was that?

20 A. It was the little bottle of Tylenol, the
21 infant drops.

22 Q. What happened -- after you got there, what
23 happened? Excuse me. What happened with you
24 and Ava? You were there to pick up Ava, is
25 that right?

1 A. Yeah. Tasha and Brandon, they got all of
2 Ava's stuff together and then, uh, they
3 immediately -- right after they got all the
4 stuff together, they left. Then I got Ava and
5 -- everybody had already left. I went ahead
6 and went to the house.

7 Q. How many minutes were you at the house
8 before Brandon and Latasha left the house to
9 go to the hospital?

10 A. Not long at all. Probably ---

11 Q. Was this a rush in/rush out type of thing?

12 A. Yes.

13 Q. Okay. All right. So you went back to
14 your house with Ava?

15 A. Yes.

16 Q. What happened after that?

17 A. Well, I went in, I fed Ava and got her all
18 situated. Then I recognized that I didn't
19 have all the stuff that I needed for a couple
20 of nights, so I called my grandmother and I
21 was asking her -- you know, trying to get an
22 update on what had happened. Then I started
23 thinking, I said, 'dang, did I lock the door?'
24 So I went ahead and got in my car and rode
25 back to my brother's house. That's when I saw

1 my brother's truck there and the police
2 officers were there.

3 Q. Can you do your best to guess how long you
4 were at your house before you drove back to
5 Brandon's and Tasha's house?

6 A. I'd say a good -- maybe thirty minutes,
7 something like that. I mean, enough time to
8 go back home and get -- you know, get Ava out
9 and get her situated. You know, get her fed.
10 Then I was noticing that, well, I needed a
11 couple more things, you know, if she was going
12 to stay a couple more days.

13 Q. Okay. And when you got back to Brandon's
14 and Tasha's house, what did you observe?

15 A. I saw that there was a police officer and
16 everything. They were already inside. So I
17 just walked in and -- uh, I went in there and
18 was getting Ava's stuff together. Then they
19 had -- they were signing a paper for them to
20 be able to search the house. I stayed --
21 Brandon and them, they both left. I stayed
22 there while they searched the house.

23 Q. So they left before you did?

24 A. Yes.

25 Q. Okay. Do you know where they were headed?

1 A. To the hospital.

2 Q. In Greenville?

3 A. (Affirmative nod).

4 Q. Now, did you -- did you ever go to the
5 hospital in Greenville?

6 A. Yes, I did. It was later.

7 Q. What did you -- what did you do between
8 then and later? Did you leave Brandon and
9 them's house and go to the hospital?

10 A. I waited on the cops to leave first.

11 Q. Okay.

12 A. Then I went back to my house.

13 Q. Okay.

14 A. Then I got ready, got everything -- you
15 know, all of Ava's stuff situated. Then I got
16 her ready and we all went to the hospital, me
17 and Ava.

18 Q. And when you got to the hospital, where
19 did you go?

20 A. I went to the waiting room.

21 Q. Did you not try to go to Child 's room?

22 A. No, there was only a few people that could
23 be back there at a time and I knew that Tasha
24 and Jamie and Brandon and all them, I knew
25 that they wanted to be right there with him.

1 Q. Thank you. Who was in the waiting room
2 with you?

3 A. When I first got there, it was just me and
4 Ava. Then a black lady, she came in and
5 introduced herself as, uh, Patricia -- it was
6 a lady from DSS. That's when Jamie -- Jamie
7 Morris, his girlfriend at the time and Ms.
8 Phillips, they came in.

9 Q. Okay. And while you were in, could you
10 describe where -- were you sitting or
11 standing?

12 A. I was sitting. I had Ava.

13 Q. The other folks that you say were there,
14 were they sitting or standing?

15 A. They were standing.

16 Q. Can you describe, as best you can, where
17 you were sitting and where the folks in the
18 waiting room were sitting?

19 A. I was sitting -- they had a couch over
20 here but nobody was sitting there. They had
21 like another area of chairs over here. There
22 was two chairs here and there was chairs along
23 here. I was sitting here. The black lady
24 from DSS, she was sitting right here. I had
25 Ava. And it was Jamie's girlfriend, Jamie and

1 Ms. Phillips.

2 Q. How many -- what proximity were you and --
3 you said that the chairs were kinda facing
4 each other. How far away were the chairs?

5 A. These were close together. These right
6 here, they were close together. I mean, it
7 wasn't that far. It was probably from me --
8 me to her (court reporter).

9 Q. While you were in the waiting room, did
10 you hear Ms. Phillips say anything?

11 A. Yes, I did.

12 Q. Did you share with us what you heard her
13 say?

14 A. You know, I was sitting there and I was
15 talking. I was like, 'I wonder what happened.
16 How did this happen?' I heard her say that she
17 had gave him some cough medicine over the
18 weekend and "surely to God that's not what is
19 wrong."

20 Q. Did she say that to you?

21 A. No.

22 Q. Who did she say that to?

23 A. She was talking to Jamie.

24 Q. Did anyone from law enforcement interview
25 you prior to this trial?

1 A. No, sir.

2 Q. When was the first time that you and I
3 spoke about this?

4 A. Day before yesterday.

5 Q. Okay.

6 MR. HARBIN: Thank you. Please
7 answer any questions that Mr. Richardson or
8 the others may have for you.

9 CROSS EXAMINATION

10 BY SOLICITOR RICHARDSON:

11 Q. Ms. Roper, you said that Ms. Phillips said
12 -- I wrote it down, but correct me if I am
13 wrong, that she had gave some cough medicine
14 over the weekend, to Child ?

15 A. Yes, sir.

16 Q. Which hospital was that, when she said
17 that?

18 A. Greenville Memorial.

19 Q. Okay.

20 A. Up in the waiting room.

21 Q. Up in the waiting room?

22 A. (Affirmative nod).

23 Q. Were you sitting close to her or ---

24 A. (Affirmative nod).

25 Q. You have to say yes or not.

1 A. Oh, "yes." Yes, sir.

2 Q. You may have testified to this, but who
3 did she say it to?

4 A. Jamie.

5 Q. Jamie?

6 A. Yes.

7 Q. Defendant Morris?

8 A. Yes. It was him and his girlfriend at the
9 time.

10 Q. Did he respond?

11 A. (Negative gesture).

12 Q. You have to say yes or no.

13 A. I'm sorry. No. No, sir.

14 Q. Thank you, ma'am.

15 A. No problem.

16 MR. DEJONG: Your Honor, may it
17 please the Court?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. DEJONG:

21 Q. I wasn't quite clear on that last, Ms.

22 Roper. I believe that Mr. Richardson was
23 asking you about the statement that you say
24 that Ms. Phillips made; is that correct?

25 A. Yes, sir.

1 Q. And Jamie didn't respond?

2 A. No, sir.

3 Q. Where was he?

4 A. He was sitting beside her.

5 Q. Now, I'm a little confused on the sequence
6 of events. Do you recall what time that you
7 got to -- well, I guess you went first to

8 Court. Is that where you went?

9 A. (Affirmative nod).

10 Q. Do you know what time you got there?

11 A. No, I don't.

12 Q. Okay.

13 A. To be honest, I really wasn't looking at
14 my watch when all this was going on. It was
15 really hectic.

16 Q. Well, at any rate, when you got to

17 Court, Latasha and Brandon were still
18 there?

19 A. Yes, the first time.

20 Q. The first time?

21 A. (Affirmative nod).

22 Q. When you got there, was the ambulance
23 there?

24 A. The ambulance was just leaving.

25 Q. Then -- this is where I start getting

1 confused. Are you saying then they left?

2 A. After we got Ava's stuff together.

3 Q. Okay. Now, did you stay there or did you
4 go elsewhere?

5 A. I stayed for a few minutes and then I did
6 leave to go to my apartment, but then I
7 returned later.

8 Q. Where was your apartment?

9 A. Right there -- you know where City Hall is
10 in Pickens? It's right there near the museum.
11 You go straight across at that red light, then
12 new apartments right there.

13 Q. You live pretty close to ?

14 A. Yes, sir.

15 Q. When did you leave your apartment to go
16 back to Braden Court?

17 A. It was about thirty -- I would say a good
18 thirty to forty-five minutes I left from there
19 and went back to Braden Court to get more of
20 Ava's stuff, because I figured that I wouldn't
21 have enough stuff at the house for that time.

22 Q. So at that point in time, when you went
23 back, then both your brother and -- or
24 Brandon, Brandon was at the house, right?

25 A. (Affirmative nod).

1 Q. So Mr. Roper and Ms. Honeycutt were at
2 Braden Court when you got back?

3 A. Uh, -- yes, sir, and two police
4 officers/detectives.

5 Q. Now, what time then, if you know, did they
6 leave Braden Court next?

7 A. It was right after they signed the consent
8 for them to search.

9 Q. Now, you know how long -- if you know --
10 how long Brandon and Ms. Honeycutt had been
11 there before you got there?

12 A. I don't know.

13 Q. Do you know if they arrived before the
14 police officers got there or got after they
15 got there?

16 A. I don't know. When I pulled up, both of
17 them were there.

18 Q. I'm sorry?

19 A. When I pulled up, both of the police
20 officers and them was there.

21 Q. So that I am clear -- you got there, Ms.
22 Honeycutt and Mr. Roper left?

23 A. Yes, right after they signed the consent
24 form.

25 Q. Then in about thirty or forty-five minutes

1 later, somewhere thirty to forty-five minutes

2 later, they came back to Braden Court?

3 A. Yes, somewhere around there. Yes.

4 MR. DEJONG: Thank you.

5 MR. O'CONNELL: Your Honor, I don't

6 have any questions.

7 MR. HARBIN: Judge, I have just a

8 couple of questions.

9 THE COURT: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MR. HARBIN:

12 Q. When you first came to Latasha's house,

13 you were there to pick up Ava?

14 A. Yes.

15 Q. So that they could go to which hospital?

16 A. So they could go to the -- to pick up Ava

17 and then -- they were going to go to Easley.

18 That's right when they were -- they were

19 taking Child straight to Easley.

20 Q. So they left and went to the Easley

21 Hospital?

22 A. Yes.

23 Q. Then they had come back from the Easley

24 Hospital by the time that you got back to the

25 house to get more things for ---

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1 A. Yes. Then they left and went to
2 Greenville because they had flew him to
3 Greenville.

4 Q. Did they sign the consent to search form
5 the first time that you went to the house or
6 the second time?

7 A. Second time.

8 Q. Thank you. No further questions.

9 THE COURT: Anything further? (No
10 response). All right, you may step down,
11 ma'am. Thank you.

12 (WITNESS STEPS DOWN)

13 THE COURT: Call your next witness.

14 MR. HARBIN: Thank you, Judge. Call
15 Brandon Roper to the stand, please.

16 (WITNESS TAKES STAND)

17 BRANDON ROPER, being duly sworn to
18 tell the truth, the whole truth and nothing
19 but the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY MR. HARBIN:

22 Q. Brandon, ---

23 A. Yes, sir?

24 Q. --- can you tell the jury how you know
25 Latasha Honeycutt?

1 A. I met Latasha through Mr. Morris and we
2 got to become friends. Eventually our
3 feelings start to rose and -- I met her
4 through Mr. Morris.

5 Q. How long have you known Latasha?

6 A. Seven, eight years.

7 Q. You said that you met her through Jamie.

8 Was she in fact dating Jamie once upon a time,
9 at the time that ---

10 A. Yes, sir, she was.

11 Q. Now, are you aware -- were you aware of
12 the nature of Latasha's and Brandon's (sic)
13 relationship?

14 A. That's with Jamie?

15 Q. Sorry?

16 A. You said Latasha and Brandon. You talking
17 about Jamie?

18 Q. I apologize. I'm talking about her
19 relationship with Jamie?

20 A. Yes, sir.

21 Q. Were you friends with just Jamie or ---

22 A. Jamie.

23 Q. --- with Jamie and Tasha?

24 A. I was friends with both of them.

25 Q. Did you have any time that you witnessed

1 any abuse from or to either of them?

2 A. Yes, sir. Several.

3 Q. Would you tell the court about that,
4 please.

5 A. I witnessed -- Mr. Morris had -- and I
6 apologize but he had a pornography problem and
7 he ---

8 MR. DEJONG: Your Honor, ---

9 THE COURT: Hold on.

10 MR. HARBIN: I will rephrase the
11 question, Judge.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. HARBIN:

14 Q. Are you aware of the reasons for why
15 Latasha eventually left Jamie?

16 A. Yes, sir.

17 Q. Could you please tell ---

18 A. He was abusive.

19 Q. When Latasha left Jamie, where did she go?

20 A. She come to my home.

21 Q. And is it true that you actually -- well,
22 were you friends or was there another type of
23 relationship?

24 A. We were both. I mean, you know, after --
25 when she come to me and told me that

1 basically, uh, you know, at that time she had
2 nothing and no one and Jamie, you know, was
3 being abusive, so she come to me afraid and I
4 took her in.

5 Q. Did you witness, yourself, any evidence of
6 abuse? No what Latasha may have told you or
7 alleged, but did you witness abuse?

8 A. Yes.

9 Q. What was that? What did you witness?

10 A. I seen -- they rented a mobile home in
11 Easley. We were there on occasion. Jamie's
12 cousin -- and I don't even know if it was his
13 cousin -- was at their place, had made a
14 comment. I don't know how it escalated but
15 the next thing I know, Tasha is being pushed
16 down the hill because she was basically
17 defending herself from his cousin.

18 MR. DEJONG: Judge, I object to all
19 of this. What does this ---

20 THE COURT: Hold on, hold on.
21 Sustained. Move on to something else. The
22 jury is to disregard all the testimony. It's
23 not relevant to the case, it's not part of the
24 evidence in this case.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. HARBIN:

2 Q. Latasha moved in with you, correct?

3 A. Yes.

4 Q. And Latasha brought Jamie with her,
5 correct?

6 A. Yes, sir.

7 Q. How long was she able to stay with y'all,
8 as soon as she moved in?

9 A. As soon as she moved in?

10 Q. (Affirmative nod).

11 A. Around a week and a half, two.

12 Q. Where did Child go after that short
13 period?

14 A. To Mr. Morris.

15 Q. Why did he go to Mr. Moriss' house instead
16 of staying with y'all?

17 A. I, at that time, had a roommate and he
18 wasn't completely comfortable with Latasha
19 coming in with a child. I eventually had him
20 evicted. My grandmother owned the park that
21 we were staying in and, therefore, I bought
22 Child into our home and raised him like he
23 was my own.

24 Q. Was ---

25 A. But it wasn't no three months. It was

1 more like a month, month and a half, long

2 enough to get an eviction on him.

3 Q. You are referencing the amount of time

4 that Child ---

5 A. Yeah.

6 Q. --- stayed with Jamie?

7 A. Yes.

8 Q. Let's fast forward to Friday, March 14th.

9 A. Okay.

10 Q. Jamie and his mother came and got Child

11 from you, is that correct?

12 A. Yes, sir.

13 Q. There was testimony that they were

14 knocking on the door, basically forever.

15 A. Uh-huh.

16 Q. Do you remember that?

17 A. Yes, sir.

18 Q. Why did you take so long to get to the

19 door?

20 A. Well, sir, the 'thirty minutes' comment

21 kinda blew me out of the water because they

22 knocked twice. I was using the bathroom.

23 They knocked once, I heard it. You know, I

24 finished using the bathroom. I had him in the

25 little bathinett kind of thing there. I

1 immediately walked out of the bathroom and
2 opened the door.

3 He didn't have on a dirty diaper, he
4 wasn't -- hold the pen (sic) off a pen -- the
5 head off of a pen. He was perfectly fine. We
6 were sitting there watching cartoons.

7 She had called me from work stating that
8 Mr. Morris and Ms. Phillips were going to come
9 and pick Child up. So I had maybe thirty
10 minutes to an hour's warning. I worked third
11 shift. I got up, me and Child were kicked
12 back watching cartoons. I fed him a peanut-
13 butter and jelly sandwich. He had a glass of
14 milk with me. The next thing I know, I get a
15 call, 'Hey, Jamie and them is going to come by
16 and pick Child up. Be ready from them.'

17 So by the time I made -- sorry, but go
18 ahead. Yea. Yeah, that's it.

19 Q. So you got a call from who saying that
20 Jamie was going to come?

21 A. I got a call from Latasha. Yes, sir.

22 Q. She said that Jamie was going to come pick
23 up Child ?

24 A. Yes, sir.

25 Q. To you knowledge, was there any kind of

1 custody arrangement between Jamie and Latasha,
2 or did they just sort of have this worked out
3 between themselves?

4 A. I believe that they had it worked out
5 between themselves. Yes, sir.

6 Q. Latasha would just say that's fine, Jamie
7 is coming.

8 A. Yeah, being adult about it.

9 Q. So when you gave Child over to Brandon --
10 sorry. To Jamie. I apologize. When was he
11 in good health?

12 A. Yes, sir, he was.

13 Q. Were you aware that he might have had an
14 ear infection?

15 A. Yes, sir.

16 Q. Is it true that you did not see Child
17 until he was brought back Sunday evening; is
18 that correct?

19 A. Yes, sir.

20 Q. When is the first time that you saw Child
21 or Jamie or Ms. Phillips or Latasha that
22 evening?

23 A. Well, I ---

24 Q. When is the first time that you saw Child
25 that Sunday?

1 A. When I arrived back at the home, Mr.
2 Morris and Ms. Phillips was pulling out of the
3 driveway. I walked in, me and my cousin
4 Jeremy, we walked inside and, uh, -- the door
5 was open. Latasha, she was -- at that time
6 she was getting ready to feed Ava. Ava was
7 crying, Child was crying. I walked in, she
8 sat down on the couch to feed Ava. I asked
9 her what was wrong with Child. She stated
10 that his father had just dropped him off.

11 Q. What door are you referred to that was
12 open?

13 A. Child's door.

14 Q. Child's door?

15 A. Yes, sir.

16 Q. You can continue.

17 A. Okay. And I walked in there to talk to
18 him. He was standing up in his crib, holding
19 onto the side and he was crying. I went in, I
20 picked him up. I patted him on his back, was
21 telling it that it was okay, okay. He did
22 have a runny nose, he was congested -- not to
23 the point where you would jump up and rush him
24 to the E.R.

25 I did walk into the living room and I did

1 state to Latasha at the time, you know,

2 'What's wrong with him?'

3 She stated that Jamie had just dropped him
4 off, that he had mentioned to her that he had
5 a cold over the weekend. Nothing was ever
6 said about any type of breathing problems.
7 You know, he was congested. I could see that
8 for myself. But it was nothing, you know, to
9 where you would just freak out about it.

10 I did -- you know, after he quit crying, I
11 asked him if he wanted to stand down -- you
12 know, to sit down. So I went to stand him
13 down and when -- the closer that he got to the
14 ground, the more he started back crying. The
15 closer that I got, you know, he wanted to pick
16 his little legs up and all. I said, 'Come on,
17 stand up.' When he -- when he put his feet on
18 the ground, he took a step back like he was
19 just going to hit the ground and just start
20 pitching a fit. You know, so I picked him up.
21 I was like, 'Boy, you're tired.' I patted him
22 on his little back. He wiped his nose off on
23 my shirt. I told him it wasn't a wash rag. I
24 said, 'My shirt ain't no washrag.'

25 Latasha, she got done feeding Ava and, uh,

1 -- I remember walking Child over to her. She
2 held him around ten, I'd say five, ten,
3 fifteen minutes. I can't remember. Maybe she
4 changed his diaper on the couch, or not. I
5 know she checked it. I don't think that he
6 had a soiled or pee diaper on.

7 She took him in his room, she requested
8 that I make a sippy cup of milk. I went in
9 there, I made a sippy cup. I walked in the
10 room with her. She was laying him down there.
11 I handed her the sippy cup, she handed it to
12 him. He did drink a couple of drinks and then
13 he did set it off to the side. You know, at
14 that time I -- you know, do you expect him to
15 chug it all at once? I didn't -- looking
16 back, it wasn't ---

17 Q. Brandon, let me ---

18 A. At that time, he set it off to the side.
19 She asked me to put it back in the
20 refrigerator. That's what I did.

21 Q. When she put Child down in his crib, what
22 -- there has been testimony that the door was
23 closed.

24 A. I keep hearing that.

25 Q. Can you address that?

1 A. The door was not closed, we kept the door
2 open.

3 Q. What did you normally -- I'm sorry. What
4 did you normally do when you put Child down?

5 A. We would lay Child down, shut the light
6 off of course, and we would crack the door --
7 and by "crack", I mean we'd leave it at least
8 a foot open, not shut him up in the door. We
9 wouldn't just shut him up in the door. The
10 mobile home we were staying in at that time,
11 it was not a big mobile home. I promise you
12 that if someone burped in Child's room, you
13 could hear it. It just was not that big of a
14 mobile home.

15 Q. How many bedrooms was there in that ---

16 A. Two bedrooms.

17 Q. Describe the trailer for the jury for me.
18 Where were things, where was -- as you walk in
19 the front door.

20 A. When you walk in the front door, you can
21 literally -- if the front door was open, you
22 could stand on the porch and put your right
23 arm inside that room. There was no hallway.
24 There was no hallway. You open the door and
25 you could literally put your hand in that

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1 room. In front of you was ---

2 Q. Sorry, Brandon. What room?

3 A. That's the room to the right, that --

4 Child 's room.

5 Q. Okay.

6 A. The living room is in front of you as you

7 walk in, the kitchen is to the left, the

8 bathroom is right here, the back door is right

9 here, our room is right here.

10 Q. How many feet is your room from Child 's

11 room? How far was your door from Child 's

12 room?

13 A. Fifteen feet, ten or fifteen feet -- about

14 fifteen feet.

15 Q. In fact, is there a light of sight from

16 your door to Child 's door?

17 A. Yes, sir.

18 Q. You just testified that you did appear to

19 notice that Child had a runny nose?

20 A. Yes, sir.

21 Q. And that he was congested?

22 A. Yes, sir.

23 Q. Were you alarmed at that?

24 A. No, sir.

25 Q. Do you recall that Latasha had told you

1 that Jamie had told you that they needed to go
2 to the doctor, that he was sick?

3 A. She mentioned to me that when he was
4 dropped off that Jamie handed her the Medicaid
5 card, had said that Child had come down with
6 a cold over the weekend, that 'you might would
7 want to take him to the doctor.' It was
8 Sunday nights. The doctor's offices were
9 closed. If I had felt in any way whatsoever
10 that he'd had a lethal dose of anything, he
11 would have been taken to the E.R. so --
12 considering no matter what time they brought
13 him back.

14 We laid him down that night. I did not
15 see no signs of a lethal dose of anything. I
16 seen a child with a cold and congestion.

17 Q. How long after you put Child down did
18 you'all go to sleep, how long after that did
19 you'all go to bed?

20 A. It's been four years. I'd say we laid
21 Child down no later than nine o'clock. We
22 went to bed no later than ten thirty or
23 eleven. Because all we did after we got him
24 down and got Ava to sleep, we stepped out on
25 the back porch, because I did not smoke

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1 inside, stepped out on the back porch, smoked
2 a cigarette. Come back in, checked on Child
3 and Ava before we went back to bed. I'm
4 sorry, when we come back in from smoking a
5 cigarette, we checked on them, watched TV.
6 Before we went back to bed, before we went to
7 sleep, she walked in there and checked on them
8 and we went to bed.

9 Q. At this time you had a daughter, correct?

10 A. Yes, sir.

11 Q. She was how old?

12 A. She was two months old.

13 Q. And there's been testimony that Latasha
14 had gotten up in the night. Do you remember
15 Latasha getting up anytime during the night?

16 A. Yes, I do.

17 Q. To your knowledge, what does she do when
18 she gets up -- is that a regular routine or
19 what? What's going on?

20 A. I mean, a two-month old child, she is
21 basically still a newborn. I mean, she has to
22 be checked on, she has to be fed throughout
23 the night. I know I remember -- I worked
24 third shift at Ingles in Liberty at that time.
25 She was kinda taking care of that for me. I

1 knew that she had to go to work the next
2 morning. She did get up several times
3 throughout the night. What times, I can't set
4 here and say because I don't know, but I do
5 Riley Road cracking my eyes open as she -- I
6 slept on the right side, she slept on the left
7 side of the bed. She would have to kinda wake
8 me up as she got up.

9 Q. So Latasha handles the responsibility of
10 feeding Ava in the middle of the night?

11 A. At that time she did.

12 Q. There's been testimony that Latasha got up
13 at 8:00 the next morning. Were you asleep or
14 awake, or do you remember that?

15 A. I don't -- I remember her -- I remember
16 waking up and -- you know, just for a brief
17 moment, I remember her getting up and just
18 immediately falling back asleep. She, you
19 know, she'd evidentially come back in and laid
20 back down. The next time I woke was basically
21 to her screams, with the alarm going off, of
22 course, and I kinda dozed back off for a
23 moment.

24 Q. Let's back up just a little bit. There is
25 testimony that there was an alarm clock, do

1 you ---

2 A. Yes, sir, that's what I was referencing.

3 Q. Did the alarm clock wake you up enough to
4 figure out what time it was?

5 A. Not really.

6 Q. Did the alarm clock go off more than once?

7 A. It seems like it did, sir.

8 Q. Why would it go off more than once?

9 A. Because we hit Sleep. Snooze. I'm sorry.

10 Q. Okay. So after that, you go -- after the
11 alarm goes off a couple of times, you go back
12 to sleep; is that right?

13 A. Yes, sir.

14 Q. Fall back asleep?

15 A. Yes, sir.

16 Q. Then the next thing that you remember is
17 what?

18 A. Well, her screaming. It was a scream that
19 I will never forget. When a mother finds a
20 child basically nonresponsive, it's -- that's
21 all that I can say. It was a scream that I
22 won't forget. It shot through me like a
23 billion rusty nails.

24 I jump up. He said that he wasn't
25 responding. My dad has epilepsy my entire

1 life, five and six seizures a days. In my
2 mind, at that time I thought that maybe
3 possibly, you know, he was having some type of
4 seizure.

5 So I rush in there -- I run in there, you
6 know, I -- I looked down and his little eyes
7 were open, his lips were blue. And she said,
8 'Is he breathing?' And I knew that he was
9 dead. I knew that he was dead at that point,
10 I knew that he was not breathing.

11 I reached down -- I told her to get back.
12 I said, 'please get back, call 911, he's not
13 breathing.' I reach over in the crib and I
14 gave the first breath of air in the crib.
15 When I gave that breath, vomit -- projectile
16 vomit -- came back in my face. His little
17 head was still on the pillow -- if you've seen
18 the pictures, that's why it was on that
19 pillow, because I gave him the first breath in
20 the crib.

21 I picked little Child up, I laid him in
22 the floor. Every single time that I would
23 give him a breath, vomit would projectile back
24 in my face. She made the statement that I
25 threw up on him. The first time that he threw

1 up on me, it went in my mouth and I did turn
2 around and I went to throw up, but I realized
3 that Child didn't have the three seconds that
4 he was going to take me to throw up, so I got
5 back down on my knees and I just continued to
6 give CPR. Every single time I would give him
7 a breath, vomit would come out. I would move
8 him each time I would give chest compression
9 and breath, I would move him every single time
10 and wipe the vomit off his face, wipe the
11 vomit off his little face. I just did it
12 until the ambulance got there, until she said
13 "they're here."

14 Q. What happened when the ambulance got
15 there?

16 A. When the ambulance got there -- and,
17 again, she said "They're here." So this room
18 was about a six by eight room. When she said
19 that they are here, I'm expecting a gurney to
20 come flying in the door, four or five EMS
21 workers. There were two people that come in
22 there and I -- I stepped out of their way so
23 that they could get to the child. That's -
24 you know what I mean? That's it. I got out
25 of their way. They said that I was standing

1 off to the side and he was laying there by
2 hisself. That's a lie. He was not in there
3 by hisself. I was just giving him CPR for
4 fifteen minutes, waiting for them to get
5 there.

6 Q. You were in the courtroom when the 911
7 tape was played.

8 A. Yes, sir.

9 Q. Was it an accurate portrayal of what you
10 remember?

11 A. Yes, it was.

12 Q. All right. EMS comes in and tends to
13 Child

14 A. (Affirmative nod).

15 Q. They take him, put him in the ambulance,
16 and then what do you do?

17 A. Well, after Child was put in the
18 ambulance, after I got off the phone with 911,
19 I immediately called my grandmother. I asked
20 her, because she lived literally across the
21 road from me, if she could come and sit with
22 Ava while we went, you know, with Child .
23 Because at that point they still hadn't got
24 him out of the home yet, and I was on the
25 phone with her. She said, 'Well, your

1 grandfather, it's going to take him a minute
2 to get up.' He has emphysema, COPD. So I
3 immediately called my sister afterwards -- you
4 know, immediately after and said, 'please, we
5 found Child , I don't know what's going on,
6 can you please come and sit with Ava while we
7 go up here to the hospital.' She agreed.

8 Q. Did she in fact come?

9 A. She did, (affirmative nod).

10 Q. What happened when she got there?

11 A. Well, when my sister arrived, I was
12 continuing to grab Ava's stuff up. I was, you
13 know, I was just getting up the quickest, the
14 best way that I could, what I thought that she
15 would need for, you know, a period of maybe a
16 day or two. I wasn't sure at that time what
17 in the world was going on or how long it was
18 going to take. So as soon as she got there,
19 you know, I told her, 'we are going to
20 Easley', Child went to Easley; so, you know,
21 'we're gone.'

