

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to York County

Eugene C. Griffith, Jr., Circuit Court Judge
Thomas J. Rode, Circuit Court Judge

QUENTIN EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000646

APPENDIX

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**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #52 (CD—RHPD VIDEO/REENACTMENT @ [REDACTED]
WRIGHT STREET, ROCK HILL SOUTH CAROLINA (SCENE INCIDENT.))]**

QUENTIN EVANS: CROSS BY SOLICITOR BRACKETT

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1 in.

2 A. And pop her back in and she ready to go.

3 Q. Okay. Now the - You said she likes to watch TV
4 with you?

5 A. Yeah, cause one day me and - I remember Kierra
6 saying oh she's watching TV. So I was like she already
7 aware of what a TV is? So you can sit **Minor** on your leg
8 and **Minor** will actually sit there and watch TV with you
9 like.

10 Q. What kind of shows did you like to watch?

11 A. I watch all kind of police shows like - uh - World
12 Wide Police videos or - Uh - World's Funniest Videos, you
13 know.

14 Q. That kind of stuff. Did she seem to enjoy that?

15 A. She seemed to enjoy it. Ain't crying or nothing.

16 Q. So you did some of that during the day?

17 A. Yeah. That was the first time she came for the first
18 --

19 Q. Oh, I'm not talking about that. Any questions I ask
20 you are referring to Wednesday. We're only talking about
21 that.

22 A. Oh, okay, okay, okay, okay.

23 Q. So during that day --

24 A. Okay. Oh, no, we ain't watching none of the them
25 shows. The only movie we watch was Fast and the Furious.

1 And I had Bad Boys II but she ain't staying up long enough
2 for that.

3 Q. She wasn't what?

4 A. She wasn't gonna stay up long enough for that.

5 Q. Okay. So you watched *Fast and Furious* several times
6 through the day I believe you said?

7 A. Yeah, I watch the Fast and the Furious several times.

8 Q. And did it seem like just a normal day?

9 A. Normal day.

10 Q. All right. And then so moving forward to the
11 evening hours, about six or seven o'clock, who's in the
12 house?

13 A. I can't tell you exactly because it'd be a variety
14 of family members but it was a variety of family members in
15 the house. I'm in the bedroom of course with my daughter
16 so I ain't really paying attention to who really out there.

17 Q. Okay.

18 A. But it's a variety of family members.

19 Q. Okay. But you're staying with [Minor] in the
20 bedroom?

21 A. I'm staying with [Minor] in the bedroom.

22 Q. Is that pretty much throughout the day?

23 A. That's pretty much throughout the day.

24 Q. Just you and [Minor]?

25 A. Just me and [Minor].

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1 Q. Okay. Now at some point in time you fed **Minor**
2 closer towards the end of the evening? And I think you
3 said - What time was that?

4 A. It was about late nine, about nine, nine forty-five,
5 nine thirty somewhere.

6 Q. Okay. And that was her last bottle?

7 A. That was her last bottle she attempted to - I mean
8 she ate the whole bottle but that's about - You know it's
9 five lines on the side of one bottle.

10 Q. Uh-huh.

11 A. Like she eat all the way down until the last one.

12 Q. And then what did she do?

13 A. I burp her. While I doing that she might spit up
14 one time but she don't really spit up that but she might
15 spit up. I'll wipe her neck cause it run down her mouth to
16 her neck right here so I was wiping her neck, wipe her
17 mouth. Look at her and laugh and like giggle with her a
18 little bit and proceed to putt in her to sleep.

19 Q. Okay. So she was smiley and giggly when you put her
20 to sleep?

21 A. Yeah.

22 Q. You fed her and burped her?

23 A. Fed her and burped her then she --

24 Q. Same thing she always does?

25 A. Same thing, just normal **Minor**.

1 Q. Okay. And then what time did she fall asleep?

2 A. Little bit after ten maybe, ten thirty, ten twenty.

3 Q. Okay. What did you do when she went to sleep? Now
4 you've had a hard day playing with ---

5 A. I had --

6 Q. --- the baby, keeping the baby happy. I mean it's
7 a job taking care of a baby.

8 A. Yeah it is. It is.

9 Q. So you've now had a hard day doing all that and
10 she's down.

11 A. She's down. I relax.

12 Q. What does Quentin do?

13 A. I relax. I kick my feet back cause I'm --

14 Q. What does Quentin do to relax? How does he calm
15 himself down?

16 A. You know I might lay around or watch YouTube videos.
17 Stick my head phones in or something but I got my daughter
18 so I can only put one head phone in if I'm gonna listen to
19 YouTube video or something. But other than that when my
20 daughter is there I just head to toe with her.

21 Q. Okay. But at some point in time when she's asleep
22 you feel like you've done your job for the day, so you
23 rewarded yourself by taking a blunt and going into the
24 laundry room and smoking it didn't you?

25 A. No I ain't have a full blunt. That was - Them

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1 pictures was not from that day because I told my - It was
2 on my SD card, you know, if you snap a picture your memory
3 chip and your phone memory is two different things, you
4 know.

5 Q. You think that expert who came in here and talked
6 about all those schools he went to and how many times he's
7 been doing this and nine months at this school and with the
8 Secret Service and the US Marshalls Service and he teaches
9 other people, you don't think he knows the difference
10 between a time date stamp that's from ---

11 A. Yeah.

12 Q. --- moving something and the time date stamp that is
13 embedded in the photograph when it's created?

14 A. Yeah. I feel like he - I understood what exactly
15 he was talking about. But --

16 Q. Okay.

17 A. There a chance you did smoke that night and you just
18 don't remember that you smoked the joint?

19 A. No. I mean I remember. I would a remembered cause
20 if I go in there and smoke then I come back in there with
21 my daughter ---

22 Q. All right.

23 A. --- I don't really smoke around my daughter like
24 that.

25 Q. Now I believe you told Detective Haire that you were

1 watching the Fast and the Furious when she went down at
2 ten or ten thirty that night?

3 A. Yeah.

4 Q. With your brother?

5 A. Yes, sir.

6 Q. Now after that movie was over isn't it true you told
7 him your brother left the room?

8 A. No I don't remember my brother leaving the room.

9 Q. You went to go to sleep?

10 A. No, my brother went - My youngest brother Adrian
11 went to sleep and later on that night he got up because he
12 was hot because he came from up under the covers like man
13 I'm hot.

14 Q. You didn't tell Detective Haire that you were alone
15 back there with **Minor** that night?

16 A. Yeah, I was alone.

17 Q. That night? Through the night?

18 A. I was alone with her until - Listen, it was like
19 my little brother there, me, **Minor** and then my little
20 brother get up and then he leaves. But I basically I
21 called it alone cause it was just me and her. Who else is
22 there? Just me and my little brother and he's asleep. I'm
23 alone with her.

24 Q. Okay, tell us what happened? Walk us through that
25 night after she falls asleep and you finish watching the

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1 Fast and the Furious and you go to bed.

2 A. Oh I --

3 Q. What time was that that you went to sleep?

4 A. I ain't go to sleep. I was up on my phone all night
5 watching YouTube videos or hip hop, you know what that is,
6 that's a internet site like ---

7 Q. Okay.

8 A. ---all kind of videos and texting and calling
9 people and all kinds of just nic naks on my phone. Maybe
10 she - I ain't gonna say she wake up but you know if you sit
11 up and you shine the light on her she make a noise so I
12 just give her her pacifier she go back to sleep.

13 Q. Okay. Let me show you what's been marked as State's
14 Exhibit Sixty-one.

15 A. Uh-huh.

16 Q. The 911 call right there, you see that?

17 A. Yes, sir.

18 Q. At 6:36.

19 A. Yes, sir.

20 Q. Right?

21 A. Yes, sir.

22 Q. Now before that there was one phone call at 3:44.

23 A. Yes, sir.

24 Q. And then before that at 9:56, 21:56. So there were
25 no phone calls made except that one. Right?

1 21:56 on 1/22 then after midnight it became 1:23 one
2 phone call at 3:44 and then the next phone call was at
3 6:36 to 911.

4 A. Okay.

5 Q. So there's one phone call in the middle of the
6 night. Right?

7 A. Right.

8 Q. Here's the text, State's Exhibit Sixty-two.

9 Well this is just Baby Momma.

10 State's Sixty-three or four?

11 MADAM COURT REPORTER: State's Sixty-three is the
12 internet history and that's marked for ID.

13 SOLICITOR BRACKETT: That's only for ID. That's
14 right.

15 MADAM COURT REPORTER: Yes, sir, at this point.

16 SOLICITOR BRACKETT: Where is that?

17 MADAM COURT REPORTER: I got it here, Mr Brackett.

18 SOLICITOR BRACKETT: Okay. Thank you.

19 Q. Now you say you were up with the internet. There
20 we are at January 22nd, 2014, at 9:35.

21 A. Okay.

22 Q. Right? That's one thing to Facebook.

23 A. Right.

24 Q. And then again at 12:03, ---

25 A. Right.

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1 Q. --- one thing? Then again at 2:43, one thing.

2 A. Right.

3 Q. Then 1/23 at 4:22.

4 A. Where we start Hip Hop Mobile.

5 Q. Uh-huh. Then at 4:22 Face book?

6 A. Right.

7 Q. And nothing else until 10:21 in the morning.

8 A. Yeah but look. If you flip these pages over they

9 1:22 all the way. I was on the phone all --

10 Q. Yeah, that's at 7:00, 8:00, 9:00. I'm talking about
11 in the middle of the night after you went to bed at 10:30.

12 A. Right. Okay. Flip the page over.

13 Now 10:30. Show me where 10:30 is.

14 Q. 10:30. There is where they start at 9:35.

15 A. Yeah, right.

16 Q. There's one. Then again at midnight. That's just
17 three minutes after midnight.

18 A. Okay.

19 Q. One thing. Then 2:43?

20 A. Right.

21 Q. Then 4:22?

22 A. Right.

23 Q. Again at 4:22 to Face book. Then the next thing is
24 10:21. So there's only like four things on the internet.

25 A. Right. But you see all these visits right here. I be

1 going - You can have more one App open at one time. I was
2 just going back and forth, back and forth.

3 Q. Their showing up as pages on the internet. This
4 just tells us the pages.

5 A. Pages of what?

6 Q. The pages that you're going to, www. whatever.

7 A. Right. And so as I visited thirty-seven times.

8 Q. Okay. So you lay there watching your phone all
9 night?

10 A. Basically.

11 Q. So you should know the times pretty well; isn't that
12 right?

13 A. Sometimes with some videos take the whole screen but
14 it's - I ain't thinking nothing.

15 Q. But your phone has the time.

16 A. Time. Yeah it got the time in the corner but I
17 ain't -

18 Q. You should be dead on the time.

19 A. Yeah I should be but I ain't really paying that
20 much attention. Why - Its in the middle of the night. I
21 ain't - What am I using the time for?

22 Q. So you really aren't sure about the times?

23 A. Not really. I mean I know about the times but I
24 ain't really.

25 Q. Now let's go through a few things that you said.

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1 (STATE'S EXHIBIT NUMBER FIFTY-FIVE PUBLISHED AT 11:50
2 A.M..)

3 Q. 9:03, 9:04. That's not like about nine o'clock.
4 That's pretty specific time isn't it?

5 A. Yeah early nine o'clock.

6 Q. Okay. 10:36, 37, pretty specific. 2:05, 2:06, pretty
7 specific.

8 MR. COOK: Your Honor, I'm gonna object. That's not
9 a question.

10 THE COURT: Over ruled.

11 BY SOLICITOR BRACKETT:

12 Q. Is that pretty specific, 2:05 or 2:06?

13 A. You can say but they estimates. They not exactly.

14 I don't know what time there, I'm just given estimates
15 off my memory.

16 (STATE'S EXHIBIT NUMBER FIFTY-FIVE PUBLISHED.)

17 Q. Around 4:40?

18 A. Yeah, you see as I say about cause I ain't for sure.

19 Q. At 5:32?

20 A. Correct.

21 Q. That's dead on.

22 A. That's - that's --

23 Q. That's a specific time.

24 A. And I can tell you about that specific time. I'm
25 actually looking at my phone. I told you I pop up cause

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1 I'm laying down with my daughter and I get up. That's when
2 she was making the noise like kind of like I ain't gonna
3 say whining but . . .

4 Q. All those are very specific times aren't they?

5 A. You can count 'em as it.

6 Q. So you should have known the time. You said you
7 knew the time. Right?

8 A. Yeah, I was given estimates.

9 Q. And you're holding a cell phone in your hand?

10 A. Yeah, I'm watching videos.

11 Q. Okay. So all the times that you gave the detectives
12 in this case that things happened, are those all true and
13 accurate?