22 Q. Let's back up.

23 A. Okay.

24 Q. You're tending to Child until the EMS
25 workers get there?

1 A. Yes, sir.

2 Q. After you stopped tending to Child , were
3 you able to focus any attention on Latasha?

4 A. Yes. Oh, yes.

5 Q. Can you describe what you saw?

6 A. Tasha was bawling like a baby, she was
7 shaking uncontrollably. I couldn't -- you all
8 have to understand. She's lost everything.
9 She's lost her mother, her grandmother, her
10 father, her son. She has no family. For
11 these people to sit up here and throw out
12 allegations that she wouldn't do something if
13 she knew that he was -- that he had some type
14 of dose, it blows my mind. I cannot fathom it
15 that they would even consider that. I
16 apologize, but I'm ---

17 Q. Understandable. How long did it take you
18 from the moment that the ambulance left for
19 you and Latasha to get on the road to the
20 hospital?

21 A. I would say from the time the ambulance
22 left until the time we got on the road, no
23 more than around five or six minutes.

24 Q. Where -- what -- where did you go
25 immediately. Where is the first place that

1 you went?

2 A. I took Tasha to Easley, Easley Hospital.

3 Q. What was going on in the truck? Were you
4 and Latasha talking or ---

5 A. Holding hands and praying, man.

6 Q. All right. What happened when you got to
7 the Easley Hospital?

8 A. I gave Natasha a nice firm hug and I told
9 her that I felt like the father should be
10 here, that he needed to know that this son may
11 not make it. I let her out and I told her,
12 'Go sit with Child . I'm going to go get
13 Jamie. I feel like he should be here.'

14 Q. So instead of going in with Latasha, you
15 volunteered to tell Jamie?

16 A. Yes, sir, I did.

17 Q. Why didn't you -- well, -- where -- I'm
18 sorry. Where did you go after that?

19 A. That is when I rushed -- when I say speed,
20 I'm talking about ninety-five miles an hour on
21 back roads. I had no regards for my life at
22 that point. I was out of mind, just -- and I
23 mean out of my mind, just on the road trying
24 to process what just had happened, why and how
25 could it have possibly happened to us.

1 I'm on the road -- I'm sorry, I'm just
2 trying to tell you what was going through my
3 mind. I went immediately to Jamie's mother's
4 home.

5 Q. Looking for Jamie or ---

6 A. Looking for Jamie.

7 Q. What happened when you got to her house?

8 A. When I arrived at Jamie's home, I knocked
9 on the door. Stevie, his brother, had come to
10 the door. As you can imagine, I was frantic,
11 you know.

12 I asked immediately, 'Where's Jamie,
13 Where's Jamie?'

14 "Jamie is at work?"

15 I asked, 'well, where's Lynn?'

16 "She's in here."

17 I said, 'Well, get her. Get her. Hurry.'

18 Lynn, she come out there, 'What is it,
19 Brandi, what is it?'

20 I said, 'something has happened to Child
21 I don't know -- Tasha found him nonresponsive,
22 he wasn't...' --

23 "Is he dead?"

24 I said, 'I don't know. I done CPR. He
25 wasn't breathing when I left. The ambulance

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1 took him. I don't know. I didn't find out.

2 I didn't go into the hospital, I come here

3 first.'

4 She immediately, she turned, grabbed her

5 shoes, she run out the front door, collapsed

6 to the ground as she kept screaming, "Jamie's

7 going to blame me. Jamie's going to blame me.

8 Jamie's going to blame me."

9 I said, 'What are you talking about?'

10 She said, "Well, I was told that we should

11 have took him to the doctor yesterday and he

12 said that he didn't know...", da, da, da, da,

13 on and on.

14 Finally his brother said, 'Mama, shut up.'

15 At that time, I am just thinking, 'What in

16 the heck is going on here?' You know?

17 Go ahead. Sorry.

18 Q. Did you and Ms. Phillips ride together

19 after leaving the house?

20 A. No, sir.

21 Q. Where did you go after you left the

22 Phillips house?

23 A. I went to Jamie's place of employment.

24 Q. Tell us about that.

25 A. Again, ninety miles an hour. I shot up

1 178. He worked at the -- it was some type of
2 shirt company off of 178, right there at the
3 Liberty airport. The old county (sic)
4 building. I don't know if that is relevant,
5 but -- (pause).

6 I pull in, I run in to the front door and
7 I screamed the words, 'Where's Jamie at?' The
8 bossman just looked at me. I said, 'His son
9 may be dead. Where is Jamie at?' That is
10 when his eyeballs went like that and he went
11 and got Jamie.

12 Jamie come out and he asked me, "What's
13 wrong?" You know.

14 I said, 'Jamie, get in the truck, I will
15 tell you on the way.'

16 'I need to know what's wrong.'

17 'I -- get in the truck.'

18 Jamie got in the truck. I grabbed Jamie
19 by the hand and I -- took a good firm hand,
20 and I said, 'Man, we need to pray.'

21 He said, 'Brandon, please tell me what's
22 going on.'

23 I said, 'Man, your son wasn't breathing
24 this morning. I don't know why. I don't know
25 what could have caused it. I don't know.'

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1 'Is it alive?'

2 'I don't know, Jamie. I don't know.'

3 And, uh, I said, 'Let's just pray.' I

4 held his hand we just went. I got pulled over

5 on the way for going down the median at a

6 hundred and ten.

7 Q. You and Jamie arrived at the hospital,
8 though?

9 A. (Affirmative nod).

10 Q. What did you do when you got there?

11 A. (Affirmative nod).

12 Q. What did you do when y'all got there?

13 A. I let Jamie out at the door. I parked my
14 truck, I run inside, ran through triage, I
15 come to Child n's room.

16 Child , he's laying there hooked up to a
17 bunch of monitors. Latasha is standing up
18 there at the head of the bed, patting him on
19 the head, saying 'my baby, my baby.' Jamie
20 was doing basically the same.

21 Jamie, after a few moments, Jamie stepped
22 out of the room -- you know, nurses and -- it
23 was frantic. I remember Ms. Burgess coming up
24 and asking us, said she needed to talk to both
25 parties before we left the parties. I know --

1 I don't know whether or not Ms. Phillips heard
2 that or not, but I'm standing there -- and,
3 again, they're in the room.

4 Jamie is wanting to talk and consult with
5 the nurse and maybe a doctor at that time,
6 Latasha is in the room, Lynn is standing out
7 beside me just asking if I knew and -- a nurse
8 had come up, there was a doctor standing right
9 over here. A nurse come up and she whispered
10 that they had found opiates in Child's
11 system. I looked at Lynn and I said, 'What?
12 Opiates?' I thought, what is opiates.

13 Thirty seconds later, I look up and she's
14 done got Jamie by the arm and is dragging him
15 out the back door of the hospital. I told her
16 this.

17 Q. After you went to the room, you saw that
18 and at some point, I believe, at that location
19 you spoke with Detective Burgess, is that
20 right?

21 A. Yes, sir.

22 Q. And that is the statement that -- that
23 would be Latasha's statement, that she's
24 related to the court? At that same time?

25 A. Yes, Latasha and me both spoke with Rita.

1 Q. All right. Where did you go from Easley
2 and why? I'm sorry, from the Easley Hospital
3 -- did you leave the hospital?

4 A. Eventually, yes.

5 Q. Where did you go immediately from the
6 hospital?

7 A. Ms. Burgess informed us that there was a
8 detective at the house and that we needed to
9 sign a consent to search, to search our home.
10 So me and Latasha hightailed it back to my
11 house. I arrived. There was an officer
12 sitting there, waiting on me. I walked in my
13 home, they followed me in behind. I said,
14 'Where is the consent to search?' They handed
15 it to me, me and her both signed it.

16 About that time my sister comes wheeling
17 in, if I remember correctly, and me and her
18 jetted to Greenville Memorial.

19 Q. How was Latasha handling this at the
20 house, throughout what we've been talking
21 about the last couple of minutes?

22 A. It's been so hard for me to hear the
23 things said, but Latasha was hysterical. She
24 was just -- she was in a deep state of shock.
25 I'm telling you. She was crying, she was cry

1 one minute, she would be silent the next, but
2 shaking -- shaking. I mean, just literally
3 just shaking.

4 Q. Okay. When you got to the Greenville
5 Hospital, what do you remember when you got to
6 the Greenville Hospital?

7 A. I remember pulling into Greenville and,
8 uh, going up there. The doctors were there.
9 Lynn, she was out in the hallway. She was
10 kinda mumbling on to herself that he wasn't
11 going to make it, that the doctors had said
12 that he had been without oxygen too long, that
13 he wasn't going to pull through. But she
14 wasn't like saying it like directly to us.
15 She was having a -- like as she went down the
16 hallway, she was kinda saying, 'He ain't gonna
17 make it, he just ain't gonna make it.'

18 Well, me and Latasha went to Child . She
19 broke down. I broke down. We wanted to
20 consult the doctor. So, you know, the doctor,
21 he pulled us in to the little waiting room
22 right here. So I asked him, straight up, I
23 said, "Sir, have you received any good news?"
24 He said ---

25 MR. DEJONG: Objection to what the

1 doctor said, Your Honor.

2 THE COURT: Sustained.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HARBIN:

5 Q. What did Latasha do when she found out

6 Child 's prognosis?

7 A. Actually the -- after we got a zero
8 percent chance of him surviving, she collapsed
9 into my arms and said, "God, please, please,
10 don't take my baby." Crying frantically,
11 shaking worse than ever. It finally hit her,
12 I believe, that he wasn't going to make it
13 through it.

14 Q. Brandon, did Latasha love her son?

15 A. Yes, she did. She loved her son very,
16 very much. She loved her daughter.

17 Q. Did she care for and provide for Child
18 and Ava?

19 A. Yes, very well.

20 Q. Did you do everything that you could to
21 help Child that morning?

22 A. I did.

23 Q. Did Latasha do everything that she could?

24 A. She did.

25 MR. HARBIN: Please answer any

1 questions that the Solicitor or any of other
2 attorneys may have.

3 CROSS EXAMINATION

4 BY SOLICITOR BARWICK:

5 Q. Are you and Latasha still dating?

6 A. Yes, ma'am.

7 Q. Do you still live together?

8 A. Yes, ma'am.

9 Q. Back on that Monday morning, if I heard
10 you right, you said that Latasha woke up at
11 8:00 and checked on Ava and Brandon? I'm
12 sorry. Ava and Child ?

13 A. Yes, ma'am. Like I said -- (pause) -- you
14 know.

15 Q. Well, go ahead and say it.

16 A. Like I said to his question there, I
17 remember the alarm going off. I do remember
18 her getting up, I went back to sleep.

19 Q. Did you get up before Latasha at eight
20 o'clock?

21 A. No.

22 Q. So it was really like you don't know the
23 condition of JChild at that time, do you?

24 A. I can't say that.

25 Q. I respect that. Then the alarm went off

1 again, right?

2 A. Yes, ma'am.

3 Q. It went off at ten o'clock?

4 A. As far as I remember, yes.

5 Q. That is what you wrote in your statement?

6 A. Yes, it is.

7 Q. And it went off at ten o'clock because you
8 had to be at work at eleven?

9 A. As far as we know.

10 Q. Let's talk a little bit about that night.
11 It's been talked about a whole lot during this
12 trial. Will you please tell the jury what you
13 mean about Child stumbling back?

14 A. When I made the reference that I had went
15 to set Child down -- and I will repeat it
16 again, -- the closer that he got to the ground
17 the more upset that Child started to get.

18 Well, finally, I said, 'Buddy, stand up.'

19 I went to stand him up and he -- he --
20 when I say "stumbled back", I mean more like
21 he was about to pitch a fit. He didn't want
22 to be stood up. He wanted to be held. I
23 mean, please understand that. That is all
24 that I meant by that. I didn't mean that he
25 was falling around, bouncing into walls. All

1 I meant was that the simple fact that he
2 didn't want to be stood up. That's it.
3 That's all.

4 Q. Brandon, and I keep calling you Brandon,
5 and I mean no disrespect.

6 A. No, no.

7 Q. Mr. Roper, ---

8 A. Go right ahead.

9 Q. Did you not put in your statement, "I
10 put him down, he stumbled backwards like he
11 couldn't keep his balance, acted drowsy."

12 A. Yes.

13 Q. "I called Latasha what was wrong with him
14 and she said he had been playing all day and
15 he acted like he had a cold."

16 A. Yes.

17 Q. So, he fell back like he was drowsy?

18 A. No, I didn't mean it like that. He
19 stumbled back and acted like he was drowsy.

20 Q. Yes, sir.

21 A. Yes.

22 Q. When Latasha ---

23 A. That could be interpreted in several
24 different ways.

25 Q. Yes, sir, but you did write it in your

1 statement ---

2 A. Oh, I wrote it. I am just telling you
3 honestly ---

4 Q. And your memory was probably better four
5 years ago of the incident than it is now?

6 A. Well, to be honest with you, that was
7 pretty traumatic, so ---

8 Q. And Ms. Honeycutt, she called 911
9 immediately?

10 A. Yes, ma'am.

11 Q. Immediately?

12 A. Yes, ma'am.

13 Q. Immediately upon finding him unresponsive?

14 A. Yes, ma'am.

15 SOLICITOR BARWICK: No further
16 questions.

17 MR. DEJONG: Your Honor, may it
18 please the Court.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. DEJONG:

22 Q. At the time opiates were mentioned, you
23 said 'what opiates' or 'what are opiates'?

24 A. I'm sorry, sir?

25 Q. At some point in time when you were

1 talking to Mr. Harbin, you said opiates were
2 mentioned and you said ---

3 A. I said, "What are opiates?"

4 Q. What are opiates?

5 A. Yes, sir.

6 Q. You're not a stranger to opiates, are you,
7 Mr. Roper?

8 A. Sir, when we arrive at the hospital and
9 you have a twenty-two month old child laying
10 there that wasn't breathing and I was told --
11 I wasn't told anything. I overheard a nurse
12 to the doctor, say that they had found opiates
13 in his system. That's when I then turned to
14 Lynn and said, "What are opiates?" I didn't
15 know. Opium? Heroin? What?

16 Q. Isn't it true, Mr. Roper, that on March
17 the 4th, 2008, at CVS here in Pickens that you
18 had a prescription filled for Lortab?

19 A. Yes, sir.

20 Q. So you certainly know what opiates are.

21 A. I know what Lortabs are. I didn't know
22 they was referred to as opiates.

23 Q. All right. And also you had been a
24 patient at that time at the methadone clinic,
25 hadn't you?

1 A. No.

2 Q. Now, let's go to March the 14th. Did

3 Child have an allergy to peanuts?

4 A. Did Child have an allergy to peanuts?

5 Is that what you ---

6 Q. Yeah.

7 A. (Negative gesture), I'm not -- I'm not
8 sure.

9 Q. Pardon me?

10 A. I'm not sure, sir. I can't answer that.

11 Q. You're not sure?

12 A. No. I mean, I wasn't aware of any
13 allergies.

14 Q. But at that point in time, that being
15 March the 14th of 2008, how long had you and
16 Ms. Honeycutt lived together?

17 A. At the time of the accident?

18 Q. Well, March the 14th, the time that we're
19 talking about?

20 A. Let's see, we had been living together for
21 -- it seems like -- to be give an honest
22 answer, I can't really answer that question.
23 I don't remember exactly how long.

24 Q. Had it been for an extended period of
25 time, or just a few days?

1 A. Oh, more than just a few days. You know.

2 Q. And during the time that you and Ms.

3 Honeycutt was living together, Child was

4 there; wasn't he?

5 A. Yes, sir.

6 Q. And you took care of Child, didn't you?

7 A. Yes, sir.

8 Q. So you knew Child?

9 A. I knew Child, yes.

10 Q. All right. Now, you said on March the

11 17th -- that this times all run together. On

12 March the 16th, you came home and Ms. Phillips

13 and Mr. Morris were leaving; is that correct?

14 A. Yes, sir.

15 Q. Do you recall what time of day that was?

16 A. I remember it being dusky dark. I can't

17 -- I know that when I took my computer back to

18 WalMart on White Horse Road that it was around

19 6:45. When I pulled in the parking lot to

20 drop the computer off.

21 Q. Okay.

22 A. And then we went to McDonald's and then

23 come home.

24 Q. Okay.

25 A. So I would imagine, you know, that at

1 least by eight o'clock.

2 Q. 7:30 or 8:00 or something like that?

3 A. Yeah. It's all been ---

4 Q. So I think we could say that it was fairly
5 well before nine o'clock, right?

6 A. I would agree with that. I think that it
7 was before nine.

8 Q. All right. Now, then, you went
9 immediately into the house?

10 A. Yes, sir.

11 Q. And your testimony is that Ms. Phillips
12 and Mr. Morris were already gone?

13 A. They were pulling out of my driveway; yes,
14 sir. They were gone from my residence.

15 Q. You didn't see them, talk to them ---

16 A. No, sir.

17 Q. --- that night at all?

18 A. No, I didn't.

19 Q. Now, let's back up a little bit to March
20 the 14th. To your knowledge did Child have
21 some sort of respiratory infection or issues?

22 A. I didn't hear that.

23 Q. Maybe I didn't talk loud enough. The
24 acoustics in this courtroom are ---

25 A. Yes, sir. Go right ahead.

1 Q. On March the 14th, around that time, did
2 Child have a respiratory infection?

3 A. I don't believe that Child had a
4 respiratory infection. He had an ear
5 infection.

6 Q. Had he been on Amoxicillin?

7 A. It wasn't -- he had just finished the
8 Amoxicillin around the 14th. But, you know.

9 Q. For an ear infection or some type of ---

10 A. Yes, sir.

11 Q. All right. And, uh, -- now, when you get
12 into the house, where is Child ?

13 A. He's in his crib.

14 Q. Where?

15 A. He's in his crib.

16 Q. In his crib?

17 A. Yes, sir.

18 Q. Okay. Sometime between the time that Mr.
19 Morris and Ms. Phillips brought him back until
20 the time that you got home, Ms. Honeycutt had
21 put Child in his crib?

22 A. That is what I was told. I can't testify
23 to that.

24 Q. Okay.

25 A. I wasn't there.

1 Q. But he was in his crib when you got there?

2 A. He was in his crib, but I'm not aware of
3 who put him there.

4 Q. Who got him out of the crib?

5 A. I got him out of the crib.

6 Q. When you got him out of the crib, you took
7 him where?

8 A. Into the living room.

9 Q. Now, when you got him out of the crib, was
10 he crying?

11 A. Yes.

12 Q. Was he standing?

13 A. He was standing up, holding onto the side
14 of the bars there.

15 Q. Was he moving about?

16 A. I wouldn't say that he was -- you know, he
17 was standing holding onto the bars. I mean, -
18 --

19 Q. When you went in there, did he respond to
20 you?

21 A. Yeah, he held his arms up for me --
22 (emotional) -- I promised myself I wouldn't do
23 that. He held his arms up for me.

24 Q. You said that he had a runny nose?

25 A. Yes, sir.

1 Q. And that he had some congestion?

2 A. Yes, sir.

3 Q. That led you to believe, if I understood
4 you correctly, that he had a cold?

5 A. Yes, sir.

6 Q. And is the first child that you've been
7 involved with helping to rear?

8 A. Yes, sir.

9 Q. Of course you and Ms. Honeycutt have a
10 child together, right?

11 A. Yes, sir.

12 Q. Ava.

13 A. (Affirmative nod).

14 Q. And Child ?

15 A. Yes, sir.

16 Q. Well, you don't have Child

17 A. Child was older than Ava.

18 Q. So now you get Child out of the crib,
19 pick him up, and what -- you take him to the
20 living room. What happens next?

21 A. I continued to comfort Child . I was
22 patting him on his back, telling him that it
23 was going to be okay. He eventually stopped
24 crying.

25 Q. Once he stopped crying, what did you do?

1 A. That's when I proceeded to ask him if he
2 wanted to stand up. And he didn't. He didn't
3 want to stand up. He didn't want to be sat
4 down.

5 Q. He could have stood up but he didn't want
6 to stand up. Right?

7 A. Right.

8 Q. There was no indication at that point in
9 time that there was anything wrong with his
10 ability to walk or ---

11 A. No, sir, not that I could see.

12 Q. Certainly nothing to indicate at that
13 point in time that he -- well, let me back
14 up. So you put him down?

15 A. Yes, sir.

16 Q. Nothing other than a runny nose and a
17 cough or cold that you saw?

18 A. Yes, sir.

19 Q. Now, you put him down. What happens next?

20 A. When I went to put him down?

21 Q. Right.

22 A. Like I said, he took a step back like he
23 was going to sit down and start crying. The
24 closer that he got -- but he never made it
25 because I picked him back up. I said, 'Okay,

1 buddy, you must be tired.' I patted him on
2 his back. You see, Child never actually in
3 our custody got to actually stand up and walk
4 around because he was laid down, I picked him,
5 up, you know she took care of him, laid him
6 back down, and he went to bed, we went to bed.

7 Q. All right. So then you comforted and
8 consoled him some more?

9 A. (Affirmative nod).

10 Q. You picked him back up?

11 A. Yes.

12 Q. He quit crying, again?

13 A. He did, (affirmative nod).

14 Q. Did Child fight sleep?

15 A. Sometimes. Sometimes he wouldn't. It
16 just depended.

17 Q. When he would fight sleep, would he cry?

18 A. He would cry sometimes, sometimes he would
19 just toss and turn.

20 Q. At one point in time, I think when you
21 were talking to Mr. Harbin, you said that he
22 was pitching a fit; right?

23 A. Pitching a fit as in crying.

24 Q. Pardon?

25 A. Pitching a fit as in crying.

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1 Q. Right. Being ornery?

2 A. Being ornery.

3 Q. Now, this would have been around -- would
4 it be safe to say between eight and nine
5 o'clock on Sunday evening?

6 A. Yes, sir.

7 Q. Now, did you or Ms. Honeycutt fix Child
8 anything to eat?

9 A. At that time, I believe that I had -- that
10 she requested me to fix him -- she requested
11 me to fix him a sippy cup of milk. That's
12 what I did.

13 Q. But not solid food?

14 A. I believe that she had mentioned something
15 about they had -- that wherever that they'd
16 come from that he'd eaten.

17 Q. All right. Then you and Ms. Honeycutt go
18 out -- is that when you got out and smoke a
19 cigarette, or do you watch TV first?

20 A. After we laid Child down?

21 Q. Right.

22 A. Right. Yes, sir, we laid Child down.

23 We come back out -- and, like I say, Ava, I

24 can't -- it's been four years. I can't

25 remember if she was in her swing. I remember

1 Latasha laying her down, too. Me and her, we
2 walked on the back porch, left the door open
3 so that we could hear them, we walked out
4 there and smoked, then come back in and
5 watched TV.

6 Q. When was Child given the sippy cup?

7 A. Child was given the sippy cup before --
8 as soon as we laid him down -- she had
9 requesting, as she took Child into his room,
10 for me to get the sippy cup.

11 Q. Did you take the sippy cup down to the
12 room?

13 A. Yes, sir.

14 Q. Did he drink out of the sippy cup?

15 A. Yes, sir, he did.

16 Q. Did he spit it up?

17 A. No, sir.

18 Q. Do you know how much he drank?

19 A. I'd say probably two sips.

20 Q. Pardon me?

21 A. Two to three sips.

22 Q. Okay. And once he took those two to three
23 sips, what did he do next?

24 A. He set it off to the side like he didn't
25 want it. You know, like he -- like he was

1 done.

2 Q. That is what he would do when he was done?

3 A. A normal child, that's what they do when
4 they're down with something, they sit it to
5 the side; yes, sir.

6 Q. So you and Ms. Honeycutt go outside and
7 smoke a cigarette.

8 A. (Affirmative nod).

9 Q. When you come back in from smoking a
10 cigarette, do y'all go straight to bed?

11 A. No, sir.

12 Q. What do you do then?

13 A. Well, we come in, look over the children
14 kinda briefly, we sat in the living room and
15 we watched TV until around, I'd say, probably
16 ten thirty or eleven. She did a final check
17 on them and then we went to bed. That's the
18 last ---

19 Q. Did you go a check at that point in time?

20 A. I walked in there with her.

21 Q. Did you notice anything out of the
22 ordinary?

23 A. Other than him sleeping, that he was
24 sleeping pretty hard. You could tell that he
25 was -- it just looked like, from what I would

1 described, that he'd been playing all day, he
2 was tired, fussy, he was sleeping real good.

3 Q. Now, as I understand it, Ms. Honeycutt got
4 up three or four times during the night?

5 A. I know that she got up at least three
6 times.

7 Q. To your knowledge, did she check on Child
8 that three times that she got up?

9 A. I can't testify anything to that. I
10 wasn't awake.

11 Q. Well, let me ask you this. There were no
12 alarms that went off those three times that
13 she got up to check him?

14 A. No, sir. Ava would wake us up, you know,
15 either Ava or JChild.

16 Q. Then she got up, I gather the fourth time
17 would have been at eight o'clock in the
18 morning.

19 A. Yes, sir. If she got up four times, the
20 fourth time would be that time.

21 Q. Now, you described this mobile home a
22 little bit. When you went to bed, were any
23 lights left on?

24 A. The kitchen -- the exhaust fan thing, the
25 light there, we leave that on.

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1 Q. A fairly small area, so it would light up
2 the area; right?

3 A. Well, not -- as far as Child 's room goes,
4 no. As far as my two-month old little girl's,
5 yeah.

6 Q. Well, at --

7 A. It was a little bitty tiny bulb in the
8 kitchen.

9 Q. And at eight o'clock there was no alarm
10 sounded by Ms. Honeycutt, right?

11 A. At eight o'clock, I heard nothing.

12 Q. You kinda woke up?

13 A. I woke up just briefly as she got out of
14 the bed.

15 Q. Then you went back to sleep?

16 A. Yes, sir.

17 Q. I gather as far as you know, she came back
18 to bed?

19 A. Yeah, she come back to bed.

20 Q. Now, ten o'clock is when you get the
21 alarm; right?

22 A. Yes, sir.

23 Q. Now, you say that you went in there and
24 you knew that he was not breathing.

25 A. Yeah.

1 Q. How was it that you knew that he wasn't
2 breathing?

3 A. His lips were blue, his eyes were barely
4 cracked open from where she'd trying shaking
5 to wake him up and he didn't respond. An
6 unconscious child, it barely cracked his eyes
7 open a little bit. I walked in and I seen
8 him, I immediately checked for his pulse, put
9 my ear down to his mouth, I heard nothing and
10 I felt like ---

11 Q. Were there windows in that particular
12 room?

13 A. There was one window that had blinds and
14 curtains.

15 Q. Were they closed?

16 A. Yes, sir, they were.

17 Q. To keep the room dark?

18 A. Yes, sir.

19 Q. So even at ten o'clock in the morning, the
20 lighting in that room was not particularly
21 good.

22 A. I mean -- it wasn't the best, no.

23 Q. All right. So -- who actually called 911?

24 A. She -- I told her to call 911, that I
25 hadn't got a pulse and that he wasn't breath-

1 ing. She -- like I said, I heard the scream,
2 I run in there. I looked down, realized that
3 he was not breathing. I screamed to her, you
4 know, "Call 911, he's not breathing."

5 Q. At ten o'clock -- well, let's back up a
6 little bit. Through the night it was only
7 you, Ms. Honeycutt and the two children that
8 were in that residence?

9 A. I'm sorry, -- sir? I couldn't hear you.

10 Q. Through the night ---

11 A. Through the night -- yes.

12 Q. No guests, no visitors?

13 A. I think we had Wayne Guest that had
14 stopped by to bring some movies, but I pretty
15 much met him at the door.

16 Q. Let's say after you went to bed, was there
17 anybody else in the house ---

18 A. No, sir.

19 Q. --- other than you, Ms. Honeycutt and the
20 two children?

21 A. No, sir, there wasn't.

22 Q. At ten o'clock when you got up, was there
23 anyone in the house other than you, Ms.
24 Honeycutt and the two children?

25 A. No, sir.

1 Q. When EMS arrived, was there anybody in the
2 house other than you, Ms. Honeycutt and the
3 two children?

4 A. When EMS arrived?

5 Q. (Affirmative nod).

6 A. No, sir.

7 Q. So at the point when EMS gets there,
8 that's when you call your grandmother?

9 A. Yes, sir, as soon as I heard Latasha
10 scream "they're here, they're here" and I
11 heard the door close and I heard them get to
12 the porch, I stood up, I backed out of their
13 way, I stood beside Latasha and I immediately
14 called my grandmother.

15 Q. Now, -- so I believe that you said that it
16 wasn't five minutes later that somebody showed
17 up to take care of Ava, right?

18 A. Well, like I said, I called my grand-
19 mother, she stated my grandfather was going to
20 need some more time. So I just hung the phone
21 up and called Kayla. She come.

22 Q. So you and Ms. Honeycutt go to Easley
23 Baptist?

24 A. Yes, sir.

25 Q. From Easley Baptist, you come back to

1 Court?

2 A. When I dropped Tasha off at Easley

3 Baptist, I went to get Mr. Morris.

4 Q. I jumped ahead.

5 A. That's quite alright.

6 Q. I am not trying to ---

7 A. That's okay.

8 Q. When you went back to Easley Baptist

9 Hospital with Jamie, ---

10 A. Yes, after I picked him up.

11 Q. Let me ask you about that. Jamie got in

12 your truck and he said, "What's wrong?"