14 A. What the times?

15 Q. Yes.

16 A. They not - I ain't gonna say completely all the way
17 one hundred percent accurate but I gave a brief estimate of
18 what I thought the time were.

19 Q. Okay.

20 A. I would say maybe like eighty-five percent correct I
21 think so.

22 Q. You told the coroner for example that you got up,
23 that the baby fell behind the bed about two or two-thirty;
24 isn't that right?

25 A. I ain't for sure if it was two, two-thirty but I

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1 don't remember telling her not two, two thirty.

2 Q. You told Detective Haire three or four o'clock.

3 A. That she fell?

4 Q. Yes.

5 A. No, that's when I was attempting to fed her.

6 Q. No, I'm talking about falling. Didn't you tell
7 Detective Haire it was between three and four o'clock?

8 A. I think it - I think I told him about four, somewhere.
9 I know it was deep in the night so I gave a good estimate
10 three or four.

11 Q. That's a long way from five something which is what
12 you're saying now isn't it?

13 A. Correct.

14 Q. How could you be so far off?

15 A. Cause it's late in the night I'm really not paying
16 too much attention to the time.

17 Q. But you're holding the phone in your hand that has
18 the time on it. All these things are happening through the
19 night and you've got a phone in your hand that's got the
20 time right on it.

21 A. Right. But if just because I have a phone in my
22 hand doesn't mean that I'm exactly just watching the time.

23 Q. Well you say you got up at 5:37 to go get your
24 mother. Right?

25 A. Right.

1 Q. And that she runs in grabs the baby. Right? And you
2 carry her over to the couch?

3 A No I don't - I don't carry her. My mother carried
4 her.

5 Q. She does?

6 A. Right.

7 Q. She carries the baby over to the couch -

8 A. Yes, sir.

9 Q. --- and 911 is called immediately?

10 A. Yes, sir.

11 Q. But that says 5:37 but the 911 call was at 6:36. You
12 can see that on your own record ---

13 A. Yes, sir, ---

14 Q. --- that's an hour late.

15 A. --- I can.

16 Q. What were you doing for that hour?

17 A. I wasn't - The hour is that you pertaining to that's
18 where my lawyer he explained --

19 Q. He didn't explain anything cause he can't explain
20 anything. He doesn't know anything that happened. You're
21 the only one that knows what happened. Do you understand
22 that?

23 A. Yes, sir.

24 Q. So you're the one that has to testify to it.

25 A. When I ran past the clock in the living room the - as

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1 it set the five and the six almost look completely alike so
2 I say 5:37 cause I'm in panic mode and adrenaline rushing.
3 I'm really - I just glance at it and keep going. I know
4 you had made a second mistake thinking something was
5 something.

6 Q. Okay. So what you're telling us now is that you
7 looked at that clock and you thought that ---

8 A. Yes I did.

9 Q. --- the clock said 5:37?

10 A. Yes, sir, so I said 5:37.

11 Q. Okay. So at that moment that's your time reference?

12 A. Yes, sir.

13 Q. 5:37. And you're thinking it's five - It's twenty
14 till six?

15 A. That's how I end up calculating a lot of things cause
16 if it's 5:37 then I go back like a hour or so such and
17 such.

18 Q. So was that your point of reference when you're
19 talking to the police ---

20 A. Well can you --

21 Q. --- throughout the day? In other words when you're
22 trying to guess when something happened you're saying well
23 if that was at 5:30 then the other thing must have been at
24 five?

25 A. Yeah. Type of thing.

1 Q. So the 5:37 really threw you for a loop?

2 A. Yeah.

3 Q. Messed all your times up?

4 A. Yeah, you can say that.

5 Q. Now you understand how important it is to tell
6 the truth?

7 A. Yes, sir.

8 Q. And you would agree with me that time is important
9 in this case?

10 A. Yes, sir.

11 Q. Because if you're lying about that, and the time,
12 and you're making that up about misreading the time, that
13 would be a bad thing?

14 A. Right.

15 Q. And if that could be shown then there's really no
16 question about your guilt. Right? Because only a guilty
17 person would make up something like that to try to conceal
18 the truth from this jury.

19 A. No I wouldn't do such a thing.

20 Q. You wouldn't do such a thing. Only a guilty person
21 would do such a thing.

22 A. What, lie?

23 Q. Yes.

24 A. I'm not lying.

25 Q. I didn't say you were. I'm saying if only a guilty

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1 person would lie. Right? That's the kind of thing a
2 guilty person would do.

3 A. Is lie.

4 MR. COOK: Your Honor, I would object. I believe that
5 calls for speculation.

6 THE COURT: Sustain.

7 BY SOLICITOR BRACKETT:

8 Q. It's critical that you tell the truth. Right?

9 A. Yes, sir.

10 Q. Now this time issue's important.

11 A. Yes, sir.

12 Q. How many times did **Minor** wake up in the middle of
13 the night?

14 A. You want me to start from ten and tell you?

15 Q. Yeah, please.

16 A. Ten lay her down she wake up and about one, two, then
17 she go back to sleep and wake up that second time.

18 Q. Speak up a little bit. I can't hear you.

19 A. I would say twice.

20 Q. Okay.

21 A. From ten o'clock that's when I lay her down then
22 about two and then the - Uh - five, when she wake up that
23 last time when I go make the bottle.

24 Q. So ten o'clock you laid her down. And what's the
25 next time she woke up?

1 A. About two.

2 Q. Two? And how long was she up?

3 A. About a minute. I mean all you got to do is just
4 lean up put the cell - put my cell phone over her face.
5 Her eyes are closed like this --

6 Q. And what did she do at two o'clock?

7 A. She ain't crying but she like making baby noises so
8 I just put the pacifier in her mouth.

9 Q. Did you get up to fix her a bottle?

10 A. I got up the - to get the bottle cause it was about
11 that much, cause in case she don't want the pacifier I
12 might as well give her the bottle.

13 Q. Okay.

14 A. Or something so I got the bottle on standby so it
15 really don't - -

16 Q. Where was the bottle? This is the left over from
17 when you fed her earlier that night?

18 A. Yeah, that's the left over.

19 Q. Where was that at?

20 A. I think it was either on my bed, on my head board
21 right there or on the lower right but I had - -

22 Q. It was somewhere in the room?

23 A. Yeah.

24 Q. You didn't have to leave the room though?

25 A. Right.

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1 Q. Okay. But you gave her a pacie?

2 A. Yes, sir.

3 Q. Did she take the bottle?

4 A. She - I ain't give the pacifier first so if she took
5 the pacifier then the bottle is just.

6 Q. So then she fell back to sleep?

7 A. Went back to sleep.

8 Q. Until?

9 A. Hours after that she woke back up again.

10 Q. At what time?

11 A. Shooo, five, uh - I think five. Five-thirty-three,
12 thirty-two, five thirty.

13 Q. Okay. I thought you said you woke up at 5:32 and
14 your eyes popped open? You knew the time cause you was
15 looked at the clock.

16 A. It was 5:37.

17 Q. No, no. On your phone. You said you looked at
18 your phone at 5:32. You knew that time was solid because
19 you looked at the time on your watch, on your phone earlier
20 you said.

21 A. Earlier.

22 Q. Yes.

23 A. I said that?

24 Q. Earlier you were testifying just a few minutes ago
25 you said you looked at your watch on your cell phone and it

1 was 5:32 and your eyes popped open.

2 A. Popped open from where? From being asleep?

3 Q. From being closed.

4 A. No. You got it - You got it mumbo jumbo. I'm laying
5 in the bed popping up I'm sitting up you know I can look at
6 the phone.

7 Q. Yeah.

8 A. Then flash it on her to see if she got eye open.

9 Q. Yes. You remember when I went through all the times
10 and I said you sure seem to know all the times. You were
11 saying I really didn't know the time of anything. And I
12 said well you sure seem to know 'em in all these
13 interviews, 9:02, 9:03.

14 A. Cause I'm giving a good estimate.

15 Q. Yeah. No, but then I got to the last one and I said
16 (STATE'S EXHIBIT FIFTY-FIVE PUBLISHED.)

17 Q. Popped up at 5:32 and you said, oh, I knew that time
18 was right because I looked at my cell phone.

19 A. I popped up.

20 Q. And you looked at your cell phone.

21 A. Yes, sir.

22 Q. Right. Okay.

23 A. You laying down you pop up.

24 Q. Okay. 5:32. Right?

25 A. Correct.

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1 Q. Look at your cell phone?

2 A. Correct.

3 Q. Cell phone says 5:32?

4 A. Correct.

5 Q. Well, what did you do after that? Tell the jury
6 what happened after you popped up and looked at your cell
7 phone? Why did you pop up?

8 A. Because **Minor**.

9 Q. What about her?

10 A. She was making baby noises so I figured hey, let's
11 make a bottle cause it's about time. The last time I fed
12 her was way about ten o'clock last - that same night way
13 long time ago so I guess she must a be hungry so I get up.

14 Q. So you think that's when you went to make the bottle?

15 A. Yeah, that's when I went. She was making baby
16 noises and that's when I went and made the bottle.
17 I turned the stove on to get the water ready.

18 Q. Step us through what happened.

19 A. I get the water ready.

20 Q. Okay.

21 A. I come back into the room.

22 Q. Right.

23 A. That's when I open my closet put the cereal the powder
24 milk and I think its nursery baby water if I'm not
25 mistaken. Nursery baby water.

1 Q. Okay.

2 A. I put all that in there.

3 Q. Right.

4 A. Grab the top of the head of the bottle - the bottle
5 she drank out of.

6 Q. Right.

7 A. And I shake it so the milk don't stir well.

8 Q. Okay. And then what happened?

9 A. After that you can hear her making baby noises - you
10 know she's laying on her side so I go back out cause the
11 water - I feel like the water is warm enough to put in her
12 bottle. So phishhhhh -

13 Q. How long did all that take?

14 A. Maybe about a minute, minute and half. So I - -

15 Q. You warmed a bottle up in a minute and a half?

16 A. No. I fixed the bottle in - I'm fixin the bottle. I
17 didn't warm it. I warmed the water up first. First I
18 turned the water on.

19 Q. How long did the whole process take from the time
20 you got up and started fixing the bottle till the bottle
21 was warm?

22 A. Uh - About four minutes, five minutes. I ain't sure.

23 Q. Okay.

24 A. Short period of time.

25 Q. So now you're walking in there with a warm bottle.

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1 THE COURT: Use that microphone, please.

2 A. Oh, I'm sorry.

3 Q. Now the bottles warm. Tell us what happens next.
4 It's been five minutes or so.

5 A. Yeah, the bottle warm and as I'm coming back in the
6 room that's when I - the incident.

7 Q. Okay. Tell us about that.

8 A. Oh, I run. As I told you earlier I was processing in
9 my mind that she crying so she must be either hungry or she
10 finally woke now because she crying more than she normally
11 cries cause she don't really cry like that.

12 Q. Was it a loud cry?

13 A. Yeah.

14 Q. Like a help me cry?

15 A. Yeah.

16 Q. Like screaming her head off kind of cry?

17 A. Like trying to - Like kind of screaming her head off.

18 Q. Okay.

19 A. So that's when I - As I open the door it's dark so
20 I still can make out the room because I been in there all
21 night your eyes are adjusted to the dark so - -

22 Q. But you had the light turned on in the kitchen you
23 say?

24 A. Yeah, I don't - Well my brother said that.

25 Q. Was it?

- 1 A. I don't remember.
- 2 Q. Okay.
- 3 A. But if it was it still luminares the room.
- 4 Q. Okay.
- 5 A. So that's when I opened up the door ---
- 6 Q. All right.
- 7 A. --- and I run and I jump on the bed.
- 8 Q. You jump on the bed you think your baby's on?
- 9 A. No. I can see that my daughter's not on my bed.
- 10 Q. Okay.
- 11 A. That's the reason why I jump on the bed. If she's
- 12 laying there I'm not gonna bong jump on the bed.
- 13 Q. How fast were you moving when you jumped on the bed?
- 14 A. Immediately.
- 15 Q. A what?
- 16 A. Like at immediate speed.
- 17 Q. Well it's a pretty tight space in there. Right?
- 18 A. Yeah, it's a pretty tight space about this far.
- 19 Q. Okay.
- 20 A. You can take off running.
- 21 Q. Okay.
- 22 A. And get some speed up and jump.
- 23 Q. Very good. Now what happened when you got on the bed?
- 24 A. I look down she right there and I jerk her arm.
- 25 THE COURT: Don't forget about your microphone,

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1 please.