13 A. Yes, he asked what was wrong with Child .

14 Q. Not 'what's wrong' in general?

15 A. No, 'What's going on? Why are you at my

16 job screaming at me?"

17 Q. A total shock to him, right?

18 A. Of course.

19 Q. Okay. So you go to Easley Baptist, you

20 drop Ms. Honeycutt off and then you go looking

21 for Jamie?

22 A. Yes, sir.

23 Q. How long have you known Jamie?

24 A. Sixteen years, maybe twenty years --

25 twenty years.

1 Q. Well, you said -- if I recall correctly,
2 and correct me if I am wrong, the reason that
3 you wanted to go get Jamie was because his son
4 may not make it. Right?

5 A. That's just the way that I perceived it at
6 the time, sir.

7 Q. But at that point in time, other than what
8 you'd seen at ten o'clock, you had not idea
9 whether he would make it or not; did you?

10 A. I mean, -- well, sir, he wasn't breathing.
11 I gave him CPR for fifteen minutes, I begged
12 for God to help me and nothing every happened,
13 so I assumed that he wasn't going to make it.

14 Q. But that was your testimony, that he was
15 not going to make it?

16 A. Yes, sir. And wouldn't you say the same?

17 Q. Now you get Jamie back to Easley Baptist,
18 ---

19 A. Yes, sir.

20 Q. And at some point in time you and Ms.
21 Honeycutt leave Easley Baptist; correct?

22 A. Yes, sir.

23 Q. Now, when you and Ms. Honeycutt leave
24 Easley Baptist, you go back to
25 Court -- Drive, or whatever.

1 A. Yes, sir.

2 Q. At that point in time, did you know that

3 Child was being airlifted to Greenville

4 Memorial?

5 A. I did.

6 Q. But rather than going straight to

7 Greenville Memorial, you went back to

8 Court?

9 A. Yes, sir.

10 Q. When you got to Court, were the

11 cops already there?

12 A. Yes, sir.

13 Q. How long did you stay at Court?

14 A. No longer than five minutes. Long enough

15 to pull out a pen and sign that form and

16 leave.

17 Q. Well, at that point in time you didn't

18 know that's what the cops wanted?

19 A. I did, sir.

20 Q. Well, not until you got there.

21 A. No. She told me that's what they wanted,

22 to go back there, that they were waiting on me

23 until I got home to sign the consent to

24 search. So we left and went.

25 MR. DEJONG: One moment, please,

1 Your Honor.

2 CROSS EXAMINATION CONTINUED

3 BY MR. DEJONG:

4 Q. You know a Sidney Morris?

5 A. Yes, sir.

6 Q. Did you have Mr. Morris -- when you went
7 by where Ms. Phillips lived, did you see
8 Sidney Morris?

9 A. Yes, sir.

10 Q. At that point in time, you didn't know
11 anything was in the child's system; did you?

12 A. No, sir.

13 Q. Pardon me?

14 A. No, sir.

15 Q. But you asked Mr. Sidney Morris what the
16 child had been given. Right?

17 A. That was after his mother collapsed to the
18 ground, sir, saying that Jamie was going to
19 blame her.

20 Q. I'm sorry?

21 A. That was after his mother collapsed to the
22 ground, started screaming that Jamie was going
23 to blame her, over and over. So I asked,
24 'Did you give him anything? What are you
25 talking about, Jamie is going to blame you?'

1 Q. Jamie wasn't there at that point?

2 A. No, Jamie was not there.

3 MR. DEJONG: Thank you very much.

4 CROSS EXAMINATION

5 BY MR. O'CONNELL:

6 Q. Mr. Roper, ---

7 A. Yes, sir?

8 Q. --- you testified that you know what an
9 unconscious child looks like?

10 A. I'm sorry? Say what now?

11 Q. You said that you knew what an unconscious
12 child looked like?

13 A. I couldn't hear you.

14 Q. You said that the child was in the crib or
15 bed, that his eyes were open and that he had
16 blue lips?

17 A. Well, sir, when I walked in and looked
18 down, it was pretty obvious.

19 Q. You said you knew what a child looks like
20 when it is unconscious.

21 A. Right.

22 Q. Had you had prior experience with
23 unconscious children?

24 A. No, sir. I had prior experience with my
25 father having seizures, being unconscious.

1 Other than that, no. No children.

2 Q. You testified that you know nothing about
3 methadone or ---

4 A. I testified that I wasn't in a methadone
5 clinic at that time.

6 Q. Have you ever been in a methadone clinic?

7 A. How is that relevant?

8 THE COURT: Answer the question.

9 THE WITNESS: Yes, sir.

10 CROSS EXAMINATION CONTINUED

11 BY MR. O'CONNELL:

12 Q. Prior to or after this occasion?

13 A. I believe it was around a year and a half
14 or two years later.

15 Q. Do you know anything about opiates?

16 A. I do now.

17 Q. Were you prescribed Lortab at one time?

18 A. Was I prescribed?

19 Q. Yes, were you prescribed Lortab at one
20 time?

21 A. Yeah. I mean, it was -- I've been
22 prescribed medication before.

23 Q. Were you prescribed Lortab on March 4th,
24 2008?

25 A. (Affirmative nod), that was for a neck

1 injury, sir.

2 Q. Please answer. Were you prescribed Lortab

3 on ---

4 A. The answer is 'yes.'

5 Q. And you took twenty-one Lortab, right.

6 A. I took them as prescribed, sir.

7 Q. You had twenty-one Lortab, is that right?

8 A. If that's what I was prescribed.

9 Q. What is Tramadol, do you know what that
10 is?

11 A. I believe that it is a light pain
12 medicine, non-narcotic.

13 Q. And those were prescribed through 3/08?

14 A. If that's what it says, sir.

15 Q. And you had twenty of those?

16 A. If that's what it says, sir.

17 Q. You had none in your house on the 17th
18 when they searched your house?

19 A. Did they find anything? No, I did not
20 have anything.

21 Q. You'd used them all up?

22 A. I either used them or flushed them.

23 Q. You flushed your ---

24 A. You throw away medication that you're not
25 using.

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1 Q. That you'd just received?

2 A. I just stated that if I did not use them
3 that I disposed of them.

4 Q. So maybe Child took something at your
5 house?

6 A. There would be no possible way for that.
7 None of what you just brought up was in
8 Child's system.

9 Q. Did you call your sister over to get any
10 kind of evidence out of your house before the
11 police got there?

12 A. No, sir.

13 Q. Do you claim to have been a father figure
14 to Child ?

15 A. Yes, sir.

16 Q. Were you trying to replace Jamie Morris?

17 A. No, sir, I did not.

18 Q. Did you ever tell Ms. Honeycutt that you
19 only wanted one child, that you didn't want
20 any more than one child?

21 A. I don't remember ever saying that.

22 MR. O'CONNELL: Thank you. I have
23 no further questions.

24 MR. HARBIN: Redirect, Your Honor?

25 THE COURT: Yes, sir.

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1 REDIRECT EXAMINATION

2 BY MR. HARBIN:

3 Q. You said that you were prescribed Lortab
4 for a neck injury?

5 A. Yes, sir.

6 Q. What was the neck injury from?

7 A. I worked for The Cliffs. I had an eighty
8 pound of Flex that is used for hydro sealant
9 dropped on the top of my head from about four
10 foot difference.

11 Q. And you said that you used all of it?

12 A. Yes, sir.

13 Q. Did you have any Lortabs in your house?

14 A. No, sir, I did not.

15 Q. Did you have any Tussinex in your house?

16 A. No, sir, I did not.

17 Q. And you previously testified when the
18 solicitor asked you about the time line of
19 when you got up. You said that at ten --
20 that after eight, the first thing that you
21 heard was the scream.

22 A. Yes.

23 Q. Do you remember asking Latasha to change
24 Child before she went to work?

25 A. Yes, sir.

1 Q. When did you do that?

2 A. Well, it was -- she come in the room, she
3 was dressed for work and she -- she pretty
4 much come in there, was giving me a kiss
5 goodbye, telling me that she was about to
6 leave. I said, 'Would you please change
7 Child 's diaper before you take off to work?'

8 She agreed.

9 Q. Then what happened after that?

10 A. That's when I heard the scream.

11 Q. What happened first and what happened
12 second? You have to be sure about this.

13 A. (No verbal response).

14 Q. Did she scream before or after you asked
15 her to change the diaper?

16 A. She screamed after I asked her to change
17 the diaper.

18 Q. And you said that she was on her way to
19 work. Did she go to work the same time every
20 day?

21 A. No, sir, it was swing shift.

22 Q. Okay. Did you give Child any medication?

23 A. No, I didn't.

24 Q. Did you see Latasha give Child any
25 medication?

1 A. No, sir, I did not.

2 Q. Thank you.

3 MR. HARBIN: No further questions.

4 THE COURT: Any further questions?

5 SOLICITOR BARWICK: Not from the
6 State, Your Honor.

7 MR. DEJONG: No, sir.

8 MR. O'CONNELL: None from us.

9 THE COURT: All right, thank you,
10 Mr. Roper.

11 (WITNESS STEPS DOWN)

12 THE COURT: Ladies and Gentlemen,
13 we will take a brief recess. Don't talk about
14 the case, keep an open mind.

15 (JURY OUT @ 4:20 P.M.)

16 THE COURT: We will take about a
17 five-minute break.

18 (RECESS)

19 (DEFENDANTS PRESENT)

20 THE COURT: Bring the jury back in.

21 (JURY IN @ 4:39 P.M.)

22 THE COURT: Call your next witness.

23 MR. HARBIN: We call my client,
24 Latasha Honeycutt, to the stand.

25 (WITNESS TAKES STAND)

1 LATASHA HONEYCUTT, being duly sworn
2 to tell the truth, the whole truth and nothing
3 but the truth, testified, as follows:

4 DIRECT EXAMINATION

5 BY MR. HARBIN:

6 Q. Good afternoon, Latasha. I want to start
7 out by you telling the jury how you met Jamie.

8 A. We met on the internet. It was the South
9 Carolina chat room. We got to know each other
10 for a while and then we decided to meet each
11 other. We had a first date, we liked each
12 other and we continued to date. That's pretty
13 much it.

14 Q. Did you move in with Jamie?

15 A. I did.

16 Q. How old were you when you moved in with
17 Jamie?

18 A. I was seventeen.

19 Q. And how old are you now?

20 A. I am twenty-six.

21 Q. So if my math is right, that was in 2003?

22 A. Yes, sir.

23 Q. Give or take?

24 A. (Affirmative nod).

25 Q. Okay. Did you -- well, what was your

1 relationship like? Did you love Jamie?

2 A. I did.

3 Q. And y'all have had some problems
4 throughout your relationship, is that right?

5 A. We did.

6 Q. All right. Did Jamie -- Jamie is
7 obviously the father of Child ?

8 A. Yes, sir.

9 Q. You eventually broke up with Jamie?

10 A. I did.

11 Q. Why did you break up with him?

12 A. At the time we were having a lot of
13 arguments, a lot of problems and I just felt
14 like it was the best thing to do at the time.

15 Q. In fact, did y'all even try couples
16 counseling?

17 A. We did.

18 Q. At what point, post or pre-breakup did you
19 have Child ?

20 A. (No verbal response).

21 Q. Did you have Child before -- was Child
22 born before you broke up with Jamie?

23 A. Yes, sir.

24 Q. What kind of father was Jamie?

25 A. He was a great father.

1 Q. Okay. Latasha, I have spoken with you and
2 have told you that you have to tell the jury
3 if you have anything on your criminal record.

4 A. Yes, sir.

5 Q. What do you have on your criminal record?

6 A. I pled guilty to selling thirty dollars
7 worth of marijuana to my mother's boyfriend at
8 the time.

9 Q. Okay. Now, let's fast forward to March
10 16th, Sunday night. Okay?

11 A. (Affirmative nod).

12 Q. That is the night that has been testified
13 to that Child was returned to your house?

14 A. Yes, sir.

15 Q. Do you remember that night?

16 A. I do.

17 MR. DEJONG: Your Honor, could I ask
18 Mr. Harbin to speak up just a little bit.

19 MR. HARBIN: Yes, sir. I apologize,
20 Mr. Dejong.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. HARBIN:

23 Q. You remember the night of March 16th.

24 A. Yes.

25 Q. And March 16th, what do you remember in

1 relation to Jamie bringing Child back home?

2 A. Well, at the time, -- I was on the phone
3 with Michelle Henry and we were talking about
4 -- she had some kind of -- there was some kind
5 of party or something coming up and she was
6 making brownies. Jamie and his mother come
7 pulling up, and I was still on the phone with
8 Michelle Henry. She said, 'Your baby is
9 home.'

10 Q. That is the same Michelle Henry that
11 testified earlier?

12 A. Yes, sir.

13 Q. And in fact you -- Michelle Henry was your
14 neighbor?

15 A. Yes, sir.

16 Q. Did you consider her a friend?

17 A. I did.

18 Q. You actually babysat for her kids?

19 A. I did.

20 Q. How many times?

21 A. Over several months.

22 Q. Now, when Child was returned home, who
23 dropped him off? Who came in and what
24 happened when they came in the house?

25 A. When they knocked on the door, I was still

1 on the phone with Michelle.

2 She said, 'Jamie is getting Child out of
3 the car, can we come in?'

4 I was like, 'sure', you know.

5 I was still on the phone. I got off the
6 phone with Michelle.

7 She -- Jamie sits Child in the middle of
8 the couch, Lynn is over on the side -- the
9 other side -- and if I am correct, Donna was
10 sitting in the reclining chair. Jamie stooped
11 down on the floor in front of Child and he
12 said, 'Child had a good weekend, he played
13 all weekend.' You know, 'He's tired, and I
14 think he is coming down with a call. You may
15 want to take him to the doctor. Here's his
16 Medicaid card.'

17 At that time I said 'okay.' He actually
18 had a doctor's appointment for that Wednesday.
19 But I felt like if his cold had progressed by
20 Monday morning, I would make an earlier
21 appointment.

22 Q. What did you notice -- what did you see
23 that -- he told you that Child had a cold,
24 but what did you see with your own eyes?

25 A. He sounded a little congested. He had a

1 runny nose, he acted sleepy and fussy.

2 Q. Now, what did you do -- did you do
3 anything with Child before Jamie left, or is
4 that about all that happened when they were
5 there?

6 A. Me and Jamie went in Child 's room. I did
7 change the bed sheets because I did that
8 regular and, uh -- we then went back into the
9 living room. Jamie picked up Child , he was
10 crying. We both went in there. Jamie set him
11 in the crib and was, you know, saying his
12 goodbyes, that he would see him later, that he
13 loved him. We went back into the living room.
14 At that time, Laura and Lynn were standing up
15 and they started to leave.

16 Q. And after they left, what happened?

17 A. Well, as they were pulling out of the
18 driveway, I walked to the door and Brandon was
19 pulling in the driveway. I had Ava in my
20 arms. I had fixed her a bottle while they
21 were there -- I left that out. I had fixed
22 her a bottle while they were there and had
23 started to feed Ava.

24 Q. Let's back up just a second. When you and
25 Jamie set Child down in the crib, did you or

1 Jamie shut the door on Child ?

2 A. I did not.

3 Q. Is it your practice to shut the door?

4 A. No, sir.

5 Q. What is your practice to do, if anything?

6 A. I pull the door slight to, not all the way
7 to the doorframe. I leave it open maybe this
8 much (gesturing).

9 Q. Okay. There was testimony earlier that it
10 worried somebody that you didn't have a
11 monitor. Can you hear from Child 's room --
12 from your room or from the living room or the
13 kitchen?

14 A. You can, (affirmative nod). It's a very
15 small trailer.

16 Q. Again, how many bedrooms in that trailer?

17 A. Two.

18 Q. All right. So Child is in the crib and
19 you're feeding Ava. What happens after that?

20 A. Well, Brandon comes walking in the door,
21 him and his cousin, Jeremy. Jeremy sits in
22 the reclining chair. Brandon asks me what's
23 wrong with Child . I told him that Jamie had
24 just left, you know, he'd said that he had a
25 cold, that he was fussy, that he had been

1 playing all day, had a pretty big weekend.

2 Q. If Child is already in the crib, why did
3 Brandon ask what was wrong with Child ?

4 A. Because he was crying.

5 Q. He was still crying?

6 A. He was.

7 Q. Did I understand correctly that it was
8 your assessment that he was crying because his
9 daddy was leaving, that he was upset?

10 A. Yes.

11 Q. Okay. Once Brandon asked you what
12 happened and you told him what Jamie had said,
13 what did you do or what did Brandon do?

14 A. After I told him that, Brandon patted him
15 on the back, said 'Baby, you're sleepy.' And
16 he said, 'JChild , do you want to stand up?'

17 That's when he started to set him on the floor
18 and Child just acted like he was going to

19 collapse and pitch a fit, which was no
20 uncommon for him to do.

21 Q. Okay.

22 A. That's when Brandon picked him back up and
23 continued to pat him on the back.

24 Q. So at this point had you seen anything,
25 any symptoms, any signs, anything that made

1 you worry about Child , about his health?

2 A. No, sir.

3 Q. At what point did you put Child back down
4 to sleep?

5 A. It was between twenty and thirty minutes
6 later. I held him maybe ten, fifteen minutes.
7 Brandon held him for a minute. Then I went to
8 go into his room to lay him down and I asked
9 Brandon, 'Will you make him a sippy cup of
10 milk?' I was continuing to lay him down.

11 Brandon come back in with the sippy cup of
12 milk. Child drank a little bit of it and set
13 it to the side like he was trying to hand it
14 back. He put it in our direction. So I got
15 the sippy cup and asked Brandon if he would
16 put it back in the refrigerator, or to put it
17 in the refrigerator.

18 Q. Was there anything that indicated to you,
19 as you laid him down to sleep, that there was
20 anything wrong?

21 A. No, there was not.

22 Q. Now, I believe that Brandon testified that
23 Child had been put down, give or take, around
24 nine o'clock. Is that your recollection?

25 A. As far as I can remember, (affirmative

1 nod).

2 Q. Okay. What did y'all do after you put
3 Child down to sleep?

4 A. Well, that's when I laid Ava down and we
5 went outside to smoke a cigarette.

6 Q. And what did you do after you went outside
7 to smoke a cigarette?

8 A. I came back in, checked on Child and Ava,
9 and we sat there and watched TV for a while.

10 Q. Did you go to bed after that?

11 A. I checked on them once again before I went
12 and laid down.

13 Q. All right. Now, once you go to bed, did
14 you have occasion to wake up at any time
15 during the night?

16 A. I did. Ava would wake me up several times
17 a night because she was two months ago.

18 Q. How often, how long would she normally
19 sleep?

20 A. Two or three hours.

21 Q. At that time, were you breast feeding or
22 did you use formula?

23 A. Formula.

24 Q. So when she wakes up, you would have to
25 make formula and ---

1 A. Sometimes. I'd premake it and put in the
2 refrigerator. Other times I would have to
3 make it.

4 Q. Approximately when do you think, if you
5 have any recollection, when did Ava wake up
6 and/or how many times did she wake up that
7 night?

8 A. I can't really remember exact times. I
9 just know that she woke me up at least three
10 or four times that night.

11 Q. In one of your statements you had
12 mentioned that you had -- that Child was on
13 the side and that you had turned him over?

14 A. Yes.

15 Q. What do you remember about that?

16 A. He was still kinda of a little congested.
17 I figured that maybe if he was on his side
18 that it would -- that it was a lot of pressure
19 on his lungs to lay the way he was lying on
20 his side, you know. I turned him over and his
21 breathing kinda eased out for him, he didn't
22 sound quite as congested.

23 Q. Was that the -- what time of night was
24 that? Was that early evening?

25 A. That was early evening.

1 Q. At the time, where were you working?

2 A. I was working at Wendy's.

3 Q. And were you a fulltime employee?

4 A. I was.

5 Q. What is the definition of a Wendy's
6 fulltime employee?

7 A. Thirty-five to forty hours a week.

8 Q. Now, did you have a set schedule at
9 Wendy's?

10 A. It was swing shift.

11 Q. What does swing shift mean?

12 A. I could come in early in the morning, mid-
13 afternoon or at night. It just depended.

14 Q. Does it change from day to day or week to
15 week?

16 A. Week to week.

17 Q. How did your schedule work with Brandon's
18 if he was working on the third shift?

19 A. My manager would work around it. After I
20 had Ava, he really would work around it.
21 Sometimes I couldn't work because Brandon had
22 to work that night and he would just change it
23 to a different day or give me hours on a
24 different day to make up the hours.

25 Q. Okay. All right. Let's fast forward to

1 -- well, actually, during the night when you
2 woke up to change and/or feed Ava, did you do
3 anything other than feed Ava?

4 A. I checked on Child .

5 Q. Did you do that each time that you got up
6 with Ava?

7 A. I did.

8 Q. So to your recollection, that would be
9 either three or four times?

10 A. Yes, sir.

11 Q. Now, when you say that you checked on
12 Child , what does that actually mean?

13 A. I would step in his room and lean towards
14 his crib and make sure, you know, that he
15 seemed okay.

16 Q. You didn't touch him?

17 A. I'd just see him.

18 Q. All right. You have given a statement
19 that Ava woke you up at eight o'clock.

20 A. It was around eight o'clock, (affirmative
21 nod).

22 Q. Do you know for sure that it was eight
23 o'clock exactly?

24 A. No, I don't.

25 Q. It could have been 7:30, it could have

1 been 8:30?

2 A. I know that it was at least eight o'clock,
3 maybe between 8:00 and 8:30.

4 Q. Okay. What do you remember about getting
5 up at 8:00 or 8:30?

6 A. Well, I went in there and fed Ava, changed
7 her -- because newborns are often to go. At
8 that time, I decided to go in there and check
9 Child 's diaper. The room was kinda dark. I
10 sat down. I was real, real quiet because of
11 the fact that I had been told that possibly he
12 had a call, I didn't want to wake him up
13 changing his diaper. I wanted him to get his
14 sleep because I thought he was sick. I very
15 carefully changed his diaper.

16 Q. Did you notice anything out of the
17 ordinary at that changing?

18 A. No, not at that change.

19 Q. Now, what did you do after you changed
20 Child ?

21 A. I went back to bed.

22 Q. And you had to work later in the day?

23 A. (Affirmative nod), I did.

24 Q. And I believe that in your statement that
25 was presented to the court that you set your

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1 alarm?

2 A. I did.

3 Q. Did your alarm go off?

4 A. It did.

5 Q. Did you get up as soon as your alarm went
6 off?

7 A. I didn't.

8 Q. All right. What did you do when you got
9 off -- when your alarm went off, what did you
10 do?

11 A. The second time that the alarm went off, I
12 turned it out and I got up. I ---

13 Q. Can I stop you for a second?

14 A. Yes.

15 Q. You said the second time that your alarm
16 went off. What happened the first time?

17 A. I hit Snooze after -- well, at ten o'clock
18 when it went off, I hit Snooze.

19 Q. How long is your snooze button, do you
20 know?

21 A. I don't remember.

22 Q. So you hit Snooze, so it went off
23 technically twice?

24 A. Yes.

25 Q. So you only got up once?

1 A. Yes.

2 Q. What did you do when you got up? What is
3 the first thing that you do when you get up?

4 A. I went in there and got Ava's bottle out
5 of the refrigerator that I had previously
6 made, that way when I got ready for work
7 everything would be in a row. I heated it up,
8 checked it on my arm to make sure that it
9 wasn't too hot. That's when I got Ava up,
10 changed her diaper and fed her.

11 Then I went and got my work clothes. I
12 changed into my work clothes. I went to the
13 bathroom and put my makeup on, did my hair.
14 I went back into the kitchen, made me a
15 sandwich.

16 Q. Okay, let me back you up a little. I
17 didn't ask you specifically when I asked about
18 feeding Ava before. Can you describe what you
19 do when you change Ava's -- I mean, she is two
20 months old.

21 A. Right.

22 Q. What is your routine. You changed the
23 baby's diaper, you put on your work clothes,
24 did you hair and makeup and then what do you
25 do before you actually leave for work?

1 A. I went to the kitchen, I made myself a
2 sandwich. I sat on the couch and ate it.

3 Q. Do you remember what kind of sandwich that
4 it was?

5 A. Peanut butter and jelly.

6 Q. Okay.

7 A. That's when I went back in the bedroom to
8 get my pocketbook and tell Brandon bye, and he
9 asked me if I would get the kids changed
10 before I left so that he -- you know, because
11 he won't get up with them. I guess he thought
12 I'm the mother and that would be something
13 that would help out.

14 Q. When you're leaving for work, who is going
15 to watch the kids when you leave for work?

16 A. Brandon.

17 Q. So it is correct that Brandon is supposed
18 to be getting up by the time that you're
19 leaving?

20 A. Yes.

21 Q. Basically Brandon just didn't want to have
22 to change the diaper when he got up?

23 A. Yes.

24 Q. Once Brandon asked you to change the
25 diaper, what happened next?

1 A. That's when I went into Child 's room. I
2 thought he was sleeping. I started to shake
3 him, I said, you know, 'JChild , honey, wake
4 up.' He didn't have any response. So I shook
5 me and that's when I realized that something
6 was wrong.

7 Q. When you realized that something was
8 wrong, what did you do?

9 A. I screamed, 'Brandon, please come in here.
10 Something's wrong.'

11 Q. What do you remember happening next?

12 A. Brandon came running in the room, started
13 getting Child out of his crib and he screamed
14 for me to "Call 911, he's not breathing."

15 Q. What did Child look like, that you could
16 tell when you went in the room?

17 A. His lips was blue, his -- it's an image
18 that I'll never get out of my head.

19 Q. When Brandon asked you to call 911, did
20 you call 911?

21 A. I did.

22 Q. Did you get anyone to answer?

23 A. I did.

24 Q. Was it you that stayed on the phone with
25 911?

1 A. I did for awhile.

2 Q. Did you see what Brandon was doing?

3 A. He started CPR on him. When he breathed
4 for him, vomit came out. He put him on the
5 floor and every time he's breath into him the
6 vomit would come out, so he would move him
7 over. He was pushing me out of the room the
8 whole time, you know. I was screaming,
9 'What's going on? He would continue to push
10 me out of the room, wouldn't tell me what was
11 happening; said, 'You don't need to be in the
12 room.'

13 Q. How long did that go on before someone got
14 there?

15 A. At least ten or fifteen minutes.

16 Q. Now, I believe that I heard on the 911
17 tape that you were on the phone when -- well,
18 let me ask you. Were you on the phone when
19 the ambulance arrived?

20 A. I was not.

21 Q. Did you see the ambulance arrive at your
22 house?

23 A. I had to go outside to flag them down.

24 Q. What did you do to flag them down?

25 A. I was waving my arms like 'over here, over

1 here.'

2 Q. And what -- what happened when you flagged
3 them down at your house?

4 A. They came in, put him on a stretcher and
5 took him in the ambulance.

6 Q. Now, there's been testimony that you
7 didn't get into the ambulance with him, so is
8 there any reason why you didn't get into the
9 ambulance?

10 A. Well, Ava was there. We had to make sure
11 we had somebody to take care of her. We told
12 called separate people and Brandon's sister
13 showed up. That's when we started to pack
14 Ava's stuff and -- we left, and he took me to
15 the Easley Hospital, dropped me off, and
16 that's when he went to go pick up Jamie.

17 Q. Let's back up a little bit. Who made the
18 call to Ava and his mother?

19 A. You mean Kayla?

20 Q. His grandmother?

21 A. Brandon.

22 Q. Not Ava. I mean Kayla. I apologize.
23 Brandon?

24 A. (Affirmative nod).

25 Q. Okay. When Brandon and you went to the

1 hospital, did both of you get out and go into
2 the hospital?

3 A. No.

4 Q. What happened?

5 A. He dropped me off at the emergency part
6 and he said that he was going to get Jamie.

7 Q. And what did you do when you got dropped
8 out at the ---

9 A. I went in there, told them who I was and
10 who I was there for. They took me back.

11 Q. Give us a better timeline. When you
12 walked into the hospital, do you know what
13 you were doing? What were you looking at?

14 A. It was a room-like that had a window, and
15 I went up there and told her what I was there
16 for, that I needed to know where to go.

17 Q. What did they tell you?

18 A. A nurse came and got me and took me.

19 Q. Did he take you to Child 's room?

20 A. He took me to a waiting room and asked a
21 couple of questions.

22 Q. What happened after that?

23 A. After that I went to Child 's room. At
24 first I when I looked in the door there was
25 people all around him and I didn't want to get

1 in their way. I stepped back -- like if you
2 come in here, ---

3 Q. I apologize. When you said the nurse --
4 there was a nurse that testified earlier that
5 you were unable to give answers. Was that the
6 nurse that asked you the questions? Do you
7 remember?

8 A. I can't remember.

9 Q. Can you describe what you were -- of you
10 can kinda of step outside yourself, what were
11 you -- what was your state of mind when you
12 were at the hospital?

13 A. I was out of my mind.

14 Q. Do you remember the questions that you
15 were asked?

16 A. I do not.

17 Q. Do you remember how long you were talking
18 to the nurse?

19 A. I do not.

20 Q. You were taken to Child 's room?

21 A. (Affirmative nod).

22 Q. You said that you saw a lot of people in
23 the room and you stood at the door?

24 A. (Affirmative nod).

25 Q. What happened as you were standing at the

1 door?