2 A. Oh, I'm sorry. That's when I run and I grab her and
3 jerk her up.

4 Q. Okay. When you look down there and you saw her down
5 below describe how she was oriented in that little space.

6 A. She was on her left side like this.

7 (WITNESS DEMONSTRATED.)

8 Q. Okay.

9 A. And that's when I looked down and that's when she like
10 this.

11 (WITNESS DEMONSTRATED.)

12 A. You know her arm straight like this.

13 Q. Was her face above or below that little side wooden
14 panel where it's on the side of your bed?

15 A. Maybe - I think it was - It's dark, right, maybe the
16 - say the bed thing right here like in between like kind
17 of sort of look like her head was --

18 Q. Like maybe she's hovering just above the safe?

19 A. Well it look like her head, not her whole body is
20 straight like half of it on and half of it off type of
21 thing.

22 Q. Okay. Did you pull her up easily from there?

23 A. No, sir, I was in fear and shock so I ran and jumped.
24 Ran as fast as I could without --

25 Q. Did she come straight up from the side of the bed is

1 what I'm asking?

2 A. No. I ain't got - I ain't got to do like this to get
3 her but she ain't come just perfectly like that. But as I
4 grabbed her it just seemed all of it happened so fast.
5 Well it seemed to me that she ain't come easy but I ain't
6 gonna say it took a whole lot to kind of jerk her out of
7 it.

8 Q. Okay. And she's still screaming this whole time?

9 A. If she screaming you know - Well what do you expect -
10 Explain screaming. She crying loudly

11 (SOLICITOR BRACKETT MADE NOISE LIKE BABY CRYING.)

12 A. Yeah, she crying loudly.

13 Q. Okay.

14 A. And that's when I sit on the right side of my bed and
15 I pat her on her back ---

16 Q. Okay.

17 A. --- and tell her everything gonna be okay.

18 Q. And how quickly does she calm down?

19 A. Quickly.

20 Q. Okay. And what else did you notice about her at
21 that time?

22 A. Her head was kind of loose.

23 Q. Kind of loose?

24 A. Yeah.

25 Q. You testified or you said earlier in the coroner's

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1 re-enactment ---

2 A. Yeah, ---

3 Q. --- her head ---

4 A. --- her head very ---

5 Q. --- she couldn't support it at all.

6 A. Yeah.

7 Q. It was completely off track and bobbling around.

8 A. Her head was like shoosh, shoosh.

9 Q. And you didn't think maybe something was wrong then?

10 A. No cause I looked at her like this.

11 Q. Her head flops forward and then flops backward. Is
12 that what you said?

13 A. Yeah.

14 Q. Like jello.

15 A. Yeah.

16 Q. I believe you used the term it looked like she'd
17 snapped her neck.

18 A. Yeah, that's when I looked and reached like this and
19 I was looking at her like baby you okay. That's what I'm
20 thinking in my head. You okay?

21 Q. Uh-huh.

22 A. But her eyes was like half dazed but I wasn't
23 thinking in my mind that she injured like in a head or her
24 arm or something was hurt. I'm not thinking like she's
25 really really hurt cause I seen babies fall before and they

1 don't get - they don't do like that but I'm not thinking
2 like she's really really really seriously hurt. If I'd a
3 knew she was seriously hurt like when 911 got there then I
4 would a been called.

5 Q. How long did it take you to calm her down?

6 A. Uh-Short period of time. Maybe a minute, two minute.

7 Q. And then what did you do with her?

8 A. I laid her down.

9 Q. Okay. How did you lay her down?

10 A. On her left side.

11 Q. Did she have a pillow?

12 A. She sleep on a pallet. My grandma made a blanket
13 before she died and I put the pillow then [Minor]'s covers
14 that Kierra brings and then my mom got a - bought a pink
15 crown blanket.

16 Q. And underneath all of that you have a big black
17 comforter. Right?

18 A. I got a -

19 Q. And that does down and lays over the whole top of the
20 bed?

21 A. Yes, sir.

22 Q. Now, what did you do after you laid her back down?

23 A. I run back in the kitchen.

24 Q. She take a pacie?

25 A. I tried to put it in her mouth.

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1 Q. But she didn't take it. Any response at all?

2 A. No. She was just doing moaning sounds.

3 Q. Like?

4 (WITNESS DEMONSTRATED.)

5 A. Like she was calming down that's why I never
6 thought that she would - was needed immediate attention
7 cause she was still like

8 (WITNESS DEMONSTRATED.)

9 Q. And when she fell back asleep?

10 A. I ain't gonna say she fell back asleep. But she
11 wasn't making no noises as I come back in the room from
12 puttin her bottle in the refrigerator.

13 Q. All right.

14 A. And I laid back down with her face to face.

15 Q. Was the lights still on in the kitchen?

16 A. Like I say I don't remember the light. I don't
17 even remember the light being - -

18 Q. Could you see her face as you lay down beside her?

19 A. I could see her face though.

20 Q. All right. I think you said she slept with her
21 eyes open?

22 A. No. I laid - I lay my arm over her and I go to sleep.
23 I start dozing but her eyes are still open so as I'm laying
24 --

25 Q. She sleeps with her eyes open regularly?

1 A. You can't sleep with your eyes open can you?

2 Q. Well you said that earlier in one of your statements
3 she sleeps with her eyes open.

4 A. Yeah.

5 Q. Yes, sir.

6 A. Okay. Well, she sleep with her eyes open. I don't
7 think that she was asleep, man. No.

8 Q. Does she stay there laying there with her eyes open
9 or did she --

10 A. She laying with her eyes open. I from being up all
11 night I go to sleep.

12 Q. Okay.

13 A. And when I wake up when my eyes pop back open.

14 Q. Now you - I think you've said in the re-enactment you
15 dozed off at ten or fifteen minutes and then your eyes pop
16 back open cause you had a dream?

17 A. Yeah, I had a flash in my head.

18 Q. Okay.

19 A. That my daughter had fell so pewwww my - I was
20 sleeping.

21 Q. So this is gonna be maybe twenty, twenty-five minutes
22 total thirty minutes after you had first heard her crying
23 and woke up to fix the bottle?