2 A. A nurse said, 'Come in here, stand up
3 here.' She said, 'We've got everything pretty
4 much set.' That's when I got ---

5 Q. Tell me what you saw when you went into
6 the room?

7 A. He was hooked up to a bunch of machines,
8 they were still giving him medications. I was
9 standing there rubbing his head, holding his
10 hand, and I started praying.

11 Q. Did someone tell you that you had to go
12 back out to the waiting room?

13 A. Yes.

14 Q. Who did? And why? Do you remember?

15 A. Actually I think Rita Burgess came in and
16 she said she wanted to question us, and that
17 that is when we went out to the parking lot.
18 Right before that, we was told that he was
19 about to be airlifted to Greenville.

20 Q. When Detective Burgess asked to speak with
21 you, do you remember the conversation with
22 Detective Burgess?

23 A. I just remember her happening about how it
24 happened and I told her everything that I
25 knew, and then she wanted me to write the

1 statement.

2 Q. You wrote a statement at Easley Hospital?

3 A. I did.

4 Q. Now, you said we. At what point did
5 Brandon arrive?

6 A. Actually he arrived right before I was
7 asked by Rita Burgess to be questioned.

8 Q. So when she asked, she asked both of you
9 at the same time?

10 A. She did, (affirmative nod).

11 Q. Now, Brandon testified earlier that
12 Detective Burgess had asked if y'all could go
13 back to the house to sign a consent to search
14 form. Is that your recollection, or do you
15 remember?

16 A. That's what I recall, (affirmative nod).

17 Q. Did y'all do that?

18 A. We did.

19 Q. So you left Easley Hospital and -- did you
20 leave before, after or as they were airlifting
21 Child ?

22 A. I believe that it was right before.

23 Q. So you went back to the house?

24 A. I did.

25 Q. Did Detective Burgess tell you that there

1 would be somebody waiting on you there?

2 A. Yes.

3 Q. Was there?

4 A. There was.

5 Q. Do you remember how many officers there
6 were there?

7 A. I believe that it was two.

8 Q. Was one of the officers an officer that
9 testified earlier, I believe Lieutenant
10 Robinson?

11 A. Yes.

12 Q. Did you sign the consent to search?

13 A. I did.

14 Q. He didn't make you sign the consent to
15 search, did he?

16 A. No.

17 Q. You signed it ---

18 A. Yeah, I signed it on my own.

19 Q. How long were you at the house when you
20 signed -- when you went back to the house to
21 sign the form, how long did you stay there?

22 A. Not long at all.

23 Q. When you left the house, where did you go?

24 A. Straight to Greenville.

25 Q. To the hospital in Greenville?

1 A. Yes.

2 Q. Do you remember the car ride there with
3 Brandon?

4 A. Vaguely.

5 Q. What do you remember about getting to
6 Greenville, getting to the hospital?

7 A. I just remember him holding my hand on the
8 way, he said that 'we need to pray.'

9 When we got there, we did the same thing
10 that I did in Easley: went to the E.R., told
11 them who I was, what I was there for, and that
12 I needed to know where to go.

13 Q. And they told you where ---

14 A. (Affirmative nod), they took me back.

15 Q. Did you and Jamie -- I'm sorry. Did you
16 and Brandon go into the room?

17 A. At first we were both going in but they
18 only allowed two people. Jamie and Jamie's
19 mother was already in there. They asked them
20 to come out, that the mother and father needed
21 to be in the room, and she left the room.

22 Q. So Ms. Phillips volunteered to allow you
23 and Jamie to be in the room?

24 A. Yes.

25 Q. Did you see Jamie caring for Child -- or

1 at his bed?

2 A. I did, (affirmative nod).

3 Q. At some point were you asked to go to the
4 waiting room to talk to the patient counselor?

5 A. I was.

6 Q. Did you?

7 A. I did, (affirmative nod).

8 Q. Do you recall who you saw in the waiting
9 room when you were asked to talk to the
10 patient counselor?

11 A. I remember that it was patient care, Ava,
12 Lynn, Kayla, -- I can't remember who all was
13 there.

14 Q. You said that you worked at Wendy's but
15 that you didn't have a steady schedule. Did
16 you stay at the hospital with Child with he
17 was in the hospital?

18 A. I did.

19 Q. How often or how long did you stay with
20 Child ?

21 A. At that time, I was there a lot of time.
22 Actually my manager called me to come in to
23 work and I quit.

24 Q. Was Jamie also there with Child with you,
25 with his son?

1 A. He was.

2 Q. After this incident, after the ambulance
3 came to your house, did you ever spend another
4 night in that house?

5 A. I did not.

6 Q. Where did you go?

7 A. We went to his cousin's, Jeremy's house.

8 Q. Why didn't you spend another night in that
9 house?

10 A. I couldn't. I couldn't bring myself to go
11 back in there.

12 Q. Since this has happened, have you noticed
13 anything about yourself?

14 A. I have not been able to hold a job, I have
15 not married, I've lost a lot of weight because
16 it's hard to eat, it's hard to sleep and I
17 wake up many times during the night. It's so
18 hard to get out of bed every day. There's
19 some days that I just lay in the bed all day
20 until Brandon is coming home, then I'll get up
21 -- (emotional), I just want him to lay in the
22 bed with me. It's just so hard -- (crying).

23 Q. Were you asked to donate Child 's organs?

24 A. We was.

25 Q. You said you would?

1 A. I did.

2 Q. Latasha, did you give Child any
3 medication?

4 A. No, I did not. I wouldn't do something
5 like that.

6 Q. Did you do everything that you could to
7 help your son?

8 A. I did.

9 Q. Did you know that he was in distress and
10 needed medical attention before you found him
11 and screamed for help?

12 A. No, sir.

13 MR. HARBIN: Just a second, Your
14 Honor.

15 THE WITNESS: (Emotional).

16 MR. HARBIN: No further questions.

17 Please answer any questions that the solicitor
18 or these other gentlemen may have.

19 THE COURT: Cross examination?

20 CROSS EXAMINATION

21 BY SOLICITOR RICHARDSON:

22 Q. You need some water?

23 A. No, I'm fine.

24 Q. Are you all right?

25 A. No. I'm -- I'm okay.

1 Q. You stated that you worked at Wendy's, is
2 that right?

3 A. Yes, sir.

4 Q. Which Wendy's was that?

5 A. The one in Easley.

6 Q. Is that -- how far is that from your home?

7 A. About fifteen, twenty minutes.

8 Q. So -- I'm talking about the home that you
9 were living in at the time that ---

10 A. Yeah, it was fifteen or twenty minutes.

11 Q. All right. Okay. Now, you testified that
12 you got up at eight o'clock -- a.m., is that
13 correct?

14 A. Around eight o'clock, yes, sir.

15 Q. At that time, you changed Ava?

16 A. I did.

17 Q. And you fed Ava?

18 A. I did.

19 Q. And then you also changed Child ?

20 A. I did.

21 Q. You didn't feed Child ?

22 A. No.

23 Q. During that changing, he didn't wake up;
24 right?

25 A. He didn't, but I was -- I made it a point

1 not to wake him up.

2 Q. The fact of the matter is that he did not
3 wake up, right?

4 A. He did not.

5 Q. And you testified that then you got up at
6 -- set your alarm again for ten o'clock; is
7 that right?

8 A. Yes, sir.

9 Q. And you got up at ten or five after?

10 A. I am not exactly sure. I know that it was
11 ten o'clock and that I'd hit the snooze.

12 Q. So the snooze was five minutes?

13 A. (No verbal response).

14 Q. You hit the snooze one time?

15 A. Yes, sir.

16 Q. All right. At that time when you got up
17 at ten, you went in and you changed Ava again;
18 right?

19 A. Yes, sir.

20 Q. Fed her again?

21 A. I did, (affirmative nod).

22 Q. And before you went to work, -- you said
23 that you started getting ready for work?

24 A. Yes, sir.

25 Q. And that before you went to work, Brandon

1 asked you to change Child ; is that right?

2 A. Yes, sir.

3 Q. So you get up at ten o'clock, change one
4 child but not the other?

5 A. I was going to change him.

6 Q. The testimony was that Brandon had to ask
7 you to change Child ?

8 A. He did ask me but he didn't have to ask
9 me.

10 Q. I believe that your testimony was he
11 wanted you to do the motherly thing. Is that
12 right?

13 A. Yes.

14 Q. The fact of the matter is that before you
15 got ready for work, you in fact did change
16 Ava?

17 A. I did.

18 Q. Now, you do recall -- I believe that it
19 was Mr. Morris -- telling you that the child
20 needed to go to the doctor?

21 A. Yes, sir.

22 Q. And you testified that you checked on the
23 child during the night?

24 A. Yes, sir.

25 Q. By "the child", I mean Child .

1 A. Yes, sir.

2 Q. You looked at him, right?

3 A. Yes, sir.

4 Q. But you didn't go up and touch him or
5 anything of that sort?

6 A. No, sir.

7 SOLICITOR RICHARDSON: That's all the
8 questions that I have.

9 THE COURT: Mr. DeJong.

10 MR. DEJONG: Thank you, Your Honor.
11 May it please the Court.

12 CROSS EXAMINATION

13 BY MR. DEJONG:

14 Q. Ms. Honeycutt, at this point in time you
15 were working at Wendy's in Easley?

16 A. Yes, sir.

17 Q. And eleven o'clock was your time to go to
18 work?

19 A. It was either eleven or eleven thirty. I
20 believe that it was eleven. I know that I put
21 in my statement eleven o'clock but -- I put
22 eleven.

23 Q. Let's go right to Sunday when Mr. Morris
24 and Ms. Phillips brought Child home. Brandon
25 wasn't there, correct?

1 A. That's correct.

2 Q. And do you recall what time that they
3 would have brought Child back?

4 A. It wasn't dark but it was about to get
5 dark.

6 Q. Would 7:30 or 8:00 be accurate, or would
7 it have been earlier than that?

8 A. That time of year, I'm not sure.

9 Q. Okay. But you do remember that on March
10 16th, 2008, when he came home that it wasn't
11 dark yet?

12 A. Yes, sir.

13 Q. Now, I am not trying to be funny or
14 anything else but you are Child's mother?

15 A. Yes, sir.

16 Q. When Child come home, did you notice a
17 runny nose?

18 A. I did.

19 Q. Was he coughing at all?

20 A. He was not coughing.

21 Q. Had he had any respiratory illnesses
22 recently?

23 A. Not that I am aware of.

24 Q. He had an ear infection, I think?

25 A. He did.

1 Q. All right. And that was treated with
2 Amoxicillin?

3 A. Yes, sir.

4 Q. How long did -- well, let me ask you this.
5 When Child came into the house on Sunday
6 evening, March the 16th, was he awake?

7 A. (Affirmative nod), he was.

8 Q. Did he appear to be alert?

9 A. He seemed perfectly normal.

10 Q. Then how long did Laura, Jamie and Ms.
11 Phillips stay, as you recall?

12 A. Not very long.

13 Q. Were they there when Brandon came home?

14 A. They were pulling out of the driveway as
15 he pulled in.

16 Q. So as I recall your testimony, Laura and
17 Ms. Phillips came in first; is that right?

18 A. Yes, sir.

19 Q. Then Jamie brought in Child ?

20 A. Yes, sir.

21 Q. When he brought in Child , was he put on
22 the floor or what was going on with Child at
23 that time?

24 A. He sat him on the couch inbetween me and
25 Laura.

1 Q. Was he sitting up?

2 A. He was.

3 Q. On his own steam?

4 A. He was.

5 Q. While they were there, did he get off of
6 the couch?

7 A. No, he sit up on the couch.

8 Q. And I wasn't quite clear, but you went
9 back to change the sheets on the crib?

10 A. Yes. I had washed them and I hadn't put
11 them back on the bed.

12 Q. Who went back in the room? Did you go by
13 yourself?

14 A. It was me and Jamie.

15 Q. Okay. When you came back out of that
16 bedroom, what was Child doing at that point
17 in time?

18 A. Playing with Laura.

19 Q. Was he awake?

20 A. He was.

21 Q. Let me ask you, was the television on?

22 A. I can't really remember. I believe that
23 it might have been.

24 Q. Now, did you take Child and put him in
25 his crib before Jamie and Laura and Ms.

1 Phillips leave, or after they live?

2 A. Before. Actually Jamie is the one that
3 sat him in the crib.

4 Q. After you and Jamie changed the sheets on
5 the crib, is that when Jamie sat down in front
6 of Child ?

7 A. It was before, not after.

8 Q. Before. All right. Other than indicating
9 that he thought that he was catching a cold,
10 was anything else shared with you?

11 A. No, sir.

12 Q. And did you see anything other -- to
13 indicate that he was catching a cold?

14 A. That's all that it looked like to me.

15 Q. Now, you put him down, I guess shall we
16 say, to go to sleep at what time?

17 A. I am not really sure.

18 Q. Well, when you put him down to go to sleep
19 was he still -- did you carry him to the crib
20 asleep or was he awake?

21 A. He was awake.

22 Q. Did he seem to be alert?

23 A. (Affirmative nod), he seemed fine. He
24 seemed a little sleepy.

25 Q. Let me back up a little bit. At some

1 point in time after Brandon came home, did he
2 start crying or was he crying?

3 A. He actually was crying when Brandon came
4 in the door.

5 Q. Was he crying when Jamie left?

6 A. He was.

7 Q. So is he in the crib when Brandon comes
8 home?

9 A. He was.

10 Q. Who goes back to the crib to get him?

11 A. Brandon.

12 Q. Are you in the living room when Brandon
13 brings Child out?

14 A. I was sitting on the couch feeding Ava her
15 bottle, because she wouldn't take it all at
16 one time.

17 Q. Other than Child crying, did you notice
18 anything out of the ordinary with him?

19 A. No, just a runny nose and seemed a little
20 congested.

21 Q. When Brandon put him down on the floor, as
22 I understood, you said that he was kinda
23 squatting down?

24 A. He was.

25 Q. He wasn't stumbling?

1 A. No.

2 Q. Throwing a temper tantrum?

3 A. In the process, yes.

4 Q. I believe that you said that wasn't
5 unusual for him, when he was throwing a temper
6 tantrum, that he would kind squat or sit down.

7 A. It was not unusual.

8 Q. Before you and Brandon go to bed, after
9 having put Child down, how many times did you
10 check on him?

11 A. Before I went to bed?

12 Q. (Affirmative nod).

13 A. Twice.

14 Q. Twice?

15 A. (Affirmative nod).

16 Q. At that point in time, those two times,
17 did you notice anything out of the ordinary
18 about Child ?

19 A. I did not.

20 Q. Through the night, you got up, I believe
21 -- well, I don't know ---

22 A. Three or four times, (affirmative nod).

23 Q. Three or four times?

24 A. (Affirmative nod).

25 Q. That was mostly to check on Ava, I gather?

1 A. She would wake me up every two or three
2 hours.

3 Q. Now, every time that Ava woke you up,
4 would you go check on Child ?

5 A. I did.

6 Q. When you checked on Child , did you go
7 into his room?

8 A. I would. The way that his crib was set --
9 the door was right here and all you had to do
10 was step in the doorway and there was his
11 crib.

12 Q. When you got -- well, this was in March;
13 right?

14 A. Yes.

15 Q. It was still chilly outside?

16 A. Yes.

17 Q. Did he need -- was he covered?

18 A. Yes, he had the covers on.

19 Q. Each time that you went in?

20 A. The first time I checked on him,
21 (affirmative nod).

22 Q. How about the second time?

23 A. No.

24 Q. The third time?

25 A. No.

1 Q. When you went in to change him at eight
2 o'clock, were the covers moved?

3 A. It looked like they were moved like closer
4 to him, like maybe he had tried to snuggle
5 into the covers.

6 Q. So Child was twenty-one months on March
7 16th, twenty-one or twenty-two months on March
8 16th of 2008?

9 A. I believe that the was actually twenty-two
10 months.

11 Q. So, we won't quibble. Okay?

12 A. Okay.

13 Q. When you went in to change Child -- if I
14 may ask, did you use cloth diapers or ---

15 A. No. Disposable diapers.

16 Q. Like Pampers or -- something like that?

17 A. Yeah.

18 Q. Child was twenty-two months, so you'd
19 still have to lift him to get a diaper under
20 him, right?

21 A. I believe so, but not very much. I kind
22 slid it up under him.

23 Q. Did you put him on his back to change the
24 diaper or was he already on his back?

25 A. He was already on his back.

1 Q. So when you put him to sleep, was he on
2 his stomach or on his back?

3 A. He was on his back and later turned on his
4 side.

5 Q. He turned on his side?

6 A. He did.

7 Q. Was that one of the three checks or was
8 that at eight o'clock in the morning?

9 A. That was maybe the third time that I
10 checked on him.

11 Q. So -- but nonetheless, when you changed
12 his diaper, was the diaper soiled?

13 A. It had just a little bit of pee in it. It
14 wasn't like overly wet.

15 Q. Did that cause you any alarm?

16 A. No, it didn't.

17 Q. When you had to lift him, albeit a little
18 bit, was his body rigid?

19 A. It was warm.

20 Q. But when you lifted it up, did his little
21 rear end come up and back stay straight and
22 all that?

23 A. It was just normal-like.

24 Q. Normal-like?

25 A. Yes.

1 Q. The point of that is, you didn't notice
2 any limpness or anything else different about
3 his body?

4 A. I did not.

5 Q. And at eight o'clock you found nothing
6 that caused you any alarm?

7 A. I did not.

8 Q. You changed his diaper -- it's been a
9 while since I've changed one. How long does
10 it take to change a diaper?

11 A. Maybe two minutes.

12 Q. Did his breathing seem to be normal during
13 that period of time?

14 A. It did.

15 Q. You didn't notice any shallowness or
16 anything like that?

17 A. Not at that time.

18 Q. We're talking about at eight o'clock,
19 ma'am?

20 A. No, I did not.

21 Q. So you then go back to bed at eight
22 o'clock?

23 A. I did.

24 Q. You would have been up three or four, five
25 times during the night, counting the eight

1 o'clock check?

2 A. Yes.

3 Q. And you had to be at work between 11:00
4 and 11:30?

5 A. Yes.

6 Q. So it is some time after the eight o'clock
7 diaper change, sometime shortly after eleven
8 o'clock that you go check on Child again?

9 A. Yes.

10 Q. Now, at that time -- let's back up a
11 little bit. Did you have any house guests
12 during the night of March 16th and Monday, the
13 17th?

14 A. We had someone come for maybe five
15 minutes.

16 Q. Did they spend the night?

17 A. They did not.

18 Q. So when the 911 call was made, it was only
19 you, Brandon and the two children in the
20 house?

21 A. Yes, sir.

22 Q. I believe that you've heard the 911 tape;
23 is that correct?

24 A. Yes.

25 Q. Now, basically on your end you hear two

1 voices, one of which is you?

2 A. Yes.

3 Q. Is the other one Brandon?

4 A. I believe so, because we were the only
5 ones there.

6 Q. I'm sorry but I've got to back up here a
7 little bit. When Jamie was sitting down in
8 front of Child on the night of the 16th, the
9 evening of the 16th I should say, did he
10 suggest to you that Child probably needed to
11 go to the doctor and get checked?

12 A. He did.

13 Q. Did he give you the Medicaid card?

14 A. He did.

15 Q. As far as taking Child to his doctor,
16 were you the primary person that took him to
17 the doctor?

18 A. Usually I was.

19 Q. So at eleven o'clock, that's the first
20 time that you ever noticed anything was wrong?

21 A. Yes.

22 Q. Then you called 911?

23 A. I did.

24 Q. Who was doing the CPR?

25 A. Brandon.

1 Q. Now, were y'all on a cell phone or a land
2 line phone or ---

3 A. A land line phone.

4 Q. So at some point in time Brandon is on the
5 phone, he is holding the phone and doing CPR?

6 A. He is, holding it kind of with his
7 shoulder.

8 Q. Now, when EMS gets there, they leave and
9 Brandon's sister ---

10 A. (Affirmative nod), Kayla.

11 Q. Kayla. --- comes over.

12 A. (Affirmative nod).

13 Q. Who is actually packing a bag, you or
14 Kayla?

15 A. It was kinda of a combination of me and
16 Brandon.

17 Q. Of you and what?

18 A. Me and Brandon. We were putting in
19 different stuff.

20 Q. Not really Kayla?

21 A. No, not really Kayla but -- (pause).

22 Q. Then you go to Easley Baptist?

23 A. Yes, sir.

24 Q. While at Easley Baptist, you talked to
25 Rita Burgess.

1 A. Why did I? What was the question?

2 Q. While at Easley Baptist, you talked to

3 Rita Burgess?

4 A. I did.

5 Q. Now, did you know at that point in time

6 that your child was going to be airlifted to

7 Greenville?

8 A. I did.

9 Q. At that point in time, you're at Easley

10 Baptist, so you've got a pretty good start on

11 getting to Greenville Memorial. Right?

12 A. Yes, sir.

13 Q. Ms. Burgess asked you to go back to

14 Pickens to sign a consent?

15 A. Yes, sir.

16 Q. You didn't tell her to go jump off a

17 cliff, that your child was being airlifted to

18 Greenville Memorial Hospital and you were

19 going to the hospital to see your child?

20 A. I wanted to do what would help, and I had

21 nothing to hide.

22 Q. I understand that. But your child was

23 also very, very ill at that point in time.

24 You come back to Pickens to sign a consent

25 to search rather than going to Greenville

1 Memorial?

2 A. I did.

3 Q. Your relationship with Brandon -- well,
4 let me ask you this, are you and Brandon still
5 in a relationship?

6 A. We are.

7 Q. Okay. Is he jealous?

8 A. He's not.

9 Q. Do you recall on one occasion sharing with
10 Jamie that Brandon had told you that he would
11 take care of one child, his, but not two?

12 A. I do not.

13 Q. When you went to the hospital, Greenville
14 Memorial, was Jamie there also?

15 A. Right.

16 Q. Did Jamie stay, to your knowledge, all the
17 time?

18 A. He did. He didn't have a vehicle at the
19 time, so even if he had wanted to go anywhere
20 he couldn't have gone unless he caught a ride.

21 Q. But you recall that he said that he didn't
22 want to go anyway?

23 A. He didn't.

24 MR. DEJONG: Thank you.

25 THE COURT: Mr. O'Connell.

1 CROSS EXAMINATION

2 BY MR. O'CONNELL:

3 Q. Let me ask you this, were you on the cell
4 phone at any time during the 911 call?

5 A. I was not. We did not have a cell phone
6 at that time.

7 Q. You heard Mr. Roper on the stand, did you
8 not?

9 A. I did.

10 Q. He said that he flushed medicine down the
11 toilet, is that what he did?

12 A. That is not what he said, sir. He said
13 that if he had any left over, that that is
14 what he would do.

15 Q. So he used all the medication?

16 A. He did.

17 Q. All twenty of them?

18 A. He did. He used that, to the best of my
19 knowledge.

20 Q. And he used twenty-three of the Lortab?

21 A. To the best of my knowledge.

22 Q. So he took about sixty pills in a ---

23 A. Sir, he was hurt very bad in that
24 incident. He was instructed to take both
25 medication.

1 Q. But he testified that he did ---

2 A. I can't hear you.

3 Q. He testified that he went to a methadone
4 clinic?

5 A. That was a year and a half after the
6 incident.

7 Q. And methadone is a substitute for ---

8 A. Medicine. After that happened to Child
9 he developed a problem and he went there for
10 help. Actually that is personal medical
11 information that is not supposed to be
12 released.

13 Q. So he was taking methadone for taking
14 medicine?

15 A. Sir, when he was on the methadone he had
16 to go every single day to get treatment.

17 Q. Sir, did my client -- excuse me. When my
18 client was at your house, did Jamie go into
19 the child's bedroom?

20 A. Me and Jamie did.

21 Q. Did my client go in the bedroom?

22 A. No, sir, she did not.

23 Q. How big was the room?

24 A. I don't know, sir, by measurement. It was
25 a small room.

1 Q. So you could stand in the door and see in
2 the crib?

3 A. You could. It was probably three feet
4 from the door this way.

5 Q. When you would go to check on the child,
6 you would just look in, or walk in the room,
7 walk out?

8 A. Pretty much.

9 Q. You didn't check his diaper, to see if he
10 had a wet diaper?

11 A. Sometimes I would.

12 Q. When did you change Child 's diaper and
13 put on his bed clothes?

14 A. I did that after Brandon had held him, and
15 handed him to me.

16 Q. So you put him back in the crib and he had
17 ---

18 A. I changed his diaper -- well, actually the
19 diaper was dry when I put him in the crib.

20 Q. And all he had on was a diaper, right?

21 A. When I put him in the crib.

22 Q. During the night, all you did was poke
23 your head around and he was sleeping?

24 A. Yeah.

25 Q. How was he sleeping?

1 A. I could hear him, sounded like he had a
2 cold.

3 Q. He was breathing okay?

4 A. Yes, sir.

5 Q. Then at eight o'clock in the morning you
6 changed his diaper again?

7 A. Yes.

8 Q. How was his breathing at that time?

9 A. It was normal.

10 Q. So you then get up about ten o'clock?

11 A. Around ten o'clock.

12 Q. When you were putting makeup on or getting
13 ready, did you change Ava first or Child
14 first?

15 A. I changed Ava first.

16 Q. You made her bottle?

17 A. Yes, then I did my hair, put my work
18 clothes on. Then I went to the kitchen, made
19 me a sandwich and sat on the couch and ate it.
20 Then I went to go check on Child -- actually
21 then I went to the bedroom to get my
22 pocketbook and to tell Brandon bye, and -- I
23 was actually going in there to change his
24 diaper already before I was asked to, but
25 Brandon asked me to change his diaper. I also

1 was going to tell him that I loved him and
2 goodbye, before I went to work.

3 Q. So at no time were you worried about your
4 child?

5 A. No, sir.

6 Q. And one of the things you said was that
7 the child was on his side sometime during the
8 night?

9 A. Yes, sir, earlier in the morning.

10 Q. He could turn over on this side?

11 A. Yes, sir.

12 Q. And, again, the child was -- correct me,
13 but Brandon Roper started CPR while the child
14 was in the crib?

15 A. He started to do CPR in the crib but
16 realized it would not work that way, and
17 that's when he put him on the floor.

18 Q. The child's head was on a pillow?

19 A. Yes, it was.

20 Q. And that's how vomit got on the pillow?

21 A. Yes.

22 Q. What did you do with the pillow?

23 A. I left it there.

24 Q. You changed his diaper at about eight
25 o'clock.

1 A. I checked his diaper and it was dry.

2 Q. You waited another twelve hours to change
3 it?

4 A. Sir?

5 Q. (No verbal response).

6 A. I sometimes did have to change his diaper
7 in the middle of the night. A lot of time he
8 would wake up. But that night he was sick,
9 sounded like he had a cold and I didn't want
10 to wake him up in the middle of the night.

11 Q. At some time in the middle of the night
12 when you checked on him, did you pull the
13 blankets up over him?

14 A. I did. He'd kicked the blankets off after
15 maybe the first time I'd checked on him.

16 Q. So you'd pull them back on him?

17 A. He had kicked it to the side. It wasn't
18 far -- you know, it wasn't like he had kicked
19 it far away from him or anything. It was just
20 kicked off.

21 Q. You would do the things that a mother
22 would do to check on a child?

23 A. Yes, sir.

24 MR. O'CONNELL: That's all the
25 questions that I have.

1 THE COURT: Further direct examina-
2 tion?

3 MR. HARBIN: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. HARBIN:

6 Q. You were asked specifically about waking
7 up after the alarm clock at ten o'clock and
8 changing Ava but not changing Child . Was it
9 your intention to allow him to sleep until you
10 were ready to go to work?

11 A. It was.

12 Q. Okay. Did you change Child as often as
13 you do Ava?

14 A. No, because she was two months old and she
15 went every time that she had a bottle.

16 Q. And Mr. Dejong, and perhaps Mr. Harbin,
17 asked you about Brandon.

18 A. Yes.

19 Q. And they asked Brandon directly had he
20 ever gone to a methadone clinic. I believe
21 that you might have started to explain that.

22 A. (Affirmative nod).

23 Q. Brandon developed a substance abuse
24 problem after Child ?

25 A. He did.

1 Q. Then he went to a methadone clinic to get
2 clean?

3 A. He did.

4 Q. Did he?

5 A. He did.

6 MR. HARBIN: No further questions.

7 SOLICITOR RICHARDSON: Nothing
8 further.

9 THE COURT: Thank you, Ms.
10 Honeycutt.

11 (WITNESS STEPS DOWN)

12 THE COURT: All right, Ladies and
13 Gentlemen, I am going to ask you to go to the
14 jury room briefly. Don't talk about the case.
15 I will give you further instructions in just a
16 few minutes. Thank you.

17 (JURY OUT @ 5:37 P.M.)

18 MR. HARBIN: For the record, we
19 rest.

20 THE COURT: State have any reply
21 witnesses?

22 SOLICITOR RICHARDSON: No, sir.

23 MR. O'CONNELL: Your Honor, my
24 client and I discussed the right to rebut the
25 statement made by Mr. Roper. I would like to

1 have one other issue. In your charge on
2 homicide by child abuse, second page of your
3 charge, first paragraph, that entire sentence
4 -- you have "characterized by a deliberate act
5 culminating in death."

6 THE COURT: Right.

7 SOLICITOR RICHARDSON: I would ask
8 that "inaction" or "omission" be included in
9 there also. It is also the State's position
10 that there was an omission or a failure to
11 act.