24 A. Yeah.

25 Q. How could you possible think that it was 5:37 then

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1 when you walk past the clock to go get your mom --

2 A. I ain't walked by -

3 Q. I'm not finished with the question. You walk past
4 the clock, you look down and you see it's 5:37 but
5 thirty minutes before it was only 5:32. You made the
6 bottle, gone in there and had this crisis with her, put her
7 back down, laid down and slept for a little while, got back
8 up, you see a clock you think only five minutes has passed?

9 A. No, I did not walk. I ran and I just glanced at her
10 like and kept going.

11 Q. Yeah, but how could you think it was 5:37?

12 A. Because the clock said - the second -

13 MR. COOK: Your Honor, I would object. That's been
14 ask and answered.

15 THE COURT: Well, I'm not certain so I over rule the
16 objection.

17 A. Continue with the answer?

18 Q. Please.

19 THE COURT: Yes, sir.

20 A. Oh. The two numbers on the right says thirty-seven.
21 The one number on the left looks to appear to be
22 five, to me, running past with adrenaline.

23 Q. And this is a digital cable box?

24 A. Yeah.

25 Q. That's the one that's sitting below your TV in the

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1 living room?

2 A. Yes, sir.

3 Q. So -

4 A. Digital with the numbers like.

5 Q. Yes. It's a cable box that's got the time on it.

6 A. Yeah, yeah.

7 Q. You agree you told Detective Haire in your final
8 statement to him, "The injuries do not lie, I was the only
9 one that had her."

10 A. Yes, sir.

11 SOLICITOR BRACKETT: The court's indulgence one
12 moment.

13 (PAUSE.)

14 SOLICITOR BRACKETT: No further questions, Your Honor.

15 MR. COOK: I have no further questions, Your Honor.

16 THE COURT: You may step down.

17 MR. COOK: The defense rest, Your Honor.

18 (WITNESS LEAVING WITNESS STAND.)

19 THE COURT: Any reply?

20 SOLICITOR BRACKETT: No, Your Honor.

21 THE COURT: All right, ladies and gentlemen, that is
22 all of the testimony or other evidence to be offered in the
23 trial of the case. What remains to be done are the lawyers
24 final summations after which I'll instruct you on the law
25 and then you'll begin with your deliberations in the case.

1 Because of the time we don't have enough time to get
2 all that done before lunch, so we're gonna break for lunch
3 now and we will resume this afternoon at 1:30, at 1:30, so
4 you're excused for lunch. Keep in mind no discussions, no
5 investigation, no research, no media exposure. Have a good
6 lunch, please report to your jury room at 1:30, 1:30 this
7 afternoon.

8 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:15 P.M..)

9 THE COURT: All right, renew any motions or any
10 additional motions?

11 MR. COOK: I'll just renew the directed verdict, Your
12 Honor. A motion for a directed verdict. The state has
13 failed to prove every element of the crime beyond a
14 reasonable doubt.

15 THE COURT: All right. That motion is denied.

16 MR. COOK: Thank you, Your Honor.

17 THE COURT: Do you all have instruction request?

18 MR. COOK: Yes, sir, Your Honor. I did not put a
19 redaction request in my pleadings but of course I would
20 request that as well, just a typical redaction.

21 THE COURT: Well let me see your typical redaction
22 request and I'll consider it.

23 MR. COOK: To be candid and apologetic I don't have a
24 typical redaction request -

25 THE COURT: Okay.

1 MR. COOK: --- to hand to the court but I will trust
2 whatever Your Honor would charge.

3 SOLICITOR BRACKETT: Your Honor, we would just request
4 obviously a circumstantial evidence charge is appropriate
5 in this case. And we ask the court to charge - I believe
6 the language in *Repine* is appropriate and still good law.
7 In addition I would inquire is your reasonable doubt is it
8 the hybrid blended *Victor Manning*.

9 THE COURT: Its Manning.

10 SOLICITOR BRACKETT: Its *Manning*? We would request
11 the *Victor* language in addition - -

12 THE COURT: Well any request that you all have if you
13 will give them to me, whatever you're requesting in writing
14 I'll be happy to consider it.

15 SOLICITOR BRACKETT: Yes, sir.

16 MR. COOK: Thank you, Your Honor. I handed this up
17 prior but I would hand it back again if Your Honor does not
18 - Just a proposed jury -

19 THE COURT: Well I have that.

20 MR. COOK: That's all I have, Your Honor.

21 THE COURT: Well that's just the statute.

22 MR. COOK: Typical language of the statute yes, sir.

23 I would just request a beyond a reasonable doubt, the
24 typical charge that uses the hesitation in it. I'm not
25 familiar with the case law, Your Honor.

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1 THE COURT: All right. The court is in recess until
2 1:30.

3 (COURT IN LUNCH RECESS AT 12:18 P.M..)

4 (COURT BACK IN SESSION AT 01:36 P.M..)

5 THE COURT: Thank you, be seated.

6 All right, Mr. Thompson, did you share your request
7 with Mr. Cook?

8 SOLICITOR THOMPSON: I have, Your Honor. And I would
9 be asking that request in addition to your normal charge.

10 THE COURT: Okay.

11 MR. COOK: I have no objection to it, Your Honor.

12 THE COURT: All right. Any other request?

13 MR. COOK: No, sir, Your Honor, not from the defense.

14 SOLICITOR THOMPSON: No, Your Honor.

15 THE COURT: All right. You all ready to proceed?

16 MR. COOK: Yes, sir.

17 SOLICITOR BRACKETT: Yes, sir.

18 THE COURT: All right, bring 'em in please.

19 (JURY REENTERS COURTROOM AT 01:38 P.M..)

20 THE COURT: Good afternoon, ladies and gentlemen.

21 As you know all of the evidence has been received,
22 you're going to now hear from the lawyers in their final
23 summations or argument after which I'll instruct you fully
24 on the law then you can begin with your deliberations in
25 the case. So please give the lawyers your attention now as

1 they give you their final summations.

2 Mr. Cook.

3 MR. COOK: May it please the Court, Your Honor.

4 Good afternoon, ladies and gentlemen.

5 I want to begin with a quote from Winston Churchill
6 that you often hear in these types of - in jury trials,
7 that there's no more important duty that you can serve for
8 your nation aside from active military service during the
9 time of war than jury service, and there's a reason. It's
10 what separates the United State's Of America and other
11 western countries from communist Russia, where you're
12 charged with a crime you go through a paid off three member
13 panel that works for the government then you're convicted
14 and then you're sentenced.