12 THE COURT: I think that's an
13 excellent point. I will be glad to do that.
14 I will say a "deliberate failure to act." I
15 don't think "omission" is the correct word in
16 the source.

17 Anything further?

18 MR. HARBIN: I want to renew my
19 Motion for a directed verdict.

20 THE COURT: Yes, sir.

21 MR. DEJONG: The same.

22 MR. O'CONNELL: And I believe there
23 were two pages -- substantial circumstantial
24 evidence.

25 THE COURT: Okay. Yes, sir.

1 MR. O'CONNELL: Am I incorrect?

2 THE COURT: Yes, sir. No. Your
3 not incorrect.

4 MR. O'CONNELL: So I will renew
5 mine also, Your Honor. The State has not
6 proven by substantial circumstantial evidence
7 that anybody did anything in this case. Thank
8 you.

9 MR. DEJONG: And I would renew my
10 Motion for directed verdict on the same
11 arguments previously made.

12 THE COURT: All right. Thank you,
13 gentlemen, for your Motions. Again, viewing
14 the evidence in the light most favorable to
15 the State and weighing all inference -- excuse
16 me -- considering all inferences in the
17 State's favor and without weighing the
18 credibility of the evidence, I find that there
19 is enough in the record to -- whether the jury
20 believes it or not is up to them -- whether it
21 intends to prove guilt by all three
22 defendants, or that guilt could be fairly and
23 likely deduced. I respectfully deny the
24 Motions for directed verdicts.

25 Okay. How long do you think you'll

1 decision and for a verdict.

2 At this time, we will have the
3 closing arguments from the defense. Mr.
4 DeJong.

5 MR. DEJONG: Thank you, Your Honor,
6 may it please the Court, Ladies and Gentlemen,
7 Mr. Foreman.

8 At some point on this 911 tape you
9 hear Latasha Honeycutt said, "Is he alive?!"
10 What is Brandon Roper's response? "No! Shut
11 up!"

12 I find that to be a vital and unusual
13 comments based on the circumstances --what I
14 would like to do initially is talk a little
15 bit about the testimony of the doctor and the
16 other doctor, the Ph.D. doctor.

17 Dr. Brewer, who testified for the
18 defense, shared with you that in his expert
19 opinion that the peak time for Oxycodone is
20 four hours. Dr. Loree (phonetic) with A.I.P.
21 Lab and Dr. Ward, the pathologist, opined that
22 this was somehow a overdose. I would suggest
23 to that you that there is no other testimony
24 to support those opinions by those by two
25 individuals. Hopefully I will come back to

1 that.

2 Dr. Brewer testified that there were
3 a lot of omissions in this case. Omissions --
4 that had those omissions not have been
5 omissions or had they done, for want of a
6 better term, what they should have done or
7 what they were supposed to do, your job today
8 may be easier.

9 Now, Dr. Boyd of course has opined in
10 this case that he found that -- he is a
11 certified toxicologist with A.I.P. Labs in
12 this case. When asked about the one report
13 where it showed hydromorphone negative, if you
14 will recall, -- you take it as you recall it,
15 but as I recall, it was like pulling hen's
16 teeth to get him to say that it was negative
17 for hydrocodone and that it was negative for
18 that other word that I never was able to get
19 the doctor to pronounce, but he said that we
20 could called is PPA (sic) but there was no --
21 that even though it was negative, there was no
22 testing that was done as to the metabolites in
23 this case; not in the urine, but in the blood.

24 And I believe that he shared with you
25 -- (coughing), excuse me -- I believe that in

1 the test for hydrocodone and the test for
2 hydromorphone was done at the same time. It's
3 interesting to note that the people who
4 actually did the testing are not here. I am
5 not making a issue with that but what I am
6 taking an issue with is that the first time --
7 number one, he did not want to admit that
8 those two items showed negative. When he
9 finally did admit if it was not negative then
10 that was a mistake.

11 That raises a point in my mind that I
12 would ask you to consider. If that mistake
13 was made, were there other mistakes that were
14 made.

15 Now, also please consider that Dr.
16 Ward, pathologist, based in large part,
17 although he was not the pathologist that did
18 the autopsy, he was reporting for Dr.
19 Christensen's autopsy report. As far as
20 hydrocodone, those items, they did not do any
21 independent testing in this case. "They"
22 meaning the medical examiner's office in
23 Greenville. They did no independent testing.

24 What they do is they take A.I.P.'s
25 word -- which I submit to you, and there is no

1 other way to say it but that it is sloppy work
2 and based the opinion on the medical
3 examiner's work. It was a very unfortunate
4 place to start.

5 Now, obviously there has been a lot
6 of talk about ingestion in this case, whether
7 the child in this case had hydrocodone in his
8 system. I don't think that he had is
9 questioned.

10 Where this hydrocodone came from, I
11 think, is the question.

12 Testimony has been presented from the
13 witness stand that -- I submit to you that
14 Donna Phillips is not the only person that we
15 have that had a prescription for Oxycodone.
16 That's why I asked her about the timeline.

17 I ask you Monday morning, or Monday
18 afternoon, I think, to consider the timeline
19 in this case. The timeline basically
20 considered -- the timeline is, as I recall the
21 testimony, as if I misstate the testimony,
22 Ladies and Gentlemen, I do not do so
23 intentionally. You take the testimony as you
24 heard it from the witness stand. The same
25 thing on the law. If I misquote the law, you

1 take the law not from me or from any of the
2 other lawyers in this room because His Honor
3 will charge you on the law that you have to
4 follow.

5 But basically the timeline that you
6 have to follow is from March 14th, 2008 around
7 1:00 or 1:30 when Jamie Morris and his mother
8 go to -- I think it's Court in
9 Pickens and pick up this child.

10 From that point on, Child is
11 with his grandmother, his father, I guess his
12 Aunt Laura when his Aunt Laura get here.

13 Not too much but there are some
14 things that we have to consider that weekend.
15 But taking into consideration, Ladies and
16 Gentlemen, I would suggest to you that even if
17 there was a dosing -- if there were a dosing,
18 within four hours of any dose, you would have
19 started seeing the effects of hydrocodone.
20 This child played on Saturday, Saturday
21 afternoon, slept Saturday night, woke up
22 Sunday morning watching cartoons with his
23 aunt, played with PlayDoh, I believe that he
24 went outside, played -- woke up at, I believe,
25 7:30 in the morning. This was not a child

1 that had been given hydrocodone sometime after
2 midnight on March the 15th or the early
3 morning of March 16th. He ate, he played, he
4 went over to -- I believe that it was Mr.
5 Morris' sister's house, played, played
6 outside, did various and sundry things. There
7 was no suggestion in any of that testimony
8 that Child was lethargic, that he wanted to
9 sleep or that if he took a nap that he was
10 hard to awaken.

11 It is a microcosm of time. They are
12 trying to fit their allegations into this
13 microcosm of time.

14 We are not, in one sense, Ladies and
15 Gentlemen, dealing with a microcosm of time.
16 We are in terms of -- I guess that we could
17 say, in terms of this time line, but we can
18 not divorce the child from the timeline. We
19 have a twenty-two month old child that would
20 have been -- twenty-one or twenty-two month
21 old children, I would submit to you, get
22 colds, they get runny noses, they cough, they
23 get ear infections, they get respiratory
24 infections. So I ask you not to take the
25 child away from the child because the child is

1 a child. This child had normal childhood
2 issues just like every other child in the
3 world may have time to time have. So you
4 can't necessarily say, 'Okay, now, we are
5 looking at this period of time.'

6 So they go to the sister's house, Mr.
7 Morris' sister's house in the afternoon of the
8 15th. He does become cranky. I think that he
9 plays that day, that he played harder, I
10 believe that he played outside like any
11 twenty-one month old child would do he got
12 tired.

13 From the sister's house, a brief stop
14 was made at Jamie Morris' residence where he
15 lived with his mother. As I recall the
16 testimony, it was a brief stop, that Mr.
17 Morris stayed in the car with Child as Ms.
18 Phillips and young Laura went in and got a
19 couple of things. I think a teddy bear, some
20 pajamas. Then they went on to Child's mom's
21 house, Latasha Honeycutt's house.

22 Then it is confirmed that he was
23 returned on the evening of March 16th, 2008.
24 I think that is basically clarified that it
25 was still daylight. I will submit to you that

1 on March 19th (sic), close to 7:30, that it
2 was dark, getting dark.

3 There was a little period of time
4 when they got to Latasha Honeycutt's house
5 that Child awoke, but I recall no testimony
6 that he was difficult. Jamie Morris gets him
7 out of the car seat and takes him into the
8 Honeycutt home.

9 At that point in time, Natasha
10 Honeycutt said that he was pitching a fit.
11 There seemed to be some question about what
12 pitching a fit meant. But, anyway, by 7:30 on
13 March the 16th, the child was returned home,
14 to the mother and the boyfriend. At that time
15 there was no indication that there was
16 anything wrong other than a runny nose and a
17 cough.

18 Now, again, I submit to you that it
19 is normal for children to have runny noses, to
20 have colds.

21 Mr. Morris said that he had a concern
22 but that his concern was on the child having a
23 runny nose. If you will remember, and I can't
24 remember who the pediatric was that testified
25 that -- I am not sure. I know that he'd

1 treated him for ear infections. But you take
2 it as you heard it. But, nonetheless, Mr.
3 Morris is concerned about the child. He gives
4 Ms. Honeycutt, by her testimony, the Medicaid
5 card so that she can take the child to a
6 doctor, and asked if she would take him to the
7 doctor at some point on March 17th, 2008.

8 Somewhere, I suggest to you, Ladies
9 and Gentlemen, between 7:30 and 8:00 on March
10 the 16th, 2008, Jamie Morris and Donna
11 Phillips left. They were not longer there.
12 Child was returned to his mother.

13 Now, from 7:30 at night to roughly
14 11:00 or 11:15 in the morning, obviously this
15 child, as I understand it, was under the
16 exclusive care of his mother and the mother's
17 boyfriend. They did have a guest over there
18 for a short period of time but that there was
19 nobody else in the house during that period of
20 time.

21 When Mr. Roper, the boyfriend, gets
22 home, I believe that Child was in the crib.
23 He was crying. I believe at that point in
24 time -- Mr. Roper testified that he'd held his
25 arms out, wanting to be picked up. Now,

1 Ladies and Gentlemen, we are getting into the
2 range around 8:30 or 9:00 o'clock period
3 sometime that night. The child was still not
4 exhibiting appropriate motor skills, his
5 ability to respond, recognized Mr. Roper, held
6 his hands out suggesting that there was no
7 problem with his motor skills.

8 Keep in mind, that hydrocodone
9 effects have a peak of four hours.

10 At that time, Mr. Roper gets him out
11 of the crib, consoles him, he stops crying for
12 a little bit. Mr. Roper decides to put him on
13 the floor and there was testimony of Child
14 stumbling. Mr. Roper said, 'No, he didn't
15 stumble. He started crying again and sank to
16 the floor but that was normal for him to do
17 when he was going to throw a temper tantrum.'
18 According to the mother, that's what he was
19 doing at that point in time.

20 Somewhere, and I am not sure when but
21 just to put it on my time line, I think that
22 it was around 9:00 or 9:30, on March 16th, Ms.
23 Honeycutt and/or Mr. Roper took the child back
24 to the crib and put him to bed.

25 Sometime in that timeline, Ms. Honey-

1 cutt or -- or Ms. HOneycutt asked Mr. Roper to
2 fix the child a sippy cup. Mr. Roper gets the
3 sippy cup, the child take a couple of sips
4 from that sippy cup -- and it's my
5 understanding that at the time the child was
6 holding the cup while he was taking a drink,
7 took sips out of the cup and then the child,
8 by his own motion, put the cup down, set the
9 cup aside. Again, I ask you to remember that
10 the peak time for hydrocodone is four hours.

11 The child ultimately is left in the
12 room, in the crib. Mr. Roper and Ms.
13 Honeycutt stepped out to smoke a cigarette,
14 after which Ms. Honeycutt comes back in,
15 checks on Child and Ava, and there was
16 nothing out of the ordinary going on with
17 them.

18 They watch television, she checks on
19 the children, they go to bed. Throughout the
20 night, I believe three times, she gets up and
21 checks on the child. We didn't get a real
22 good picture of what she did when she checked
23 on the child but at eight o'clock and -- and
24 this is where the two doctors say that they
25 believe, in their opinion, that this child was

1 compromised. Ms. Honeycutt says that she
2 changed the child's diaper. Ms. Honeycutt
3 didn't notice anything at that point in time
4 about Child at that point in time, Child's
5 breathing, nothing. She was asked did she
6 have to lift his bottom up to get the clean
7 diaper up under him? 'Well, yes, you have to
8 do that.'

9 'Did you notice any limpness or anything
10 at that time?'

11 'No, everything was normal. He was warm.'

12 Ms. Honeycutt then goes back to bed. I
13 imagine that she was tired. She'd been up
14 three to four nights in the night between
15 Ava and Child. There is nothing at that
16 point that indicated to her that something was
17 wrong.

18 I would submit to you that Ms.
19 Honeycutt was -- as I recall there was
20 testimony that the child had, at some point
21 in the night, had turned over on his side.
22 I believe from his stomach to his side, so
23 certainly this child was still moving around
24 in the night and the testimony is that there
25 was nothing wrong with this child at eight

1 o'clock in the morning -- by the mother's
2 testimony. And I submit to you that if
3 anybody would now, that the mother would know.

4 She is tired, she goes back to bed.
5 She has to get to work by eleven o'clock in
6 the morning -- sets the alarm to get up at ten
7 o'clock, she has to be at work by eleven
8 o'clock.

9 That is when, after feeding the other
10 child, having gotten ready for work, getting
11 her pocketbook, putting her makeup on, she
12 goes back in and checks on Child . . . That's
13 when she finds Child unresponsive.

14 Now, I ask that you remember the peak
15 time for hydrocodone is four hours.

16 911 is called. The call to 911 goes
17 out at 11:15 on Monday morning, March the
18 17th. The EMS workers go in, finds this child
19 by itself laying in the room where there's the
20 crib, on the floor. The mother is not there,
21 the boyfriend is not there. The child is
22 found on the floor. They are not there.

23 EMS workers, in their statement, said
24 when they arrived that the mother was on the
25 front porch. With the child? No. The child

1 is in the bedroom, laying on the floor by
2 himself.

3 'Did the mother follow you back?

4 No, she did not.' That was their
5 testimony.

6 'Did you see anybody else in the
7 house?

8 There was a male in the house.

9 Where was he?

10 He was off to the left.'

11 Isn't that odd, that this child is
12 not breathing and he's left lying on the floor
13 by himself?

14 The child then goes in the ambulance.

15 The mother doesn't go with him. He is taken
16 to the hospital.

17 He was comatose by eight o'clock, if
18 not comatose before eight o'clock on March
19 17th. I share with you, Ladies and Gentlemen,
20 that there is no evidence that infers -- that
21 I have heard, with the report of anyone, there
22 is no evidence at all that this child was
23 comatose at eight o'clock on March the 17th.
24 By his own mother's testimony he was not
25 comatose.

1 So there is no evidence to support --
2 (inaudible, walking away from jury) -- the
3 14th, the 15th, the 16th, after which Mr.
4 Morris and Ms. Phillips did not see this
5 child.

6 Now, after coming back up, EMS is now
7 at Court. The child is put in the
8 ambulance. No one asked, as I recall the
9 testimony, to ride with the child in the
10 ambulance. The mother and the boyfriend
11 stayed at Court. I think that Mr.
12 Roper was scurrying about, moving about the
13 house. Keep in mind that law enforcement was
14 not there either before or after EMS got
15 there. Law enforcement did not come until
16 later, but nonetheless the sister comes in,
17 ultimately, and Mr. Roper and Ms. Honeycutt go
18 to Easley Baptist Hospital.

19 The nurse testified about the conduct
20 of the mother. What I find to be equally as
21 fascinating as her conduct is the fact that
22 her child is being airlifted to Greenville
23 Memorial Hospital and somebody said, 'Oh, you
24 need to go back to the house and ...' -- they
25 live in Pickens, they are in Easley, with a

1 good jump start on getting to Greenville

2 Memorial Hospital. They went back to

3 Court in Pickens to sign a consent

4 search? Does that make any sense?

5 The AIP Laboratories did no

6 toxicology for six and a half years but there

7 was no testing done on the vomit, on the

8 pillow, on the pillow slip, no samples taken,

9 nothing. Why weren't samples taken from the

10 scene? Isn't that part of their job? They

11 did not do that.

12 Now, there were a couple of bottled

13 -- three bottles of various types of

14 medication, prescription medication bottles,

15 that were -- and two others that were sent to

16 SLED.

17 Interestingly, two of those bottles

18 were sent to SLED. One was child's flavored

19 Tylenol and the other bottle, the Tussinex

20 bottle was taken from the home of Donna

21 Phillips and, as I understand it were sent to

22 SLED, but wasn't tested. And I am not sure

23 but I think that there was another bottle?

24 I'm not sure. I don't know.

25 I apologize, Your Honor, I'm just

1 looking through my notes here. In looking
2 through my notes, I note that nobody, not Dr.,
3 uh, not Dr., uh, not Dr. Brewer, uh, --
4 (pause). He surmised and conjectured on that
5 but there was no -- now, I am going to wind
6 down.

7 I represent Jamie Morris. His charge
8 is not homicide by child abuse. His charge is
9 a little different than the charges against
10 Ms. Phillips and Ms. Honeycutt. He is charged
11 with aiding and abetting. Number one, I
12 submit, Ladies and Gentlemen, that nothing was
13 given to Child , certainly not by Mr.
14 Jamie Morris while Child was in Jamie's
15 custody.

16 However, if you find that -- and I am
17 not suggesting that you find this, but if you
18 find that he did, then Mr. Morris' charge is
19 aiding and abetting. You take the law as His
20 Honor gives it to you but aiding and abetting
21 is to knowingly help, promote, support the
22 accomplishment of deed.

23 You saw Mr. Morris testify. It is
24 your job to determine the credibility of
25 witnesses, were they forthright with their

1 answers, did they try to evade questions.

2 I would submit to you that Mr. Morris
3 was forthright, that he did not try to evade
4 answers. I would ask you to consider that
5 when determining his credibility in this case.

6 His testimony was that he certainly
7 did not give the child any type of medication.
8 That as far as he knew, nobody else gave him
9 any medication.

10 So even if you find, Ladies and
11 Gentlemen, that somebody gave Child something
12 over the weekend at that house, I suggest to
13 you that for him, under the law, to be guilty
14 of aiding and abetting, that he would have had
15 to have knowledge of that and he did not.

16 Homicide by child abuse is not
17 necessarily giving someone something, it could
18 also be the failure to do something, failure
19 to give medical attention. I would
20 respectfully say in this case that did not
21 happen. Mr. Morris said there was no reason
22 to give this child medicine, that there was
23 nothing of concern other than he had a runny
24 nose and he had a cough. So I would submit to
25 you that there was no knowledge on his part

1 that this child was in need of medicine or
2 that somebody had given him any medication.
3 Without that knowledge, under the law, he had
4 no knowing to support anyone giving him
5 anything.

6 When he returned the child home, he
7 told the mother that the child had a runny
8 nose, that he had some congestion. He gave
9 the mother the child's Medicad card so that if
10 his condition worsened that she could take him
11 to the doctor, but he told you in his
12 testimony that he did not feel that the child
13 was sick, was feverish, that there was nothing
14 to suggest that he should be taken to an E.R.
15 or a doctor while he was in his care. There
16 was no knowingness on Mr. Morris' part.

17 At eight o'clock in the morning of
18 March 17th, there was no indication that Mr.
19 Morris knew about the condition of Child or
20 that he could have done anything at that time.

21 I asked you, Ladies and Gentlemen, on
22 Monday of this week to pay attention
23 throughout the trial of this case. You have
24 done that. I certainly appreciate that on
25 behalf of Mr. Morris.

1 The fact that Mr. Morris testified in
2 this case does not change the burden of proof
3 required by the State. Mr. Morris is entitled
4 to the presumption of innocence. The
5 presumption of innocence is sometime referred
6 to as a cloak of righteousness that is about
7 the shoulders of a defendant who is charged
8 with a criminal offense and that presumption,
9 that cloak, does not leave the defendant after
10 the first witness testifies, the third, the
11 fourth or the fifth, however many, even after
12 the last witness testifies. That cloak of
13 righteousness is indeed placed about the
14 shoulders of Mr. Morris on this charge until
15 you all walk back into that jury room to
16 deliberate. It is not removed until or unless
17 you, the twelve jurors who must agree in this
18 case, find that the State has proven their
19 case against Mr. Morris here beyond a
20 reasonable doubt.

21 There are three defendants in this
22 case. His Honor is going to charge you on
23 that. You must look at each individual and
24 each individual charge as to whether or not
25 the State has prove their case on each charge

1 as to each defendant.

2 They must prove their case beyond a
3 reasonable doubt. A reasonable doubt is a
4 doubt that would make a conscientious person
5 hesitate to act. If there is any thought that
6 Mr. Morris is innocent of these charges, you
7 must give him the benefit of that thought,
8 that doubt, any reasonable doubt, and find him
9 not guilty.

10 I think that if you look at this case
11 as a whole with regard to Mr. Morris, you will
12 say that he is not guilty. I ask that you
13 return a verdict of Not Guilty. Thank you so
14 much for your time.

15 THE COURT: Thank you, Mr. DeJong.
16 Mr. O'Connell.

17 MR. O'CONNELL: I will take up
18 where Mr. DeJong left off. My client, Donna
19 Phillips, did nothing except be a great
20 grandmother. What she did was to take care of
21 her children, her grandson. To show you what
22 a great grandmother she was, her son is there,
23 living in that house. He's not going out,
24 playing around, he's not going out drinking.
25 He's taking care of his son when he's got his

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1 son.

2 The presumption of innocence is --
3 anytime that you have to stop and wonder
4 'hummm?'; that's a presumption of innocence,
5 that's a reasonable doubt. The State must
6 prove their charge beyond a reasonable doubt.

7 Let's go back to the timeline. On
8 Friday afternoon they go and pick up this
9 child, the grandmother and the father pick up
10 the child.

11 They come home, they do what people
12 do, they go to bed. They get up. Child is
13 watching cartoons. No one hasn't given the
14 child any medicine. He hadn't needed any
15 medicine.

16 When did they give him any medicine?
17 They have not shown one person in all of these
18 witnesses who has said or who have even hinted
19 at that my client gave this child medicine,
20 any kind of drugs.

21 They say that there was Tussinex in
22 the house. Well, when you look at the bottle
23 and figure out the amount that's in the
24 bottle, she'd got in back in January, the 4th,
25 of '08, seventy days later there are still

1 about seven days left in the bottle. Normal
2 people keep them and use them. But none of
3 that was used on or given to this child.

4 The child gets up on Saturday
5 morning, plays like a child does. They don't
6 go out -- this was a family unit that was in
7 the house. There is nothing that shows any
8 dosing by my client.

9 Then we come to Sunday morning. The
10 child has been up watching TV, the child is
11 interacting with the man who came and they
12 played with the PlayDoh -- whatever his name
13 was. He went outside and was playing on the
14 little tractor, a little John Deere tractor.
15 If a dosing had been given like the prosecutor
16 is saying, that child could not have been up,
17 that child could not have been playing and
18 interacting -- that child would not have been
19 moving around.

20 They went to the sister's in Fountain
21 Inn, the child played hard all day. They come
22 home, the child falls asleep in the car, they
23 stop at the father's house to get his pajamas
24 and a little stuffed bear or some toy, and
25 then they take him to the mother's house.

1 They say that they had the child home no later
2 than 7:30 Sunday night.

3 What happens then? The mother and
4 the boyfriend says that the child is crying
5 when he gets home, but my client is not there,
6 she is out of the picture. What happens then
7 is what I think is the main thing of what we
8 need to focus on in this case.

9 They say that a man come to the
10 house, talked about looking at some movies,
11 came in, saw the baby was there.

12 You heard from their main witnesses
13 that the child would have had no motor skills
14 whatsoever if a dosing had been given like
15 they say that it was. It takes motor skills
16 to kick off a blanket; two, the mother said
17 that the child had rolled over on his side
18 once when she checked on him -- and the doctor
19 said that was motor skills.

20 How could this child have been dosed
21 with anything by my client after the time they
22 returned the child at 7:30, anyway, if the
23 child was acting as a child: breathing, and --
24 -

25 They said that he was tired when they

1 returned him, that he was fussy. You heard by
2 my client's own testimony that the child had
3 been up from about seven o'clock until when
4 they put the child to bed, except for the time
5 that it fell asleep when they were in the car
6 returning from her daughter's in Fountain Inn.
7 The child was tired but otherwise fine. Mr.
8 Roper testified that the child was
9 interactive, raised his arms wanting to be
10 picked up, slumped when he tried to stand him
11 up because he wanted to be picked up, normal
12 child behavior.

13 The mother testified that during the
14 night she went into the child's room, could
15 hear the child breathing. So how could it
16 have been drugged and breathe normally?
17 Wouldn't the child have (making labored
18 breathing/gagging sounds), maybe? I don't
19 know. But I do know that the facts of the
20 case, which have not been disproven by the
21 prosecution, are that -- one, the child was
22 fine when he was returned to the mother; two,
23 that there was no medication given to this
24 child by my client. You know, a twenty-month
25 old, twenty-one month, twenty-two months old,

1 they get cranky if they've been up all day.
2 If I am not mistaken, most little kids take
3 naps every day. So this child was fine when
4 he was taken back to his mother's house.

5 Now, whatever happened at his
6 mother's house, I don't know. I wasn't there.
7 My client wasn't there.

8 But here's the question for all of
9 you: when did the child get the alleged
10 dosing? Not from my client. She never gave
11 him anything. There's no proof of that
12 whatsoever.

13 The second thing is, it has been
14 proven that anything was given to the child,
15 based on what we've heard from the doctors,
16 that child would have been comatose. That
17 child would have been a bag of potatoes -- I
18 believe that I evened asked one doctor would
19 it be fair to say that the would have behaved
20 like a bag of potatoes and he said 'yes.'

21 So this child comes back to their
22 house in good condition, in good health.
23 Guess what? Something happened. We don't
24 know what it was.

25 The mother says that the child

1 behaved just like a regular ole child at that
2 time. So between eight and ten o'clock,
3 something happened.

4 On the 911 call, I heard on the tape
5 and you are going to, hopefully, listen to it
6 again if you need to, "Shut up." I even
7 thought that I heard on the tape "is this
8 happening again?" That's up to you, you can
9 always listen to it.

10 But then he calls the sister to come
11 to the house and they all rush off to the
12 hospital. I asked Mr. Roper on direct what
13 kind of drugs that he was taking. He was
14 taking Lortab, he even said that he either
15 used it up or he flushed it down the toilet.
16 I've been around the block once or twice, and
17 I have sense enough to know that's not likely
18 what happened.

19 Why were this people left at the
20 house when the police weren't there? There a
21 lot of gaps that I would like to understand.

22 I ask that you remember that it has
23 not been proven that my client gave this child
24 any drugs, any kind of medicine. Number two -
25 - nowhere in these facts will you find that my

1 client gave this child any medication.

2 I know you all will go back into the
3 jury room and deliberate. I hope that you
4 haven't make up you minds yet. Go over these
5 facts and you can only determine that my
6 client nothing to give this child any dosing,
7 any kind of medication.

8 One of the doctors has even given a
9 report that the dosing had to occur within six
10 to twelve hours before the death -- and he
11 said, 'Oh, no, no, no, no. I admit him very
12 much that that isn't correct.' O believe that
13 the prosecution cannot say in this case that
14 the experts know ----

15 SOLICITOR RICHARDSON: Your Honor, I
16 object to that. He is telling the jury --
17 improper.

18 THE COURT: Well, ---

19 MR. O'CONNELL: Judge, I apologize
20 if I've done anything wrong, but this is very
21 important to my client.

22 THE COURT: --- the jury will --
23 they heard the evidence. Go ahead.

24 MR. O'CONNELL: You heard the
25 evidence. All I am say is that you're the

1 final arbiters. I hope that you will take the
2 time to go over it and understand that there
3 is no indication or evidence that my client
4 ever dosed this child. If they had dosed the
5 child or given the child anything, if they've
6 even thought anything was wrong with this
7 child, you heard them testify that they
8 wouldn't have given the child anything -- that
9 they would have taken the child to a doctor if
10 he was sick. Children have sniffles, get
11 colds, cough, we all know that children do but
12 my client did not give this child anything.
13 Thank you very much.

14 THE COURT: Thank you, Mr.
15 O'Connell. Mr. Harbin?

16 MR. HARBIN: May it please the
17 court. I want to begin by apologizing for
18 getting a little emotional. I've been
19 involved in this case for some time now, and
20 I've seen the effects the death of her son has
21 had on Ms. HOneycutt. With that said, let me
22 get right to it.

23 Child was brought home that Sunday
24 night with a cold. Nothing more. It is not
25 unreasonable for a mother to not go to the

1 emergency room for a child with a runny nose
2 and congestion. Please keep in mind that
3 while we all know now that the Child was
4 probably suffering the beginnings of a toxic
5 overdose of hydrocodone, the symptoms just so
6 happened to mimic those of a common cold.
7 There was really no way for her to have known
8 any different.