15 There's no trial, there is no jury of peers. These
16 are the types of things that the founding fathers wrote
17 into our constitution when they were forming this great
18 nation. Their there for a reason. I bet none of you
19 realize that you're a peer to Quentin Evans, but you are.

20 I realize that perhaps when a juror leaves the
21 courtroom and they're relieved, there is a lot of stress
22 going on. You go home you flip on the TV you pull that
23 lever back on the recliner after dinner sit around and talk
24 with the family about an amazing story. A few days pass
25 starts wearing off you fall back into that hum drum routine

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1 of day to day life and you never think about it again
2 unless somebody asks.

3 But for my client the decision you're gonna make today
4 is the most important decision that you will make in your
5 entire life. And he appreciates your attentiveness and he
6 appreciates your consideration and your due consideration
7 for all of the facts in this case.

8 I would want to ask you to fight the urge of what I
9 characterize as the sandbox mentality that we learn in
10 American public schools where if you're accused of
11 something you're guilty until you prove yourself innocent.

12 That's why Jefferson and all who wrote into the
13 constitution no actually you're innocent until you're
14 proven guilty. It's a big difference there. It's barriers
15 that are erected. Especially in a case of this nature with
16 such graphic photos. I would think that it would just
17 elicit this urge for vindication. But you need to realize
18 the statute ask you to punish a crime.

19 What do you do with an accident even if it's a
20 terrible horrific accident that takes a human's life? Is
21 it still an accident? Does it become a crime just because
22 somebody passes away? So I encourage you to pay close
23 attention to the statute. And I want to read parts of it
24 here for you today.

25 Again, at the end of all of this argumentation from

1 the defense and the state the judge will address the jury
2 and the judge will tell you, instruct you, on what the law
3 is. And of course I posit that that is the law of the
4 land. I'm reading off of a statute Section 16-3-85.
5 Homicide By Child Abuse; definitions.

6 It reads, a person is guilty of homicide by child
7 abuse if the person: (1) causes the death of a child under
8 the age of eleven while committing child abuse or neglect,
9 and the death occurs under circumstances manifesting an
10 extreme indifference to human life."

11 Of course, if somebody shakes a baby as hard as they can
12 that's extreme indifference to human life. Did that happen
13 here? The statute goes on, "or, knowingly aids and
14 abets another person to commit the crime" - I'm gonna pass
15 through that section, I don't think it's relevant.

16 Section (B) "For purposes of this section, the following
17 definitions apply: "child abuse or neglect", means an act
18 or omission by any person which causes harm to the child's
19 physical health or welfare;

20 (2) harm to a child's health or welfare occurs when
21 a person: inflicts or allows to be inflicted upon the
22 child physical injury, including injuries sustained as
23 a result of excessive corporal punishment.

24 (b) fails to supply the child with adequate food,
25 clothing, shelter, or health care, and the failure to do

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1 so causes a physical injury or condition resulting in
2 death; or abandons the child resulting in . . . death."

3 That's the statute.

4 I want to just put forth a few hypothetical that
5 perhaps legislator's were thinking about when they drafted
6 this statute. Of course we've seen the terrible cases of
7 shaken baby syndrome. And I don't know if you have
8 children or not, but let's just say you're going on about
9 the third day of colic. The baby is screaming all day
10 long, but more importantly all night long and cannot be
11 consoled no matter what you do.

12 And you start wearing down and you start losing sleep
13 sure. It gets to be three, four, five o'clock in the
14 morning and you snap. You're holding the baby please stop
15 crying, the pacifier, the bottle, nothing's working and you
16 just cannot control yourself and something over comes you
17 like the detective said numerous times and it just takes a
18 few seconds and you shake that baby as hard as you can.

19 The head flops back and forth and back and forth. The
20 same type of injuries occur and the child passes away.
21 Yeah, you're guilty at that point of homicide by child
22 abuse definitely. Let's say that you have a crack habit
23 and you keep your baby in the stroller all day long while
24 you're over in the next room doing crack day in and day out
25 to a point to where the baby gets just a bald spot their

1 hair doesn't grow because you lay down all day and you
2 never pick the child up and you never hold the child.

3 And you go off and you're on a five day binder and you
4 forget the child's back there and the baby dies from
5 malnourishment. Unfortunately these things happen and you
6 have to write a statute for it. That's the neglect portion
7 I would submit. I would also submit that neither one of
8 those happened here. They don't have statutes for
9 accidents.

10 Now I'd like to just briefly go over again but in a
11 little bit more detail the concept of beyond a reasonable
12 doubt. Not only does the defendant have to be guilty of
13 the statute but they have to be guilty of the statute
14 beyond a reasonable doubt. Every element of the statute.
15 And what does beyond a reasonable doubt mean?

16 Of course his Honor is going to instruct you on that
17 but I would just like to opine for a minute or discuss it.
18 And it is an nebulous concept that law professors will
19 fight over.

20 But the basic instructions from our Supreme Court and
21 the US Supreme Court say - first from our supreme court -
22 that reasonable jurors after hearing all of the evidence -
23 and you're at that point - this isn't evidence, any of the
24 closing arguments are not evidence. But still even more so
25 you go to the deliberation room - we're not at that point

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1 yet, we're close - you get to the deliberation room and you
2 five each of you - the foreman will give each of you a
3 chance to say your peace and talk and discuss the things
4 that are on your mind. After you've heard everybody - I
5 think you're there at that point. Sure perhaps there's
6 gonna be some more arguing going on back there but after
7 you hear all of the evidence and consider the state's
8 arguments, consider my arguments, consider the statute,
9 consider all the law, consider the evidence, the hard
10 evidence that you've seen; at that point if you're
11 hesitating that the defendant is guilty then the state has
12 not met their burden.

13 And I'm sure that his Honor and the state may very
14 well cover that. I'm not sure but that's my take on it.
15 The US Supreme Court further opines that firmly convinced,
16 you have to be firmly convinced in the guilt of the
17 defendant. How can you have a line across your forehead
18 that causes a subdural hematoma and follow the state's
19 theory that the baby was shaken and not hesitate?