9 I can draw from my own experience as
10 a father, looking back on the numerous times
11 that my children came down with a runny nose
12 or congestion, a cough. In the beginning,
13 like all new parents, we were quick to call
14 the doctor. But after several of the same
15 conversations, you learn pretty quickly,
16 through experience, that these are common
17 symptoms and will resolve in a couple of days.
18 You're advised to watch for further symptoms,
19 for a fever, check their temperature, use
20 Tylenol as needed, make sure that they get
21 lots of sleep and fluids.

22 The Solicitor made a big issue about
23 Latasha's statement about exactly when she got
24 up and when she found Child. They do not
25 want you to focus on the fact that that

1 initial statement was given within an hour, or
2 an hour and a half, of Child being taken to
3 the hospital. You can only imagine the stress
4 that Ms. Honeycutt was under at the time.

5 I think that if you read her written
6 statement, her own statement, and listen to
7 her testimony that you will see that the
8 timeline isn't perfect. She recalled that she
9 set the alarm to go off again at ten, that
10 when it went off that she hit Snooze. When
11 the alarm goes off again, she gets up, goes
12 and gets Ava up and changes her, feeds her --
13 keep in mind that Ava was two months old.
14 Feeding is not necessarily a quick thing.
15 You've got to make the bottle, warm the bottle
16 -- or I believe that she testified that the
17 bottle was already made, but that she had to
18 warm the bottle, then feed, then burp, then
19 perhaps feed and burp again. Then she sits
20 Ava in the swing, gets ready for work. She
21 gets on her clothes, does her hair, does her
22 makeup. Then she checks on Child on her way
23 out the door.

24 I believe that her statement to Rita
25 Burgess was her best attempt to recollect the

1 facts. Whether she is off by fifteen minutes
2 here or there, the important part of the
3 statement is that when she changed Child in
4 the morning that he was breathing, that he
5 appeared to be fine at eight o'clock. That
6 when she came back that she found him
7 unresponsive. Every statement that she has
8 given, she has given that timeline.

9 From the moment that she found him
10 unresponsive, she did what any responsible
11 mother would do.

12 There has been a significant effort
13 to make an issue of the rash on Child's rear
14 end. I think that Dr. Ward is the doctor that
15 pointed out that the pressure lesion, as he
16 called it, was caused by laying still --
17 something that a toddler would do if he was
18 feeling the effects of hydrocodone. If he
19 laid still enough for long enough in a wet
20 diaper, throughout the night, then it is
21 perfectly understandable that lesions might
22 appear. Remember that the doctor pointed out
23 that the skin might have been broken down
24 because the hydrocodone was affecting the
25 body's ability to actively deliver oxygen.

1 That if Child laid still for the better part
2 of the night, until eight o'clock, and then
3 even if after a diaper change for another
4 couple of hours, until ten o'clock, if I were
5 to believe the doctor's explanation of how
6 that rash appears, then that would make sense.

7 Ask yourself if the woman that you
8 heard screaming on that 911 tape is a woman
9 who would have simply left her baby to die?
10 No way.

11 If Child was under the influence of
12 Tussinex when Donna Phillips, or the father,
13 returned the child, Latasha had absolutely no
14 way of knowing that. He would have appeared,
15 by all accounts, sleepy. Throughout the
16 night, he would have been "asleep" and that
17 would not have been unusual for a mother
18 checking on her child who she thought to be
19 tired and sleep. Sleep is, after all,
20 encouraged.

21 The Solicitor will have to argue to
22 you that because Latasha did not see the signs
23 of poison in Child's system that she omitted
24 the act of going to the doctor. They will
25 have to ask you to past the obvious, they will

1 have to ask you not to look at the fact that
2 the child simple appeared to have a cold.

3 Latasha was not told that there was
4 something else going on, i.e., that the
5 grandmother had given the child narcotics.
6 Just as crankiness and irritability can appear
7 normal, thus it certainly was nothing
8 something that the child needed to be rushed
9 to the doctor for.

10 If the child had appeared urgently
11 sick prior to or on Sunday night, why would he
12 have not been taken to the doctor by his
13 father or his grandmother? It may well be
14 that his father or grandmother, or both of
15 them, knew something and didn't want that
16 found out in an E.R. themselves. I don't
17 know.

18 Their statements are self-serving and
19 a little strange. On the one hand, they don't
20 want blame for not taking the child to the
21 doctor; while on the other hand they want
22 credit for having suggested that the child may
23 need medical attention.

24 If only Mrs. Phillips had spoken up.
25 I think that she recognized that Child was

1 beginning to have a bad reaction to the
2 Tussinex that she had given him. Instead of
3 speaking up, she hid that fact. Perhaps had
4 she spoken up, Child would still be with us.

5 I have to imagine, however, that
6 initially Ms. Phillips' intention was only to
7 help Child's congestion. But hiding that
8 fact after the child started showing symptoms,
9 that when it crossed the line.

10 Please keep in mind that some of the
11 symptoms he was having indicated that some-
12 thing was wrong, things out of the ordinary,
13 such as his jaws shaking on the ride over, or
14 his having stopped breathing during the
15 weekend. That was never told to Latasha. She
16 never knew that. They were -- somebody, Ms.
17 Phillips and/or her son, never told her that
18 this happened.

19 I can't tell you but I would suggest
20 that you cannot believe anything that Ms.
21 Phillips testified to. But why would Jamie
22 make up the statement that the child had
23 stopped breathing twice in the night? I
24 honestly don't know if it is true at all, or
25 if it had anything to do with medication, but

1 I think that it does indicate that at least
2 Ms. Phillips knew that something wasn't right.

3 You heard testimony from Latasha's
4 neighbor, Michelle Henry, and I would like to
5 address that. I think it becomes clear from
6 all the testimony that Michelle Henry
7 misinterpreted was Latasha's explanation of
8 Child 's not wanting to be put down. That
9 testimony explains that he would not stand up
10 but that he could not stand up that Sunday
11 night. It also seems clear that Ms. Henry
12 simply misunderstood Latasha's description of
13 "shaking" Child , not understanding that she
14 was recollecting the events of the next
15 morning when she found Child unresponsive.

16 I think it is fair to say that
17 witnesses have said that Latasha is not
18 necessarily the best communicator. Brandon
19 verified Latasha's memory. He was there. He
20 knows.

21 Please take care not to demand from
22 my client what only hindsight can provide.
23 She has replayed in her mind that night, that
24 morning, a thousand times over and wished that
25 she had done something, anything different.

1 But asking that of anyone is not being fair.
2 That would have required her to know what only
3 Ms. Phillips and/or her son knew, that he had
4 been dosed with drugs.

5 I don't exactly know how all the
6 chemistry works, but I've taken prescription
7 cold medicine before and prescription cold
8 medicines contain hydrocodone. I am sure that
9 some of you have had some experience with that
10 as well. It's safe to say that it is an
11 extremely powerful drug. I'm about six feet,
12 one hundred eight pounds and I can remember
13 how strong that medicine was for me. I can
14 only imagine how strong it would be for a
15 small toddler.

16 I imagine that all that we can do --
17 because no one seems to know exactly how the
18 drug works, but there is no reasonable dispute
19 that the cause of death was hydrocodone.

20 Exactly how it built up in Child's
21 system, how it built up or how much was
22 actually given, or how many times, is unknown.
23 We have to forgive a doctor or a toxicologist
24 for not knowing exactly how large amount of
25 hydrocodone would affect a twenty-pound

1 toddler. But looking at this from a non-
2 medical perspective, it makes sense to me that
3 it would not take a long time for a over dose
4 to build up in a child's system in a very
5 short period of time, even perhaps through
6 multiple doses.

7 It makes sense that a long-standing
8 medication would build up in a toddler over
9 time, perhaps through multiple doses. I can
10 understand that presence of the drug would
11 explain why Child 's breathing was reportedly
12 better the following morning than that night
13 when he was brought home.

14 I can also understand that a child
15 under the influence of a narcotic would have
16 appeared to be sleepy or in fact went to
17 sleep, even a deep sleep.

18 Now, the word "comatose" has been
19 used here a number of times but no one has
20 defined it. I don't think that the
21 prosecution wants to admit that if you were
22 simply looking at a child in a crib who
23 appeared to be asleep, would -- if you expect
24 the child to be asleep, you wouldn't
25 necessarily question the fact that the child

1 doesn't wake up.

2 In fact, I've changed my daughter's

3 diaper without disturbing her sleep.

4 Sometimes when my child is out, she is out

5 cold and there's nothing that you can do to

6 wake her up. If she was breathing quietly,

7 all was well. You can certainly use your own

8 experience as a guideline.

9 I believe that there was an effort to

10 make is sound unusual that the mother would

11 only have peeked in on Child during the

12 night. I don't understand that. What exactly

13 was she supposed to have done? When my wife

14 or I check on our daughter, we creep -- I

15 can't say about my wife, but sometimes I've

16 checked on my daughter and I don't even touch

17 the crib.

18 The solicitor also made it a point to

19 ask why after she got up around ten o'clock,

20 fed and changed Ava, why she didn't feed

21 Child. I think that's understandable. It's

22 much easier to feed and change a two-month old

23 while a twenty-month old is still sleeping.

24 It makes sense that she'd wait until after she

25 was finished with Ava and ready to go to work

1 to wake Child up. That morning she
2 specifically wanted him to get more rest than
3 normal because he was sick. It also makes
4 perfect sense that Latasha would have let
5 Brandon and Child sleep until she left for
6 work, and Brandon would feed Child .

7 Further, they suggested that a baby
8 sleeping for ten, eleven hours straight was
9 somehow bad. I can only speak from my own
10 personal experience again, and you can draw on
11 yours, but my daughter sleeps a solid ten to
12 twelve hours a night nearly every night. I'm
13 lucky. She will sleep longer if we wear her
14 out the night before. She will sleep less
15 something, more sometimes..

16 But allowing Child to remain asleep
17 from nine or ten at night to ten or eleven in
18 the morning is not something that rises to the
19 level of negligence. It most certainly does
20 not rise to the level of extreme indifference
21 to Child 's life.

22 The only criminal act here is the
23 giving of an enormous amount of a dangerous
24 prescription drug never intended to be given
25 to children, much less a small toddler.

1 I do not believe that there is any
2 evidence whatsoever that Latasha acted with
3 extreme indifference to human life. The very
4 act of calling 911 showed that she cared about
5 Child.

6 Secondly, during the night checking
7 on him, changing his diaper, feeding the
8 children, they are all overt acts of caring
9 and love for her children.

10 I submit to you that it took an
11 extraordinary amount of courage for Latasha to
12 get on that stand and admit to you her past
13 history. Although she is still a young woman,
14 she was much younger then. She paid for her
15 mistake and has moved on.

16 There were absolutely no illicit
17 drugs found in that home. More importantly,
18 not even an accusation from anyone including
19 the lead detective, Rita Burgess.

20 Also their house was searched by law
21 enforcement, so we know that there were no
22 medications except Tylenol, nor were there any
23 illicit substances. This was a good, clean,
24 safe home.

25 As to Brandon's misstep with

1 substance abuse, I am not going to choose to
2 judge the man that I heard on that 911 tape.
3 He lost Child , then he lost his way but he
4 has had the fortitude to be able to find his
5 way back.

6 We all react to things that happen
7 differently. You may tell yourself that you
8 would have done something differently that
9 Sunday night or that Monday morning. Given
10 what we know now, we know much more than
11 Latasha did at the time.

12 Even if you think her actions were
13 lacking or were negligent, she did not neglect
14 Child with intent. Nothing that we have seen
15 or heard about Latasha, or from Latasha,
16 suggests an indifference to human life, much
17 less extreme indifference.

18 As I said earlier, our courts have
19 defined that phrase to include "intent." I
20 don't believe that anyone here believes that
21 Latasha intended for Child to die. Quite the
22 opposite.

23 The State could have charged Latasha
24 with mere neglect or child endangerment or
25 something that carried with it a burden of

1 proof closer to that. Although I do not
2 believe that Latasha was neglectful, nor I do
3 believe that if her actions amounted to any
4 crime it would be negligence. I think that it
5 is clearly different to accuse someone of
6 being so indifferent as to have intent to let
7 someone die. They are accusing Latasha of
8 caring so little that she intended for Child
9 to die.

10 Let's talk about the 911 tape. It
11 may be enough for me to simply say that the
12 tape speaks for itself. I don't care how
13 aloof an E.R. nurse says Latasha was. That
14 tape showed genuine emotion, and you heard it.

15 I believe Kayla Booker and I believe
16 Jerry Price when they describe Latasha's
17 reaction to family and friends at the
18 hospital. I don't think I've ever heard
19 anything more powerful than when I heard
20 Brandon on the phone with 911. Latasha and
21 Brandon both did absolutely everything that
22 they possibly could that day. I am not sure
23 that it is appropriate to judge someone for
24 how they handle an event as tragic as the loss
25 of a child.

1 Given Latasha's family history, I
2 might even say that it would be expected if
3 she had some difficulty showing emotion --
4 shock, withdrawn, scared, guarded. Everyone
5 grieves in their own way. Not everyone
6 grieves in public. Not everyone behaves in
7 front of strangers the same way that they do
8 in private or with close friends and family.

9 I would suggest to you that the
10 persons who commented on Latasha's demeanor
11 had unfairly formulated an opinion and were
12 trying too hard to help the prosecution and
13 not simply relate the facts. If fact, if you
14 recall Nurse Duffy, the E.R. nurse, portrayed
15 her very harsh judgment of Latasha by noting
16 that some folks won't even come into the room
17 with their child because, she said, they don't
18 want to see their child that way. Latasha was
19 not even one of those people. She did go into
20 the room, she held Child 's hand and she cried
21 and prayed. I think Nurse Duffy just became
22 very emotionally involved and allowed that to
23 affect her judgment.

24 Ultimately, we did hear from Brandon,
25 from Sherry, from Kayla that Latasha did

1 indeed grieve in a way that was more of what
2 one would consider "typical". She just did it
3 behind closed doors, with those that she knew
4 and trusted. There is nothing wrong with
5 that.

6 I think that it is remarkable that
7 Mr. Morris and Ms. Phillips were indicted in
8 late 2008. Ms. Honeycutt wasn't indicted
9 until 2009, late 2009, almost a year later.
10 If you recall, I asked the lead investigator
11 what information that she had at the time the
12 first two were indicted, including toxicology
13 reports, doctors' reports, any information
14 that they had along with all the witness
15 statements. She said that she did a complete
16 investigation. Yet, apparently there wasn't
17 enough in late 2008 to indict my client.
18 Without any additional evidence, my client was
19 indicted nearly a year later.

20 I think the first decision not to
21 indict Latasha was the correct one. There
22 wasn't enough evidence about the crime in 2008
23 and nothing changed in 2009. There shouldn't
24 have been an indictment. She should not be on
25 trial.

1 The fact that Latasha was not
2 indicted with Mr. Morris and Ms. Phillips,
3 I believe is reasonable doubt in and of
4 itself. The solicitor could correctly argue
5 that they are not required to indict within
6 any particular timeframe. But just ask
7 yourself, why the delay? I could suggest to
8 you that it was because Mr. Morris and Ms.
9 Phillips are the only ones who could have
10 caused Child 's death, not Latasha.

11 In a former life, I was a prosecutor
12 -- not so long ago. I can recognize the
13 advantage to them of having Latasha in this
14 trial. She has to defend herself and, in so
15 doing, her defense helps to cast doubt on Mr.
16 Morris and Ms. Phillips.

17 You will recall that in my opening to
18 you, I quoted to you the statute for homicide
19 by child abuse; it demands four things, each
20 individual part of which must be proven beyond
21 a reasonable doubt. One, that a person caused
22 the death of a child; two, under the age of
23 eleven; three, while committing child abuse or
24 neglect; and, four, that the death occurred
25 under circumstances manifesting an extreme

1 indifference to human life.

2 The State has failed on the very
3 first element. The coroner told you that the
4 cause of death was an overdose of hydrocodone,
5 specifically Tussinex, provided to the child
6 by Ms. Phillips. There is an overwhelming
7 amount of evidence that that Tussinex was
8 provided to the child by Ms. Phillips while in
9 the care of the father. There is absolutely
10 no evidence that Latasha or anyone in her
11 household had any drugs that could have been
12 ingested. The State has not even alleged that
13 Latasha for providing hydrocodone to Child .

14 The solicitor's office is going to
15 have to argue that the causation was the
16 failure to get medical care. But you simply
17 do not 'fail to do' something that you had no
18 knowledge needed to be done, that is not a
19 knowing failure.

20 There may be a question of what
21 condition that Child was in in the early
22 morning hours of Monday, March 17th, but there
23 is really nothing that we know. I think
24 Latasha's story is credible and makes more
25 sense than any other poorly outlined and

1 pieced-together conjecture from the expert
2 witnesses. I know that they are very smart
3 men and I know that they are scientists,
4 learned in what they do. But I think that we
5 are all smart enough to know that at the end
6 of the day they're doing a lot of guessing.
7 We don't guess here about criminal behavior.

8 For the sake of argument, and only
9 for the sake of argument, let's say for a
10 moment that Child was under some sort of
11 distress at eight o'clock when Latasha found
12 him. Although I don't think that a child
13 being in a state similar to a state of deep
14 sleep is cause that should necessarily create
15 alarm a mother, even if it was, there was
16 nothing about Child that gave cause for
17 Latasha to be alarmed at eight o'clock. None
18 of the doctors can say that with a reasonable
19 certainty. Of course, they would have to
20 prove beyond a reasonable doubt that Latasha
21 did know that Child had been dosed and there
22 is significant doubt that he appeared to be
23 anything other than in a deep sleep. Keep in
24 mind what little was known to Latasha at the
25 time.

1 Also please bear in mind that she
2 changed Child 's diaper in the dark at eight
3 o'clock, likely half sleep from being up at
4 least three different times caring for Ava
5 throughout the night. If you have children,
6 you will remember the near permanent daze in
7 which you walk around when you haven't gotten
8 a good night's sleep because of a newborn.

9 Latasha did not cause Child 's death.
10 The hydrocodone did.

11 Latasha did not commit child abuse or
12 neglect. She called 911 and for help.

13 She did not act with extreme
14 indifference to human life. Why would she
15 make the 911 call? Why would she call help
16 from Brandon? To say that she was indifferent
17 doesn't make sense.

18 There is contrary evidence that
19 Latasha was a loving, caring mother. She
20 provided a home, clean, comfortable, with
21 clothing and food for her children.

22 I don't think that having an extreme
23 indifference to human life is something that
24 comes and goes. If you have an extreme
25 indifference for human life, you're a killer.

1 Let's talk for a moment about what
2 extreme indifference to human life really
3 means. If we were to start at the bottom of
4 defining when an act or omission has the least
5 amount of culpability and then figure out the
6 next level of culpability, and the one after
7 that, so on, what would it look like?

8 I would suggest to you that the least
9 culpable act is an act -- (marking on board).
10 Then somewhere, way up here is indifference.
11 Then above that, extreme indifference.

12 The judge will tell you that extreme
13 indifference to human life is having the
14 intent -- that extreme indifference equals
15 intent or guilt. That is what the State is a
16 asking you to find.

17 This is a homicide trial. You had
18 the opportunity to hear from Latasha
19 yesterday. Does she look or sound like
20 someone who would intentionally kill anyone,
21 much less her son?

22 Does the 911 tape sound like someone
23 who just committed a crime?

24 I told you at the beginning of this
25 trial that if you listened to the testimony in

1 this trial carefully that you could only come
2 back with a verdict of Not Guilty. I am
3 urging you to do that now.

4 THE COURT: Thank you, Mr. Harbin.
5 Ladies and Gentlemen, we are going to take a
6 short recess, let you stretch your legs, and
7 then I will give you the instruction on the
8 law. Let's take about a five-minute break.
9 Thank you. Don't talk about the case.

10 (JURY OUT)

11 (BRIEF RECESS)

12 (DEFENDANTS PRESENT)

13 (OFF RECORD DISCUSSION WITH MS. PHILLIPS

14 RE: MEDICATIONS)

15 THE COURT: All right, you can
16 bring the jury in, Mr. Teal.

17 (JURY IN)

18 THE COURT: Yes, sir, Mr.
19 Richardson.

20 SOLICITOR: Thank you, Your Honor,
21 may it please the Court. Good morning, Ladies
22 and Gentlemen. I know that this trial has
23 lasted a good while now, we are in our fifth
24 days now, and I know that you're probably
25 tired. I would just ask that you indulge me

1 for a little bit more of time. I'm going to
2 try not to keep you too long. I do have some
3 important things that I need to hit. If you
4 would indulge me just a few more minutes, I
5 deeply appreciate it.

6 We try to approach a trial in an
7 orderly fashion such that we can bring the
8 facts before you without making it overly long
9 but, in actuality, the law dictates the
10 elements that we must bring before to prove
11 the charges we have brought against a
12 defendant.

13 The judge, that is his job. He is
14 the judge of the law. He is the one that is
15 going to charge you what the law is in this
16 case.

17 Mr. Harmon brought up a few points of
18 the law and I would like to clarify certain
19 things in the law, but certainly the law that
20 you take is what the judge tells you. He is
21 going to talk to you after I finish speaking
22 with you.

23 Homicide by child abuse, we are
24 required by the State to prove that the
25 defendant(s) caused the death of a age under

1 the age of eleven while committing neglect or
2 abuse. It does not have to be both, it can be
3 either/or.

4 It is such that a death under
5 circumstances -- I apologize for looking over
6 here, but I just want to be sure that I've got
7 it right.

8 Now, Ladies and Gentlemen, there is
9 no element or representations that I have to
10 prove any type of intent -- that is not where
11 we are coming from, that is not what this case
12 is about. We are not saying that any of the
13 defendants intended to kill Child ; however,
14 whatever our boss says, I believe that Mr.
15 Harvey may have stated that to him, and I
16 disagree with him, what we are required to do
17 is to prove to you that there was an intent by
18 these defendants to either abuse or neglect
19 Child and because of that, Child died. That
20 is what the law is.

21 Now, what is abuse and neglect?
22 Abuse and neglect can be an act or a failure
23 to act - either one of those. For instance,
24 in this case the act of giving the child
25 hydrocodone or Tussinex, or a failure to act

1 by failing to give the child medical
2 attention.

3 Now, failing to give the child
4 medical attention is the focus of Ms.
5 Honeycutt. The giving of the hydrocodone or
6 Tussinex is the act that we're focusing on
7 with Ms. Morris (sic) -- excuse me, Ms.
8 Phillips -- but also, that she failed also to
9 give the child, Child , medical treatment.
10 The father was involved in that in aiding in
11 an abetting situation, and I'll get more into
12 this in a little bit -- but he was involved in
13 that, aiding and abetting, failing to give
14 medical attention and failing to do anything
15 about this mother giving Child this drug.

16 Now, Ladies and Gentlemen, you have
17 heard the defense talk a little bit about
18 reasonable doubt. The State does have that
19 burden of proof. As solicitors, we accept
20 that burden of proof day in and day out
21 throughout the state and I gladly accept that
22 burden of proof today.

23 I will explain to you a little bit
24 about how I see reasonable doubt, more by way
25 of illustration than anything else. It really

1 comes down to common sense, your common sense.

2 When you all came in here, preferably
3 nobody knows anybody, and sit here. You have
4 different individual things that you do in
5 life: different work, different families,
6 different backgrounds. But today you are all
7 together to, hopefully, use a collective
8 common sense approach to what is going on.

9 Now, by illustration, I am a not a
10 hunter. I don't hunt, but I feel like it is
11 a realistic way to explain where I am coming
12 from. If I am out in a field in the early
13 morning hours and I have these other attorneys
14 with me, we're all out there hunting deer, and
15 I see a buck off in the far distance out
16 there. I pull my gun up and put it to my
17 shoulder and I look through the scope, and I
18 aim it right at the deer. I pull the trigger.
19 Bam! The gun goes off. The gun recoils, it
20 kicks and two seconds later that deer falls.
21 Well, I would say, 'Man, what a great shot
22 that I just made. I just killed that deer.'
23 What a defense attorney maybe say is, 'Hey,
24 you say that you killed that deer but that
25 deer could have died of a heart attack, that

1 deer could have died of snake bite.' But,
2 Ladies and Gentlemen, when I tell you that
3 story, what does your common sense tell you?

4 The defense will offer you
5 explanations that we call Red Herrings to take
6 your attention away from the real facts; that
7 it was the shot from the gun that killed that
8 deer. We will get to that in a few minutes.

9 I want to start with Ms. Honeycutt.
10 She would have the end of the chain for the
11 defense but I want to start with her anyway,
12 just simply because I think it is better to do
13 it that way.

14 I mean, Child is brought to her. I
15 am going to say this about all the defendants.
16 We have statements that were made, written
17 statements, and then we have a lot of oral
18 statements. I am not going to get into every
19 single inconsistency -- there were a lot of
20 them, and I think that y'all can figure out
21 what a lot of them were. I am not going to
22 sit here and go through every single
23 inconsistency in the statements that you
24 heard.

25 The statements made by everybody

1 prior to this trial and heard during this
2 trial talks about this child being sick, this
3 child having problems. When that child goes
4 to Ms. Honeycutt's house, he's sick, he's
5 having problems.

6 Now, I appreciate Brandon Roper
7 getting up here and testifying. I think that
8 he did everything that he could to save that
9 kid's life, and I appreciate that. But the
10 fact of the matter is that he's mitigated how
11 that child was when that child got to their
12 house. He still lives with Latasha. He's
13 going to get up here and he is not going to
14 make it sound like it really was. He gave
15 statements about the child, he's saying that
16 he was stumbling and falling. How was that
17 corroborated? You know, we can say that maybe
18 he didn't mean it to see like that. But how
19 is that corroborated? I think that's what he
20 testified to.

21 How was that corroborated? How was
22 his testimony backed up? I will tell you how:
23 Michelle Henry. Michelle Henry takes the
24 stand and she tells her -- that's the
25 neighbor, I don't know if you remember -- the

1 next-door neighbor of Latasha Honeycutt and
2 Mr. Roper. She gets up to the stand and she
3 says 'yes, that I had a conversation with
4 Latasha a couple of days after this', just a
5 couple of days later. Michelle asked her what
6 happened and he says, 'Well, he came home and
7 he couldn't stand up and we couldn't wake him
8 up.' Those two statements were told two days
9 to an independent witness, the next-door
10 neighbor, who has no reason to lie. It
11 exactly backs up the statement that Brandon
12 Roper said this kid was stumbling and falling.
13 This was more than "a cold."

14 I will get into the experts in a
15 little bit, but at this point in time it is my
16 opinion, having done this job for years and
17 years, that that child was feeling the effects
18 of that Hydrocodone. I will get to that in
19 just a minute. Right now I am just starting
20 with Ms. Honeycutt.

21 So what did she do? The mother of
22 that child gets the child and, by her
23 testimony, takes the child -- Ms. Honeycutt is
24 told that the child is tired, that he may have
25 a cold, she takes the child directly to his

1 crib and puts the child in the crib, then she
2 closes the door. "That's that way that I
3 handle it." That's what she told them.

4 Now, you have to understand -- that
5 she has been told that the child needs to go
6 to the doctor. Then Brandon comes home, he
7 takes the child out (of the crib) -- he
8 doesn't know what's wrong with him, he is
9 stumbling around, he's falling. So he puts
10 the child back to bed.

11 Just like Mr. Harbin, I'm a parent
12 too. I've had three children. They are a lot
13 older now but I think if my child were
14 stumbling around, falling, I think that I
15 would be checking on them a little bit more --
16 I probably would sleep in the same room with
17 them, checking on them a little more often, a
18 little bit harder than just putting my head in
19 the door. That's what she said that she did,
20 just put her head in the door.

21 Because now we've got a problem, the
22 next problem. The next problem is that is
23 eight o'clock, 8:00 a.m., she goes in and
24 changes this child, that he is perfectly all
25 right. No problems.

1 You remember what Dr. Ward said? His
2 testimony is also corroborated by direct
3 evidence. Dr. Ward said it was based upon the
4 bedsore, based on bedsores. Mr. Harbin
5 brought up that you may get a little rash or
6 something. Dr. Ward said that this was a
7 bedsore. Children don't get bedsores. He
8 makes it sound like children get this all the
9 time. The picture is there, you can look at
10 it. He makes it sound like children get this
11 all the time. Ladies and Gentlemen, children
12 do not get bedsores because little children
13 during the night move around in their sleep.
14 They are not laying there without moving.
15 Think about that. In fact, Dr. Ward's
16 testimony was that that child had been laying
17 there still for a lengthy period of time.
18 Admittedly, he couldn't say how long. But he
19 said for a bedsore "a lengthy period of time."
20 They tested it. They don't know how, but they
21 put it under a microscope and somehow figured
22 out that it's a bedsore.

23 So at 8:00 a.m., that child,
24 according to Dr. Ward, is comatose. Now,
25 according to her testimony, she changed that

1 child at 8:00 a.m. Yeah. "He was perfectly
2 fine", is what she testified to. Yet, we have
3 an expert saying that he is in a coma. So
4 either she didn't change that child at 8:00
5 a.m. or she is not telling the truth about
6 that; or, she changed that child and that
7 child was floppy, nonresponsive, and she did
8 nothing about it. That's extreme indifference
9 to human life.

10 Here's another thing about that. If
11 he is fine at 8:00 a.m., remember what the
12 expert said -- and I will get into a little
13 more about the time. The expert talked about
14 repetitive doses over a period of time. Well,
15 if she suggested that he is fine at 8:00 a.m.,
16 where did the Hydrocodone come from? Where
17 did the Tussinex come from after 8:00 a.m.,
18 because there's a huge dose in the child's
19 body. Is she now telling y'all that she gave
20 him that? We know it's Hydrocodone, and yet
21 when they mitigate this thing -- they know now
22 that they are in action -- they say that
23 failure to get medical help is the problem.

24 And whether or not she got up -- got
25 up and change and feed one child, wouldn't you

1 change and feed your other child? You do it
2 all at once or you just do one and not the
3 other? I am not sure that I understand that,
4 but -- she said that she changes one child.
5 She definitely does not change Child or gets
6 involved within Child at ten o'clock when she
7 gets up. The only way that she goes to change
8 Child, or even looks in at Child is because
9 -- she admitted on the stand -- Brandon Roper
10 told her to. That's it. That the time that
11 she went in there. I find that very odd.

12 They call 911. Mr. Harbin made a big
13 deal about calling 911. Yes, they called 911.
14 Real late. Remember Dr. Ward's testimony,
15 Child would be with us today if somebody had
16 done something earlier. But as far as her
17 calling, there was nothing else they could do
18 -- of course they called 911.

19 The strange thing about that call is
20 that she gets up at ten o'clock, has to be to
21 work at eleven o'clock. Brandon testified
22 that she had to be to work at eleven o'clock.
23 This is her own witness. She said it was ten,
24 fifteen to twenty minutes away. Well, Ladies
25 and Gentlemen, if you notice, on the CAD

1 sheet, and you will have this in evidence,
2 this sheet right here is when -- this tells
3 you when the call comes in to 911 for EMS
4 help. This says, you will see here, "Brandon
5 Roper's house" and this is the time of the
6 call coming in -- at 11:16 a.m. She is
7 supposed to be work at eleven. She said that
8 she gets up, that she is on her way to work
9 evidently sometime before eleven. Yet the
10 call comes in and that's when she goes in and
11 finds him unresponsive. The call comes in
12 twenty-five minutes later?

13 Let's give her the benefit of the
14 doubt. Let say that she was late and it was
15 eleven o'clock. Fifteen minutes later? I'm
16 sorry, Ladies and Gentlemen, a lot of stuff is
17 going on at this time and I cannot remember
18 everything, so periodically I have to look at
19 my notes.

20 Now, referring to Defendants Morris
21 and Phillips. I want to start out first
22 regarding Mr. Morris. He testified and there
23 was testimony that Child was with him the
24 entire weekend. Okay. So anything that
25 happened to that child, he knew about. He

1 testified that he was with him the entire
2 weekend. And, a little bit, about the child
3 being sick on Saturday.

4 I asked Ms. Phillips and, as you
5 know, she was very difficult to -- have you
6 seen people who don't want to answer your
7 question, they try to avoid what's going on?
8 They go off on tangents to try to avoid
9 answering the question? Just like what she
10 was doing?

11 But I did get out of her that Child
12 would wake up during the nighttime with these
13 "frightmares" and he would spend two hours
14 crying, that he did that on two occasions.
15 Additionally she stated that he was having
16 coughing during the nighttime.

17 They had the child during the weekend
18 and these things are happening, but something
19 happened Saturday that caused -- and you heard
20 the testimony -- Mr. Morris to call to get the
21 Medicaid card on Saturday. Why would you need
22 the Medicaid card if the child is alright?
23 Or, I submit to you, the child not alright,
24 that the child was sick or was getting sick.
25 How do you help that? How do you help the

1 child's cough? Tussinex. How do you get the
2 child to calm down? Tussinex.

3 Ladies and Gentlemen, this is not a
4 situation where there is intent to kill but
5 they're giving this child cough medicine that
6 is prescribed for an adult. Not only was it
7 not prescribed for the child, but you're not
8 supposed to give it to another adult. It was
9 an adult-prescribed cough medicine that was
10 given to that child. Is that an indifference,
11 to you? Is it an indifference if the child
12 doesn't die?

13 You don't give adult cough medicine
14 to a child under two years old, that contains
15 Hydrocodone, a prescribed medicine -- an adult
16 cough medication.

17 I submit to you that giving this
18 medicine to him started Saturday when they
19 needed the Medicaid card. They started self-
20 medicating him by giving him this medicine.
21 They were giving him this medicine to calm him
22 down, to help him sleep. Remember that he was
23 up two hours crying? To help him sleep. To
24 help that cough.

25 But here's the problem. They kept

1 giving it to him. The problem is that they
2 gave it to him the first time, the second
3 problem is that when it gets real bad they
4 kept giving it to him.

5 Then we move into Sunday, the day
6 that they went to Fountain Inn, I believe that
7 it was. I can't remember whose house that it
8 was. I messed up when I kept asking the
9 question. But it doesn't matter whose house.
10 They were down there in Fountain Inn at two
11 o'clock or two, the child is acting funny,
12 getting ill, crying, crying, crying, to the
13 extent that they have to leave. They left the
14 house because the child was crying, crying,
15 crying.

16 Now, Mr. Morris' statement was that
17 he was worried about the child, that it was
18 breathing bad. He gave us the statement also
19 in one statement he said that the child was
20 breathing like he had pneumonia or something
21 like that, and that he was so worried about it
22 that he felt the need to tell Ms. HOneycutt
23 that she needed to take him to the doctor.

24 Okay, so the question is -- they're
25 in Fountain Inn. They drive all the way from

1 Fountain Inn to their home, however long it
2 takes. I think somebody testified that it may
3 be an hour, something like that. How many
4 hospitals did they pass? How many doctor's
5 offices did they pass? I asked Mr. Morris on
6 the stand, 'You said your son was hot. How
7 hot was he?' "I don't know."

8 You know why he doesn't know, he
9 didn't even take the time to feel his son to
10 see if he was hot; or to take the time to go
11 to a drugstore and get a thermometer to see
12 how sick he was. And he certainly didn't take
13 him to the doctor.

14 So what does he do? He simply
15 returns him to his girlfriend, the mother of
16 the child, and -- 'you take him to the
17 doctor.' What is his excuse? His excuse is
18 that he had to go to work on Monday. He had
19 to be at work on Monday and this was 6:30
20 Sunday evening, and he used that as the excuse
21 or his reason why he had to return the child.
22 'I have to work on Monday, so I am not going
23 to take him to the doctor, but he needs to go
24 to the doctor.'

25 Before the child was returned, why

1 did they not take Child to the doctor? Why
2 did they not take him? Maybe they were more
3 nervous about the doctor finding out the way
4 that he was acting, what was going on, that
5 Ms. Phillips have given him the medication
6 maybe she knew what he had in his system and
7 knew that any emergency room would have given
8 him a full examination.

9 Mr. Morris, I do not know who he was
10 protecting. He may have been protecting
11 himself here, or his mother, or both of them
12 -- but he didn't protect Child. He didn't
13 protect Child in the least little bit. He
14 was there the entire time to the extent that
15 there was testimony that the child was playing
16 with the Tussinex.

17 Was there testimony that the child
18 was playing with the Tussinex? They were
19 letting the child play with drugs. It all
20 adds up, the puzzle is coming together and the
21 picture is that the Tussinex is on the bed,
22 they get Child on the bed and -- they've
23 admitted this to other people -- not only did
24 they admit it here today. She admitted it
25 when I questioned her. He admitted it when I

1 went back and questioned him. They admitted
2 it.

3 Then Ladies and Gentlemen, we -- we
4 come to another big point. While this is
5 going on with them -- and once again I am
6 going to get to the time, and I will. But
7 while this was given to the child and -- of
8 course they are denying it today, of course
9 they are going to deny it, everybody is going
10 to deny it, but what they can't deny is Ms.
11 Kayla who testified for the defense. She's in
12 the hospital and she overhears Donna Phillips
13 tell Mr. Morris that, "I gave him cough
14 medicine. I hope that's not it."

15 All of a sudden we do have an
16 admission. We didn't have one by her to this
17 police officer. She knew everybody was
18 around, she had to know that somebody heard
19 her admit it. She was sitting with her son
20 right over there with her.

21 Now, Ladies and Gentlemen, Mr. DeJong
22 brought up -- I turned forty-five years old on
23 Saturday. Mr. DeJong brought up about the
24 expert witness and I believe -- while I
25 respect Mr. DeJong's advice, I don't believe

1 that he told you the whole story. He said
2 that if the drug/the medication is time-
3 released, it takes four hours. I believe
4 that's right, that that's what the expert
5 testified to, time released. But what he
6 failed to tell you all or to remind you all is
7 that it takes twelve hours for one dose to be
8 metabolized out of the body. You don't have
9 to keep giving doses before the peak, you can
10 keep giving doses over a twelve-hour period of
11 time and those doses build and build. So you
12 have it metabolizing out in twelve hours, and
13 if you give four does within the twelve hours
14 you haven't gotten rid of the first dose while
15 you still adding doses to it, to a little
16 baby.

17 The experts testified that this was
18 repetitive dosing. Dr. Ward, who has been
19 doing this a long time, he admitted to you
20 that he could not say how many doses that
21 there were but that it had to have been
22 repetitive. Dr. Ward then testified -- there
23 were two experts. Dr. Ward had been doing it,
24 as he said, eighteen years. He testified, he
25 corroborated with Dr. Flores that this had to

1 be repetitive doses, not one big dose.
2 Repetitive doses, which goes to the repetitive
3 doses over the weekend. Of course, we can't
4 say when it started but the doctor, Dr. Ward,
5 said that it could go back as far as thirty,
6 thirty-four to forty hours; which puts Child
7 in Phillips' and Morris' possession. Also in
8 their possession, 'lo and behold, Tussinex.

9 Now, Ladies and Gentlemen, I think
10 that we all know that Lortab is not part of
11 this. The experts testified for Lortab has a
12 specific ingredient, and I can't pronounce it,
13 but that ingredient that is in Lortab was not
14 found in Child 's blood. They testified that
15 that ingredient was not found in his blood.

16 Grandma testified that she didn't give him
17 Lortab. I am telling you right now that that
18 didn't happen, I am not accusing her of doing
19 that. I am not accusing her of giving him
20 Lortab. Why did she bring it up to Detective
21 Burgess right from the get-go? Because I can
22 built in an excuse that this could have been
23 an accident. 'May he just got into my Lortab'
24 or 'maybe I dropped it on the floor.' She was
25 already building her excuse up in this case.

1 She founds out this opiates in his
2 system and she says, 'Oh, I gave him some of
3 my cough medicine. I hope it's not that.'

4 But then she doesn't tell that to the
5 detective. What she tells the detective is,
6 'There were a few other people around too. I
7 hope he didn't get my sister's Lortab.' She
8 was even going to blame it on the sister.
9 Already building a defense.

10 Ladies and Gentlemen, the defense put
11 up an expert. He really didn't say much but
12 he made a big deal of hydromorphine not being
13 in the Lortab. Ladies and Gentlemen, you will
14 have this back there, what the toxicologist
15 says. He says that there was not enough blood
16 to get that sample. Well, where was that
17 sample? They make it sound like it was
18 difficult to perform a toxicology test. Well,
19 there were two tests -- a urine test and a
20 blood test. They had the information.

21 The urine had the hydromorphine in
22 it, the metabolites of hydrocodone. They
23 weren't going to talk about that when he was
24 on the stand. It showed up in the urine, we
25 had it in the urine. But was it in the blood?

1 Both the blood and the urine had the
2 hydrocodone in it. The expert had to admit to
3 that.

4 He also, I found this interesting,
5 what he based most of his opinion on was 8:00
6 a.m., that the -- remember the cross-
7 examination about that, that 'your entire
8 examination was based on 8:00 a.m.'?

9 So if the child is not okay at 8:00,
10 would that change your opinion here?

11 He said, 'Yes.'

12 He said yes, and he didn't know about
13 the bedsores. What he was basing his entire
14 opinion on was the statement of Latasha
15 Honeycutt that the child was fine. I think
16 we've seen how credible she is.

17 Ladies and Gentlemen, I will try to
18 wrap this up now. I know that I've been
19 talking a little while here and I apologize
20 for that but what happened here is that that
21 child got fussy, sleepy, was waking up at
22 night and Tussinex is a drug that will help
23 that child calm down. They calmed him down.
24 They started giving it to him, it worked. So
25 they gave him some more, and it worked again.

1 The time period here is twelve hours, and they
2 gave him some more, some more. You know, with
3 repeated doses in a twelve-hour period the
4 effects are building, building until we get
5 the bad breathing. All the things that their
6 expert said Tussinex would do to a child.
7 He's feeling the extreme effects by the
8 afternoon and he's starting to get sick.
9 Child is under the effect and influence of
10 Hydrocodone and the intoxication is building.
11 Poor little Child, an innocent child, has had
12 to feel the effects of this; he started to
13 shake, he falls asleep, he wakes up, by then
14 they are at the parent's house, the mother's
15 house. We don't know when the last dose was
16 given, but they probably gave him a dose at
17 their house before they took him to mama's,
18 and he's just getting worse and worse. When
19 he gets to mom's house, he takes poor little
20 Child, who is feeling terrible at this time,
21 and she puts him in the crib. All these
22 affects of the Hydrocodone continue to build
23 and come together, building pressure like a
24 volcano until sometime in the night the
25 volcano exploded and Child went into a coma.

1 Because of the affects of all three of these
2 people's action, and inactions, all of them,
3 Child is no longer here with us. He is not
4 here to enjoy life, to learn, to see the
5 mountains, to see the beach, to see everything
6 that we as adults enjoy growing up.

7 I ask that you come back with the
8 only possible verdicts in this case: guilty,
9 guilty, guilty. All three of them are guilty.
10 Thank you.

11 THE COURT: All right. Thank you,
12 Mr. Richardson. Ladies and Gentlemen, you
13 have heard the evidence in this case and
14 you've heard the arguments of the lawyers.

15 It is now my duty to instruct you on
16 the law that applies to the facts of this
17 case.

18 It is your duty to find the facts
19 from the evidence in this case and to those
20 facts you must apply the law as I give it to
21 you. You should not be concerned with what
22 the law should be but with what it is. You
23 must not be influenced by any personal likes
24 or dislikes or opinions or prejudices or undue
25 sympathy. That means that you must decide the

1 case solely on the evidence and the law. You
2 will recall that you took an oath to do just
3 that when we began the case on Monday.

4 Now, following my instructions, you
5 must follow the law, all of them and not
6 single out some or ignore others because they
7 are equally important. You must not read into
8 these instructions or into anything that I may
9 have said or done during the course of this
10 trial as an indication or suggestion as to
11 what I think the facts are or what verdict
12 that I think that you return. As I told you,
13 our Constitution system of justice gives you
14 the jury the right to determine the facts and
15 I am not going to infringe on your prerogative
16 to do that. You cannot infringe on my right
17 to tell you what the law are that you apply to
18 those facts.

19 Now, how do you decide what the facts
20 are? You do that by weighing and evaluating
21 the evidence that you've heard. There is no
22 way for you to weigh evidence in a literal
23 sense. I certainly am not going to give you a
24 set of scales to take back in the jury room
25 and conduct an experiment. It is a mental

1 process. You weigh and evaluate evidence by
2 using your good, common sense and your sense
3 of judgment; taking the evidence that you have
4 heard and placing it on the scales mentally
5 and determining whether the State has met its
6 burden of proof.

7 Now, there are certain things that I
8 told you at the beginning that I am going to
9 repeat briefly. I know you heard it the first
10 time, but please bear with me. I told you
11 that the evidence from which you are to decide
12 what the facts are consists of two things:
13 first, the sworn testimony of witnesses and,
14 secondly, any exhibits that have been admitted
15 into evidence or any facts that the lawyers
16 have agreed on or have stipulated to.

17 What the lawyers say is not evidence.
18 While what they have told you in their
19 arguments is very important, it is not in and
20 of itself evidence. If your memory of what a
21 witness said or what the evidence was is
22 different from the lawyer's recollection, your
23 memory controls.

24 Likewise, anything that may have been
25 excluded or stricken from evidence, that you

1 have been instructed to disregard, is not
2 evidence in this case and must not be
3 considered by you.

4 Now, Ladies and Gentlemen, there are
5 two types of evidence that are generally
6 presented during a trial. What I am talking
7 about now is direct and circumstantial
8 evidence. Direct evidence is the testimony of
9 someone who claims to have actual and direct
10 knowledge of a fact, such as an eyewitness.
11 It is evidence which, if believed, immediately
12 establishes a fact. Circumstantial evidence
13 is indirect evidence. Put another way,
14 circumstantial evidence is proof of a chain of
15 facts and circumstances, from which you can
16 find that another fact exists, even though it
17 has not been proven to you directly.

18 The law makes no distinction between
19 the weight or value given direct or
20 circumstantial evidence. You are entitled to
21 consider both kinds. There is not a greater
22 degree of certainty required of one over the
23 other. You may consider both direct and
24 circumstantial evidence and if, after weighing
25 all the evidence in the light of reason,

1 common sense and experience you're not
2 convinced of the guilt of a defendant beyond a
3 reasonable doubt, you must find the defendant
4 not guilty.

5 I told you at the beginning that as
6 the judge of the facts that you would have to,
7 by necessity, determine the credibility and
8 gauge the believability of each witness who
9 testified and each exhibit that has been
10 admitted; that you would be the sole judge of
11 that credibility. I know that you heard me
12 when I told you that the first time, when I
13 gave you guidelines that you could use in
14 determining credibility.

15 I will not go over that again, but I
16 will tell you that you may believe everything
17 that a witness says, you may believe nothing a
18 witness says, you may believe parts of what a
19 witness' testimony is, and you may disbelieve
20 other parts. You may believe one witness over
21 several or several over one.

22 You certainly are not going to decide
23 this matter of credibility arbitrarily. I
24 know that you're going to have a good, sound
25 reason for the decisions that you make as to

1 credibility. As I told you, your common sense
2 is something you can certainly use when doing
3 that. You don't determine credibility by
4 placing any emphasis or weight on who calls a
5 witness, because your objective here is to
6 determine whether the State had met its burden
7 of proof and what the true facts are. It
8 doesn't matter whether those true facts come
9 from a witness for the State or for the
10 defense.

11 You've heard testimony from people
12 who have been described and qualified as
13 expert witnesses. There are, you will recall
14 that I told you, people who are by reason of
15 their education, training and experience,
16 achieved some expertise in their field and who
17 are entitled to state their opinions on
18 matters in that field and are entitled to
19 state their reasons for their opinions. But
20 expert opinion testimony must be judged such
21 as any other opinion testimony in this
22 important respect, and that is that you the
23 jury are the sole judges of its credibility.
24 You may accept or reject expert opinion or
25 testimony or give it whatever weight that you

1 think that it deserves.

2 Now, Ladies and Gentlemen, some of
3 you have taken notes throughout the trial. I
4 have also instructed you about that. I want
5 to remind you again that simply because
6 someone is taking notes, the doesn't mean that
7 they have a better memory or grasp of the
8 evidence in this case than someone who did
9 not. As we all know, notes can be taken. I
10 just caution you in that regard.

11 I will also tell you that in this
12 case there are three defendants. The case of
13 each defendant and the evidence and the laws
14 as to that defendant should be considered and
15 must be considered by you separately and
16 individually. Your verdict does not have to
17 be the same for all defendants. Of course,
18 the fact that you may find one defendant
19 guilty or not guilty shouldn't control your
20 verdict as to the other defendants. When one
21 or more person is tried together and charged
22 with a crime, if the evidence warrants it you
23 may convict one and acquit another or you may
24 acquit all defendants or you may convict all
25 defendants. It would depend on your view of

1 the testimony and the evidence. You must take
2 each defendant, consider the evidence, weigh
3 and evaluate it, as to each defendant and my
4 instruction to you on the law, and you must do
5 that separate and specifically for each
6 defendant. You will then write a separate
7 verdict of guilty or not guilty for each
8 individual defendant.

9 Now, Ladies and Gentlemen, in this
10 criminal case there are certain principles of
11 criminal law that I have already gone over
12 with your several times. I will just repeat
13 them again because they are so fundamentally
14 important.

15 You are instructed that the facts
16 that the defendants were indicted is not
17 evidence. The indictment is not an exhibit,
18 it is not a witness and it cannot be
19 considered by you as evidence of guilt. It is
20 not an admission of guilt. It is simply the
21 formal way that a citizen charged with a crime
22 is given notice of what he or she is charged
23 with.

24 The defendants have pled Not Guilty
25 to that indictment(s) and that puts the burden

1 of proof entirely on the State. A person
2 charged with committing a crime is never
3 required to prove themselves innocent or to
4 prove themselves not guilty. It is an
5 important fundamental rule of law that a
6 defendant in a criminal trial, not matter what
7 the charge may be, will always be presumed to
8 be innocent of that charge unless and until
9 guilt has been proven by evidence satisfying
10 you of their guilt beyond a reasonable doubt.

11 This presumption of innocence does
12 not end when your deliberations begin. It
13 accompanies a defendant throughout the trial
14 until and unless you reach a verdict of guilt
15 based on evidence satisfying you of that guilt
16 beyond a reasonable doubt.

17 The presumption of innocence is not a
18 technicality. It is a fundamental right to
19 which everyone is entitled unless you, the
20 jury, are satisfied by evidence that the State
21 has proven guilt beyond a reasonable doubt as
22 to each element of the crime.

23 What is a reasonable doubt? In the
24 law's definition, a reasonable doubt is the
25 kind of doubt that would make a sincere,

1 honest, conscientious person to hesitate to
2 act in an important in their own affairs.

3 Proof beyond a reasonable doubt is
4 proof that leaves you firmly convinced of a
5 defendant's guilt. In criminal cases, the law
6 does not require proof that overcomes every
7 possible doubt. Of course there are very few
8 things in the world that we know with absolute
9 certainty.

10 If based on your view of the evidence
11 you are firmly convinced a defendant is guilty
12 of a crime, you must find him or her guilty.

13 If, on the other hand, you think that there is
14 a real possibility that a defendant is not
15 guilty, you must give the defendant the
16 benefit of that doubt and find him or her not
17 guilty.

18 A reasonable doubt may arise from the
19 evidence or from a lack of evidence. I
20 further tell you that a defendant is entitled
21 to every reasonable doubt that may arise in a
22 case. What that means is that if there is any
23 fact which is essential to a conviction, a
24 verdict of guilty, should you have a
25 reasonable doubt as to how that fact should be

1 resolved, it is your duty to resolve that
2 doubt in favor of the defendant.

3 Now, Ladies and Gentlemen, you've
4 heard evidence that a witness or witnesses
5 were convicted of a crime other than the one
6 for which the defendant is now on trial. The
7 evidence may be considered by you, if you
8 conclude that it is true, only in deciding
9 whether the defendants' testimony is believe-
10 able, and for no other purpose.

11 You may not consider a defendant's
12 prior record as any evidence of the
13 defendant's guilt of the charge we are trying
14 here today.

15 Now, statements alleged to have been
16 made by the defendants have been admitted into
17 evidence. While this court has determined
18 that the statements are admissible, you the
19 jury make the ultimate decision of whether a
20 defendant made the statement. If a defendant
21 did make a statement, you must determine
22 whether the statement was made by the
23 defendant voluntarily and or his/her own free
24 will and choice. That means that the
25 statement was not caused by pressure, force,

1 fear, threats of coercion or intimidation or
2 by hope or promise of leniency or reward(s) of
3 any kind.

4 The State has the burden of proving
5 beyond a reasonable doubt that the alleged
6 statement was voluntary. If you determine
7 that it was, you may give the statement any
8 further consideration you deem proper. You
9 must decide what weight, if any, should be
10 given to the alleged statement.

11 If you determine that it was not the
12 free and voluntary statement of a defendant,
13 you should not consider the statement
14 whatsoever.

15 Now, Ladies and Gentlemen, in this
16 case, as you know, the Defendants Donna
17 Phillips and Latasha Honeycutt are charged
18 with homicide by child abuse or neglect under
19 16-3-85 of the South Carolina Code.

20 The Defendant Jamie Edward Morris is
21 charged with a separate crime and that is the
22 crime of aiding and abetting homicide by child
23 abuse or neglect.

24 Now, in order to convict Donna Lynn
25 Phillips and Latasha Diane Honeycutt of

1 homicide by child abuse or neglect, the State
2 must prove beyond a reasonable doubt that the
3 defendant caused the death of a child under
4 the age of eleven while committing child abuse
5 or neglect and that the death occurred under
6 circumstances manifesting extreme indifference
7 to human life.

8 Child abuse or neglect is a knowing
9 act or a knowing failure to act that causes
10 harm to a child's physical health or welfare.
11 Harm to the child's physical health or welfare
12 means that the defendant(s) either inflicted
13 or allowed to be inflicted on the child
14 physical injuries, failed to supply the child
15 with adequate food, clothing, shelter or
16 healthcare and such failure cause the physical
17 injury or condition that caused death; or
18 abandoned the child, causing the child's
19 death.

20 The State must also prove criminal
21 intent beyond a reasonable doubt. Criminal
22 intent is always a matter that must be
23 determined by the jury from the circumstances.
24 There is no way to prove intent to a
25 mathematical certainty, so the law says

1 criminal intent may be inferred from the
2 circumstances. It is not necessary to
3 establish intent by direct and positive
4 evidence, but intent may be established by
5 inference in the same way as any other fact,
6 by taking into consideration the act of the
7 parties and all the acts and circumstances.
8 Criminal intent is something that may arise
9 from actions or a failure to act. It is up to
10 you to determine what a defendant intended to
11 do based on the circumstances shown to have
12 existed.

13 In the offense of homicide by child
14 abuse or neglect, the State must prove beyond
15 a reasonable doubt that the death occurred
16 under circumstances showing an extreme
17 indifference to human life. Extreme
18 indifference is a mental state akin to intent,
19 characterized by a deliberate act or a
20 deliberate failure to act culminating in the
21 child's death.

22 The State may also prove homicide by
23 child neglect or abuse by proving -- and this
24 -- let me back up just a second. This
25 instruction applies only to Mr. Jamie Edward

1 Morris, charged with aiding and abetting
2 homicide by child abuse or neglect. In order
3 to prove this offense against Mr. Morris, the
4 State must prove beyond a reasonable doubt
5 that Mr. Morris knowingly and intentionally
6 aided and abetted another person to commit
7 child abuse or neglect that resulted in the
8 death of a child under the age of eleven.

9 To "aid" means to knowingly help, to
10 promote the course or accomplishment of, give
11 support to or to give assistance to. To
12 "abet" means to knowingly encourage or appear
13 to favor or support.

14 Now, Ladies and Gentlemen, mere
15 presence at the scene of a crime is not
16 sufficient to prove someone guilty of the
17 crime. A defendant's presence where a crime
18 is being committed, or mere association with
19 persons who commit the crime, does not make a
20 defendant an accomplice or an aider or abettor
21 of the person committing the crime. The
22 burden is on the State to prove every element
23 of the crime charged. If you find after
24 reviewing the evidence that the State has only
25 proven that the defendant was merely present

1 at the scene and that they have not proven
2 beyond a reasonable doubt that there was any
3 other participation in the crime, then you
4 must find the defendant not guilty. The law
5 is that proof of being at the scene of a crime
6 is not sufficient to find someone guilty of
7 that crime.

8 Now, that covers all the substantive
9 law that applies to this case. I will give
10 you some final instructions on your
11 deliberations and then the case will be in
12 your hands for a decision.

13 First of all, you don't serve as
14 jurors to be advocates for either the State or
15 Mr. Morris, Ms. Phillips or Ms. Honeycutt.
16 You were chosen because both sides believe
17 that you will be fair and impartial and that
18 you will decide this case without bias or
19 prejudice or based on any preconceived ideas.

20 Now, that means that you're not
21 partisans. You are the judge of the facts.
22 I've told you how you judge those facts and
23 how you take those facts, once you have
24 determined what they are, and how you apply
25 the law to those facts. Once you have done

1 that, you will be able to come up with a
2 decision/verdict in this case.

3 If you looked up the word "juror",
4 "jury" it comes from an old word meaning "a
5 company of people formed to render a true
6 answer." Your job is not just to render an
7 answer as to what the true facts are but to
8 determine whether the State has met its burden
9 of proof beyond a reasonable doubt.

10 You further should know that your
11 verdicts must be unanimous. Mr. Allison, I am
12 going to hand to you the verdict forms so that
13 you will see how they are set out. There are
14 three individual verdict forms, because as I
15 told you, the jury must consider each
16 defendant separately and weigh the evidence
17 separate as to each defendant and write a
18 separate verdict as to each. The verdict
19 forms are straightforward, just asking whether
20 you find that individual guilty or not guilty.

21 Don't attach any significance to the
22 order of the verdicts, we had to put them in
23 some order.

24 Of course, you are only authorized to
25 sign when the verdict is unanimous.

1 Now, the genius of our jury system
2 is, Ladies and Gentlemen, that it allows
3 twelve different people from different
4 backgrounds and walks of life to discuss the
5 evidence that they have heard and ultimately
6 reach a verdict. You each will have different
7 perspectives and points of view. I know that
8 you will listen courteously to each other as
9 you go through the evidence and weigh it.
10 Don't be afraid to change your opinion if the
11 discussion so persuade you and not to be
12 dissuaded if you're of a different mind.
13 However, don't surrender an honestly held
14 belief just to get the case over with because
15 this case is very important to both cases, as
16 you well know.

17 Your vote is just that. It is your
18 vote.

19 Now, I will just ask you to go back
20 to the jury room at this time. Hopefully this
21 is the last time that I will have to say this
22 to you, but don't talk about the case yet.
23 When you get the exhibits, that will be your
24 signal to start deliberating. I may have left
25 something out and, if so, the lawyers will be

1 quick to tell me that I have, so I need to
2 check with them.

3 But the record is closed. You're not
4 going to hear any more witnesses, there be no
5 more exhibits that they want you to see.

6 I will ask the Alternates to just go
7 out in the hall and I will talk with you out
8 here separate from the jury. Do not go back
9 in the jury room at this time.

10 Thank you for your attention. Go
11 back, but don't start talking about the case
12 until you get the exhibits. I took the
13 liberty of ordering you lunch. I must say
14 that I got the time right on -- I can't
15 guarantee that it is any kind of gourmet fare,
16 but I hope that you enjoy it.

17 (JURY OUT @ 12:44 P.M.)

18 THE COURT: Any exceptions or
19 additions?

20 SOLICITOR: No, sir.

21 MR. DEJONG: None on behalf of Mr.
22 Morris, Your Honor.

23 MR. O'CONNELL: None on behalf of
24 Ms. Phillips, Your Honor.

25 MR. HARBIN: No, sir.

1 (COUNSEL REVIEW OF EXHIBITS)

2 THE COURT: All right, we will be
3 at-ease until we hear something. We are going
4 to do some bond hearings or something. If you
5 leave the courthouse, leave your cell number.

6 (JURY IN DELIBERATIONS @ 12:50 P.M.)

7 (NOTIFIED OF JURY QUESTION @ 3:07 P.M.)

8 (DEFENDANTS PRESENT)

9 THE COURT: We have a note from the
10 jury, which we will make a court's Exhibit.

11 (SO ENTERED AS COURT'S EXHIBIT 2)

12 THE COURT: The note says "please
13 define one more time the definition of aiding
14 and abetting homicide by child abuse or
15 negelct."

16 It's signed by the foreperson.

17 I just shared the note with the
18 lawyers in the hall and I believe that the
19 State and the defense wish for me to recharge
20 -- clarify -- do you want me to charge just
21 the portion about aiding and abetting? I
22 mean, that's all that they asked for.

23 MR. HARBIN: That would be my
24 opinion, Your Honor. What they asked for,
25 (affirmative nod).

1 THE COURT: Okay. I think that's
2 right. Bring them in.

3 (JURY IN @ 3:10 P.M.)

4 THE COURT: Okay, Ladies and
5 Gentlemen. I got your note. I am going to
6 define for you one more time the law of aiding
7 and abetting homicide by child abuse or
8 neglect.

9 In order to convict Mr. Morris of
10 this offense, the State must prove beyond a
11 reasonable doubt that he knowingly and
12 intentionally aided and abetted another person
13 to commit child abuse or neglect that resulted
14 in the death of a child under the age of
15 eleven.

16 "Aid" means to knowingly help,
17 promote the course or accomplishment of, to
18 give support to, or to give assistance to.

19 "Abet" means to knowingly encourage
20 or appear to favor or support.

21 That's what you requested me to
22 instruct you on. You can resume your
23 deliberations. Thank you.

24 (JURY OUT @ 3:14 P.M.)

25 THE COURT: Any objection or

1 exception to that instruction?

2 MR. HARBIN: None on behalf of Mr.
3 Morris, Your Honor.

4 SOLICITOR: No, sir.

5 THE COURT: Well, we will be in
6 recess until we hear something further.

7 (JURY IN DELIBERATIONS)

8 (NOTIFIED OF VERDICT @ 4:59 P.M.)

9 (DEFENDANTS PRESENT)

10 THE COURT: All right, I understand
11 that we have a verdict. I don't know what the
12 verdict is, obviously, but I do want to
13 commend the lawyers involved, both for the
14 State and the defense, on the excellent job
15 that they did throughout this trial. Thank
16 you for your courtesies.

17 Bring the jury in, Mr. Teal. Thank
18 you.

19 (JURY IN @ 5:05 P.M.)

20 THE COURT: Mr. Foreman, has the
21 jury reached a unanimous verdict, sir?

22 FOREMAN: Yes, sir.

23 THE COURT: If you would, hand the
24 verdict form to the bailiff. I will ask the
25 Clerk to publish the verdicts.

1 FOREMAN: (Complies)

2 CLERK: In the case of the State of
3 South Carolina versus Donna Lynn Phillips, as
4 to the charge of homicide by child abuse or
5 neglect, we the jury unanimously find the
6 Defendant, Donna Lynn Phillips, guilty.

7 In the case of the State of South
8 Carolina versus Jamie Edward Morris, as to the
9 charge of aiding and abetting homicide by
10 child abuse or neglect, we the jury
11 unanimously find the Defendant, Jamie Edward
12 Morris, guilty.

13 In the case of the State of South
14 Carolina versus Latasha Diane Honeycutt, as to
15 the charge of homicide by child abuse or
16 neglect, we the jury unanimously find the
17 Defendant, Latasha Diane Honeycutt, not
18 guilty.

19 THE COURT: All right. Ladies and
20 Gentlemen, if you can't control your emotions,
21 you need to leave right now -- right now!

22 CLERK: If these are your verdicts,
23 so say you all by raising your right hand --
24 (all jurors raise right hand).

25 THE COURT: Any Motions or matters

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1 before the jury is discharged?

2 MR. DEJONG: On behalf of Mr.
3 Morris, I would move for a new trial. If
4 you'd like to hear that later, that's fine.
5 That's my Motion.

6 THE COURT: Yes, sir, I will be
7 happy to hear that later.

8 MR. DEJONG: Nothing as far as the
9 jury is concerned.

10 MR. O'CONNELL: Nothing as far as
11 the jury is concerned.

12 THE COURT: Do either of you wish
13 to have the jury polled?

14 MR. DEJONG: No, Your Honor.

15 MR. O'CONNELL: No, sir.

16 THE COURT: Mr. Harbin?

17 MR. HARBIN: No, sir.

18 THE COURT: All right. Ladies and
19 Gentlemen, thank you for your service. You
20 now have a three-year exemption from service
21 in Circuit Court jury duty. I want to thank
22 you for your contribution to your community
23 this week. I know it's difficult to spend an
24 entire week on a case. We appreciate your
25 hard work and patience.

1 I don't make any comment on the
2 verdict, but do want to thank you for your
3 time. We don't have professional jurors in
4 this country, so we have to rely on good
5 citizens like you to make difficult decisions.
6 So you have our gratitude.

7 If you want to observe the sentencing
8 portion of this case, you're welcome to do so.
9 You can move to the gallery. Mr. Fields will
10 bring you around if you want to do that. If
11 you need anything for your work, anything to
12 show that you were on the jury this week, the
13 clerk's office will be happy to help you with
14 that.

15 Thank you very much.

16 (JURY EXCUSED)

17 THE COURT: Before we take up the
18 Motions, I am going to say again that if there
19 is anyone in the gallery who does not believe
20 that they can control their emotions for the
21 rest of the proceeding, the time to leave is
22 right now before I have to take care of it.
23 Contempt of court carries up to ten years in
24 prison. I don't want to have to take care of
25 something that, uh, but I will take care of it

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1 if I need to. So you've been warned. Any
2 further outbursts will be dealt with.

3 MR. HARBIN: Your Honor, speaking
4 for my client, may I ask if my client may be
5 excused?

6 THE COURT: Yes, sir.

7 MR. DEJONG: At this point in time,
8 Your Honor, on behalf of my client, Mr.
9 Morris, I would respectfully move for a new
10 trial in that the evidence in this case does
11 not substantiate the death of a child.

12 THE COURT: Thank you, sir. I
13 respectfully deny your Motion. Yes, sir, Mr.
14 O'Connell?

15 MR. O'CONNELL: I would also ask
16 for a new trial in that there is no way that
17 this jury could have found as they found with
18 respect to my client's actions. It's just sad
19 but it was not ---

20 THE COURT: Thank you, sir. I
21 respectfully deny your Motion. Yes, sir?

22 MR. O'CONNELL: I have nothing
23 further. I just didn't sit down, Your Honor.

24 THE COURT: That's fine.

25 SOLICITOR: Nothing further from

1 the State?

2 THE COURT: Are you ready for the
3 sentencing?

4 SOLICITOR: Yes, sir.

5 THE COURT: All right. Be glad to
6 hear from the State?

7 SOLICITOR: Your Honor, of course
8 you have heard the case. The sentence for
9 this is twenty to life, and ten to twenty
10 years. We certainly are seeking jail time and
11 based on the age of this child, we would seek
12 a substantial amount of jail time as indicated
13 by statute.

14 Your Honor, Ms. Scotti is here. She
15 was the foster parent for the child. She
16 would like to address the court if the Court
17 would be pleased to hear from her.

18 THE COURT: Certainly. State your
19 name.

20 MS. SCOTTI: Dionne Scotti. I would
21 just like to say that Child came into our
22 care at about a year. He was a sick child.

23 We watched him grow, we watched his
24 first steps. He seemed a healthy child who
25 was smiling and happy. And it took four days,

1 a record of abuse and they put him back in
2 that situation.

3 He couldn't -- when he came, he
4 couldn't walk, he couldn't eat. We nursed
5 that child back. We loved him with all our
6 hearts. We sent home a healthy child. I
7 think I said to him -- he was crying in the
8 car and I said, 'Buddy, it's going to be
9 okay.' But it wasn't. It wasn't even four
10 days. You would think that you could keep a
11 child alive for four days. We begged them to
12 let him stay with us. They didn't.

13 THE COURT: Thank you, ma'am.

14 SOLICITOR: Nothing at this time
15 from the State.

16 MR. DEJONG: In reading the statute,
17 it is not particularly clear to me the way
18 that the legislature -- they put in a "not
19 less", they did not put in a minimum
20 mandatory. Now, I don't know that this
21 statute has been interpreted, in all candor.
22 I know that the Supreme Court did interpret
23 the first statute some year or two ago, maybe
24 longer than that. Is it Your Honor's position
25 that the minimum set forth in the statute,

1 even though it does not say "minimum
2 mandatory" is a minimum mandatory?

3 THE COURT: Does the State have a
4 position on that?

5 SOLICITOR: What I have seen, Your
6 Honor, I don't think that it is a minimum
7 mandatory.

8 THE COURT: I would agree that it
9 is suspendable based on the way that the
10 statute reads.

11 MR. DEJONG: Thank you, Your Honor.
12 With regard to Mr. Morris, Your Honor, he is
13 now twenty-eight years of age. He is still
14 single. Has no other children. He has an
15 eighth grade education, no GED.

16 He has been working, Your Honor. I
17 know shortly after getting out on bond that he
18 worked at auto detailing. My understanding is
19 that he has been working. Initially he had
20 some problems finding employment because he
21 was on electronic monitoring, initially. He
22 has since then, at some time, come off of the
23 electronic monitoring.

24 He -- to my knowledge, Your Honor, he
25 has had no more involvement with the law since

1 this charge came about. There may have been
2 at one point in time a probation violation and
3 that's been taken care of. He is no longer on
4 probation.

5 The only record that I am aware of
6 that he has, Your Honor, back in -- it would
7 appear to be '06, he had two warrants for
8 possession of a controlled substance and
9 possession of marijuana. The only General
10 Sessions Court case that he has had came out
11 of -- they changed the NCIC report and I'm
12 having a hard time finding my date here.
13 That, I believe, was in 2007, Your Honor.
14 That was for a distribution of marijuana. On
15 that charge, he received a YOA, presumptively
16 not to exceed six. The NCIC does not say --
17 suspended but, rather, probation.

18 Other than that, I think that he may
19 have had one or two traffic offenses but no
20 other record.

21 Your Honor, under paragraph (d) of
22 16-3-85, 16-3-85(d), certainly the court can
23 take into consideration mitigating
24 circumstances. You have heard the testimony
25 and the evidence in this trial, you certainly

1 have had an opportunity to make your own
2 assessment of culpability in this case.
3 I really don't want to dwell on that, in large
4 part, because of family relationships, Your
5 Honor, but none of us -- I certainly think
6 that there are differences even as to these
7 defendants as to culpability.

8 I fully anticipate, Your Honor, that
9 he will get jail time. Of course, I would ask
10 for mercy for Mr. Morris. Again, the jury has
11 found him guilty. We are not arguing with the
12 jury's verdict -- we can't say that we like it
13 but we're not going to stand here and argue
14 with it. But I would certainly ask for mercy
15 from the Court as to sentencing.

16 Mr. Morris, is there anything that
17 you would like to share with His Honor?

18 DEFENDANT MORRIS: No.

19 MR. DEJONG: I believe that the
20 answer was no.

21 DEFENDANT MORRIS: No, sir.

22 MR. DEJONG: The answer was "no,
23 sir," in case the Court did not hear him.

24

25 DEFENDANT MORRIS: Just that

1 they're convicting the wrong person is all.

2 THE COURT: Yes, sir, Mr.

3 O'Connell?

4 MR. O'CONNELL: I'm stunned, Your

5 Honor. As we know, we can't talk about the

6 verdict. I am asking you to be merciful.

7 She's fifty-six, fifty-seven years old. She

8 has breathing problems. A jail sentence would

9 probably be like sentencing her to death.

10 There is something that's not here in

11 this case, because of the fact that everyone

12 has argued there was no intent. Mr.

13 Richardson even said to the jury that there

14 was no intent to harm this child. If you

15 assume the worst, that they gave the child

16 some medicine -- and they didn't, Your Honor.

17 I am asking you to be merciful on

18 these people because I can't see where jailing

19 them is rehabilitative. It is not. Like, I

20 said, Your Honor, -- my client would like to

21 say a few words, Your Honor, but like I said,

22 I'm just speechless.

23 THE COURT: Yes, ma'am?

24 MR. O'CONNELL: Your turn.

25 DONNA PHILLIPS: Sir, I didn't give

1 Child hydrocodone. I just know in my
2 heart -- I've work on this for four, four and
3 a half years, I've been up and down with Mr.
4 O'Connell, he knows that I am not guilty.
5 Everybody around me knows. I mean, I've
6 bared my life taking care of my kids. I've
7 fought for them in this town, I've been
8 slapped down by people, I had a woman that is
9 on the central registry that have got my
10 children. She got my children and it took me
11 a long time to get them back and everything, a
12 and stuff, with my husband. She beat me to
13 the ground, I took a warrant out on her and
14 they didn't they didn't do nothing, then I got
15 beat to the ground by her. Then she said I
16 hit her when I didn't hit her. And I had a
17 little girl, my little baby girl run to the
18 door and say, 'My mama didn't hit her, my mama
19 didn't hit her.'

20 I've done a lot of things in this
21 world that might not have been right. But,
22 you know, I -- I might have done a few things
23 that wasn't right. I got out there and dated,
24 might have went to a few bars and stuff, at
25 one time or another but I'm making it up now

1 because I'm -- I'm saying that I am not that
2 kind of person.

3 God is in my heart. I wasn't brought
4 up that way. I didn't give him nothing. I
5 would never, never, never give a child.

6 THE COURT: Yes, ma'am, if you
7 could just address me.

8 DONNA PHILLIPS: I read in the
9 records where Child was crying. We weren't
10 even told that he had nightmares. We wasn't
11 even told that he acted up in his sleep when
12 he had sleepovers. We just heard about that
13 he had nightmares the whole time that he was
14 gone, the whole year. And I went immediately
15 looking up nightmares. I didn't know about
16 this brain injury stuff so much myself,
17 because I was so busy working, trying to get
18 an apartment, I spent my last month before my
19 disability to try to help to get this baby a
20 place to live, a place of safekeeping.

21 I really didn't want him going to
22 Natasha and Brandon, I really didn't, because
23 he pulled away from her -- and that was the
24 biggest thing that hurt me the most. That was
25 the biggest thing that hurt me the most --

1 (emotional). For Brandon to stand there and
2 say that I said that he wasn't dead, when I am
3 the only one who didn't want to believe he was
4 dead, because I didn't know. They told me
5 that I had to realize that he was dead and
6 said no, I would not. I held onto the last
7 minute. Each and every thing I seen, I loved
8 him, I held him, I rocked that baby.

9 He talked and he ate. He ate table
10 food before, he'd ate baby food. But he was
11 climbing out, he was walking out. Don't they
12 know that brain injuries causes them to have
13 different behavior, that they lose that? I
14 mean, you know, you need to read up on that.
15 Every one of you need to read up on it.

16 THE COURT: Anything further,
17 ma'am?

18 DONNA PHILLIPS: I am just here to
19 tell you that I am not -- that you are putting
20 an innocent little girl and man, too, -- I
21 mean woman and man in jail, for a second time,
22 for a crime they did not commit. Every one of
23 you has blood on your hands that had gotten up
24 and put gags in -- gagged my mouth and
25 wouldn't let me tell the whole thing -- going

1 through the computers, you can see the records
2 and everything. I don't know about all that
3 evidence that you didn't show. I don't
4 understand why you didn't show all the
5 evidence and everything brought back. You
6 know, those records, you could have seen who
7 was telling the truth about each and every
8 step.

9 I told you -- that I even had to look
10 at my own kids, and I didn't want to. I
11 looked at everybody, didn't I? We fought our
12 best, as a whole family, trying to figure this
13 thing out because we didn't know.

14 Child was crying that night and we
15 were just looking at it like, 'well, she'd
16 said, well, he acts up if he gets tired.' We
17 didn't know.

18 He had a runny nose. I didn't say
19 that he was coughing. This woman right here
20 turned my statements around. I don't know how
21 you can do that until you've lost a child of
22 your own.

23 THE COURT: Ma'am! Ma'am! Ms.
24 Phillips, you are to direct your comments to
25 me. You need to sum up what you want to say.

1 I am going to give you about two more minutes.

2 DONNA PHILLIPS: All I know is that
3 I seen -- I feel like they've just -- that
4 everything in this case has been gagged and I
5 haven't even got to, you know, nobody has
6 covered my case. Nobody has covered this
7 case. There are so many -- you know, I don't
8 know. I don't know who done it. But I know,
9 being shown the Hydrocodone, you know, there
10 being that big of an amount in his system that
11 somebody had to give it to him. I know that
12 it wasn't mine. God in Heaven knows that it
13 wasn't mine.

14 THE COURT: Thank you, ma'am.
15 Based on Section 16-3-85(d), I have considered
16 the aggravating circumstances, including the
17 defendants' past pattern of child abuse or
18 neglect of a child under the age of eleven
19 years. I've considered any mitigating
20 circumstances.

21 Before we impose sentence on the
22 child abuse charges, I do want to explain
23 further my rulings on the contempt actions and
24 the limitation of Ms. Phillips' testimony
25 based on her conduct. I am relying on

1 *Illinois v. Allen*, a 1970 United States
2 Supreme Court case; I am relying on United
3 States v. Ives (phonetic), a 9th Circuit case
4 from 1974; and I am relying on State versus
5 Mosley 200 S.W. 3rd 624 from the Tennessee
6 Court of Appeals, 2005; and State v. Chapple
7 from the State of Washington Court of Appeals.
8 All of these cases uphold the right of a trial
9 judge to curtail a defendant in a criminal
10 case from testifying when they display
11 disruptive conduct, contemptuous conduct and
12 refuse to adhere to rulings of the court.

13 I've found that it was necessary in
14 the interest of decorum and justice to take
15 the actions that I did. Ms. Phillips had
16 already testified on direct and for a lengthy
17 period of time on cross examination and had
18 been able to present her side of the story to
19 the jury. But after being warned multiple
20 times about what her conduct would result in,
21 specifically her losing the right to testify,
22 you chose to forfeit that right by her
23 conduct.

24 I even offered her the chance to
25 reclaim the right but she insisted on doing it

1 the way that she wanted to do it rather than
2 the way that I proposed. Therefore she was
3 unable to reclaim her right to return to the
4 stand.

5 Now, as far as the contempt, I find
6 that she violated, willfully and
7 intentionally, my prior Order of Monday to
8 limit her testimony. She did so knowing the
9 consequences. My Order was clear and
10 definite. She told me herself that she
11 understood it, she repeated it in her own
12 words, precisely in the manner that I had
13 explained. It was done in the presence of the
14 court, it was disruptive and an immediate
15 imposition of contempt was necessary to uphold
16 the authority of the court and the respect for
17 the justice system. There was no other
18 alternative.

19 I held Ms. Phillips in contempt twice
20 yesterday. She will be sentenced to six
21 months for those convictions. Those sentences
22 will run concurrent.

23 As to the offense of child homicide
24 by abuse or neglect, I find that based on the
25 statute already referenced, the jury's verdict

1 and all the circumstances, that Donna Lynn
2 Phillips is committed to the South Carolina
3 Department of Corrections for a period of
4 twenty-five (25) years.

5 As to Mr. Morris, I find that he
6 should be committed to the Department of
7 Corrections for a period of twelve (12) years,
8 suspended to eight (8) years, following by two
9 (2) years probation. Credit for time served.

10 Court is adjourned.

11 (TRIAL CONCLUDED)

12 (DEFENDANTS IN CUSTODY)

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

INDICTMENT FOR
 HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

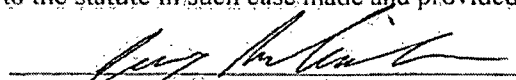
County present upon their oath:

That DONNA LYNN PHILLIPS did in Pickens County, on or about, and/or between the dates of March 14, 2008 and March 17, 2008, caused the death of Child _____, a child under the age of eleven years while committing child abuse or neglect with circumstances manifesting and extreme indifference to human life by facilitating or allowing the excessive ingestion of opiate drugs and/or the failure to get medical treatment for said child.. This is in violation of §16-3-0085(A)(1) of the South Carolina Code of Laws (1976) as amended.

TRUE COPY

Ms
 Harold P. Williams
 CLERK OF COURT
 PICKENS COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

Rita Burgess

Pickens County Sheriff's Office

ARREST WARRANT NUMBER
DIRECT PRESENTMENT
DOB:

ACTION OF GRAND JURY

TRUE BILL

DEC 16 2008

Date

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-39-2052
WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2008

THE STATE

vs.

DONNA LYNN PHILLIPS

Indictment for

2356

HOMICIDE BY CHILD ABUSE

VIOLATION § 16-03-0085

856



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Robert Foery, Ph.D., DABCC/DABTC

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LABORATORY CASE NUMBER: 538519	Subject's Name: Child
Client Account: 10145 / FIC002	Agency Case #: A08-127
Physician:	Date Of Death: 03/19/2008
Report To: PICKENS CO CORONER'S OFFICE	Test Reason: Other
ATTN: James Mahanes	Investigator:
214 E. Main St. C-374	Date Received: 03/25/2008
Pickens, SC 29671	Date Reported: 04/21/2008
Fx: 1-(864)838-5655-503	

Laboratory Specimen No: 40073124	Date Collected: 03/17/2008
Container(s): 01: Urine	Urine Random
Test(s): 70060	Autopsy Panel, Urine (550U3)

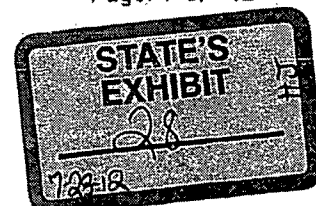
Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
ALCOHOLS	Negative				
Methanol	Negative				
Ethanol	Negative				
Acetone	Negative				
Isopropanol	Negative				
AMPHETAMINES	Negative				
BARBITURATES	Negative				
BENZODIAZEPINES	Negative				
CANNABINOIDS	Negative				
COCAINE/METABOLITES	Negative				
METHADONE/METABOLITE	Negative				
OPIATES	POSITIVE				
Hydrocodone	POSITIVE				
Hydrocodone, Quant		39607	ng/mL		
Hydromorphone	POSITIVE				
Hydromorphone, Quant		6401	ng/mL		
PHENCYCLIDINE	Negative				
PROPOXYPHENE/METABOLITE	Negative				
ANALGESICS	Negative				
ANESTHETICS	Negative				
ANTICONVULSANTS	Negative				
ANTIDEPRESSANTS	Negative				
RESPIRATORY AGENTS	Chlorpheniramine Positive				
ANTIPSYCHOTICS	Negative				
CARDIOVASCULAR AGENTS	Negative				
NARCOTICS	Negative				
SEDATIVES/HYPNOTICS	Negative				

Child

Laboratory Case #: 538519

Print Date/Time: 04/21/2008, 12:40:41

Page: 1 of 12



Laboratory Specimen No: **40073124**

Continued...

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
STIMULANTS	Negative				
SALICYLATES	POSITIVE				
Salicylates, Quant		77	ug/mL		

Specimens will be kept for one year from the date received.

Child

Laboratory Case #: 538519

Print Date/Time: 04/21/2008, 12:40:41

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Laboratory Specimen No: 40073125

Date Collected: 03/17/2008

Container(s): 01: Lavender Top Bicod. HCSPITAL

Test(s): 40320

Salicylates

40510

Opiates Panel 2

99100

Testing Cancelled

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
Cancelled Order Code:	4222C: Chlorpheniramine				
Cancellation Reason:	Test Cancelled:				
Insufficient specimen volume remains to complete testing					
OPIATES PANEL 2	POSITIVE				
Codeine	Negative				
Morphine	Negative				
6-Monoacetylmorphine	Negative				
Hydrocodone	POSITIVE				
Hydrocodone, Quant		102	ng/mL	10-40	
Hydromorphone	Unsuitable				
Insufficient specimen volume remains to complete testing					
Oxycodone	Negative				
Oxymorphone	Negative				
Salicylates	Negative				

Child

Laboratory Case #: 538519

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Laboratory Specimen No: 40073126**Date Collected:** 03/18/2008**Container(s):** 01: Green-top**Serum****Test(s):** 49900**Not Tested: (NT)**

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc

< No Testing Performed >					

Child

Laboratory Case #: 538519**Print Date/Time:** 04/21/2008, 12:40:41**Page: 4 of 12**



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Laboratory Specimen No: 40073127

Date Collected: 03/17/2008

Container(s): 01: Green-top

Serum

Test(s): 49900

Not Tested (NT)

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc

< No Testing Performed >

Child

Laboratory Case #: 538519

Print Date/Time: 04/21/2008, 12:40:41

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Laboratory Specimen No: 40073128**Date Collected:** 03/18/2008**Container(s):** 01: Lavender Top Blood, HCSPITAL**Test(s):** 49900

Not Tested (NT)

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
< No Testing Performed >					

Child

Laboratory Case #: 538519**Print Date/Time:** 04/21/2008, 12:40:41**Page: 6 of 12**



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863

Laboratory Specimen No:	40073129	Date Collected:	03/17/2008
Container(s): 01: Blue-top Tube	Serum	Test(s): 49900	Not Tested (NT)

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
< No Testing Performed >					

Child

Laboratory Case #: 538519

Print Date/Time: 04/21/2008, 12:40:41

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Laboratory Specimen No: 40073130

Date Collected: 03/17/2008

Container(s): 02: Various

Miscellaneous

Test(s): 49900

Not Tested (NT)

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc

< No Testing Performed >

This white top tube was received with no specimen.

Child

Laboratory Case #: 538519

Print Date/Time: 04/21/2008, 12:40:41

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865

Laboratory Specimen No: 40075551

Date Collected: 03/19/2008

Container(s): 01: Lavender Top Blood, HCSPITAL

Test(s): 42220

Chlorpheniramine

40440

Hydromorphone

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
Hydromorphone	Negative				
Chlorpheniramine	Negative				

Confirmation testing added to this additional sample, due to insufficient volume of other samples. kw

Child

Laboratory Case #: 538519

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Laboratory Specimen No: 40075552**Date Collected:** 03/18/2008**Container(s):** 01: Blue-top Tube Blood, HCSPITAL**Test(s):** 49900**Not Tested (NT):**

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc

< No Testing Performed >					

Child

Laboratory Case #: 538519**Print Date/Time:** 04/21/2008, 12:40:41**Page: 10 of 12**



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Robert Foery, Ph.D., DABCC/DABTC

867

Laboratory Specimen No: 40075553

Date Collected: 03/18/2008

Container(s): 01: Lavender Top Blood: HCSPITAL

Test(s): 49500

Not Tested (NT)

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc

< No Testing Performed >

Child

Laboratory Case #: 538519

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Laboratory Specimen No: 40075554

Date Collected: 03/18/2008

Container(s): 01: Blue-top Tube Serum

Test(s): 49900

Not Tested (NT)

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
< No Testing Performed >					

The Specimen identified by this Laboratory Specimen Number has been handled and analyzed in accordance with all applicable requirements.

Child

Laboratory Case #: 538519

Print Date/Time: 04/21/2008, 12:40:41


Foery, Robert

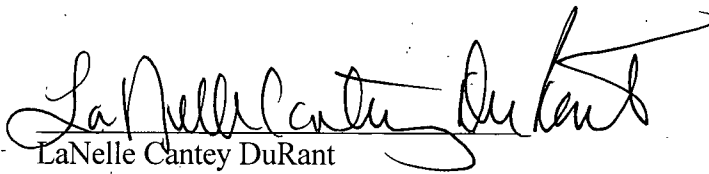
Signature of Certifying Scientist

Page: 12 of 12

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 8th, 2014



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 08 2014

SC Court of Appeals

Appeal from Pickens County

D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONNA LYNN PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2012-212663

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of January, 2014.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 8th day of January, 2014.

Mark Andrew (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.