20 Somebody tell me where that line came from? I haven't
21 heard it yet. Which makes me think about the coroner's
22 evidence. I call him the coroner, the forensic
23 pathologist, Doctor Hart. I'm not saying that he's
24 incorrect about the injuries. I'm saying he's a doctor and
25 not a detective. And I don't care what he thinks about the

1 floorboard or where it is. Just tell us what happened.
2 She's got a subdural hematoma, there's a line across her
3 forehead, there's a broken collar bone, there's bruising on
4 the ribs, there's spinal injuries. Thank you. Have a
5 seat. Did you notice in my cross-examination with him how
6 he would ask me questions which makes me think I don't
7 think he has all the experience that he needs to have
8 because you can't ask an attorney questions from a stand.

9 He says to me "I'm putting words in his mouth." Let
10 me fill him on something. I don't even know the words that
11 he's using to put in his mouth because I'm not a forensic
12 pathologist. I know one word that he didn't want put
13 back in his mouth after it came out of his mouth - linear.

14 And I ask him about that suddenly it became
15 oblongataed or I can't remember what he said. Anything
16 can cause that. Well how about a basketball to the
17 forehead, what about that? Well anything can't cause it.
18 Stick to the signs please.

19 Did you hear - I don't know many forensic pathologist
20 when I ask them is it possible, sir, that the line could
21 have come from the floor board or the molding? I think at
22 that point he's supposed to say, hum, yes, or no. Let me
23 think about the case studies that I've reviewed and give
24 you an answer. He's not supposed to say I don't think the
25 floor board was low enough to the ground. That's not

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1 forensic pathology that's detective work. He's not
2 sherlock Holmes, he's Doctor Hart.

3 These types of facts are up to you. You've got all
4 kinds of photographs. I'm not the type of attorney that's
5 gonna have a lot of evidence in my closing but look at
6 photograph Forty-five. You'll see all of 'em, please look
7 through everything in evidence. You can do that in the
8 jury room. You can play the interview again if you want
9 to. Sure it's long, but you can do it. Or you have the
10 luxury of playing just a few parts and when the typing
11 stops you can start.

12 It's all kinds of stuff in here. Very interesting
13 evidence. Look at photograph Forty-five of that floor
14 board, see if as a trier of the fact you think that it's
15 close enough to the floor or the molding to cause a line
16 across a baby's forehead. If you - I would posit if you
17 come to that conclusion we're done. If you don't hesitate
18 after that you're not paying attention.

19 He was biased in his clinical report that he read from
20 the onset. And this is what surprised me. He is a M.D.,
21 doctor, he's supposed to know about these types of things.
22 Well that report didn't influence me whatsoever. I'll just
23 read a little bit of the facts just to find out what the
24 police are saying might have happened. Well did the police
25 mention anything to you about the floor board with the baby

1 wedged between the bed. I was just reading this I was
2 looking - I think he was looking for a shaken baby case.
3 He saw retinal hemorrhaging; the subdural hematoma and some
4 of the classic signs of shaken baby case. But how could
5 he not get past the line on the forehead with all of his
6 years of experience and all the publications he's been in
7 and all the degrees that he has? That's not rocket
8 surgery. There's a line on the forehead. Do you get a
9 line on the forehead from shaking a baby? What is he
10 proposing? That my client shook the baby real hard and
11 then banged her head against the floor and then threw her
12 behind the bed and then sits there for three hours with his
13 dead daughter in the room until everybody wakes up and then
14 sudden decides to go and panic and make the 911 call that
15 the state led with? Is that what we're going with here?

16 He didn't do any case studies and he admitted that. I
17 said have you read any case studies that talk about force
18 impact, anything of this nature? I'm not sure it's ever
19 happened before. Did you read any case studies at all?
20 No. And what are you basing your premise on then? Again,
21 his job is to tell you what the injuries are and they are
22 gruesome and they make you want to punish. But it's not
23 his job to tell you how the baby came about that. He has
24 no idea. He's sitting there telling you that could be a
25 ping pong ball. I don't know, all kinds of things.

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1 How hard is a football tackle with your M.D.? You
2 want to tell me you're gonna compare it to a football
3 tackle? Is anybody played football? You can - Are we
4 talking about I'm running down the field trying to get
5 somebody on a kick off? Those are some really hard impact.
6 Or are we at the line of scrimmage and I'm just blocking
7 the guard right in front of me? Is that science? It's as
8 bad as a car crash. Huh. Did you bump into somebody at
9 Wendy's through the drive through or are you in a head on
10 on Interstate 77 going eighty miles an hour?

11 Do you know what he's talking about? He did say one
12 thing about the retinal hemorrhaging that I can imagine the
13 state is going to spend a lot of time on as proof that this
14 is shaken baby because you don't get multiple retinal
15 hemorrhages. What are multiple retinal hemorrhages? How
16 many retinas do you have?

17 Do you remember the doctor saying when somebody falls
18 and hits their head on the sidewalk one time you can get
19 retinal hemorrhages.

20 Be careful of the CSI effect. Everybody knows CSI.
21 Sweep the nation, everybody's watching CSI. And it's
22 Hollywood, it's big budget Hollywood. I really haven't
23 watched that much. I've seen it a few times. Big
24 graphics. A few times they've got you go inside the body
25 and the head and the camera takes you all through the blood

CLOSING ARGUMENT BY MR. COOK:

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1 vessels. And that's great, that's fine and dandy, when you
2 have the million dollar budget and some Hollywood writers.
3 The endings the same every time. Through out science we
4 have discovered that it had to happen this way. And then
5 they always go and approach the person and they tell 'em we
6 found retinal hemorrhaging and he's oh, I confess, I'm
7 running, you can't catch me. Here we are in reality. This
8 is York County, South Carolina. CSI. Football injuries.
9 I didn't take into account that. Are we supposed to
10 convict somebody off of that? I'm not saying the injuries
11 didn't happen. Here's the big question. How did they
12 happen?

13 Did anybody do a study? Detective Haire there,
14 Lubber, Detective Lubber and Detective Neely, the coroner
15 with her associates's degree who takes notes. Did anybody
16 try to do a force impact study? What would happen if I ran
17 and jumped on that bed? And I want to run and jump on the
18 bed. What would happen if a baby were wedged in between
19 that wall? Do we know? Did they just yeah we went through
20 that hypothesis and this and that. He said no, three
21 adults were on that bed and it never moved. What were
22 three detectives doing on that bed?

23 I ask him did any of your detectives move the bed
24 around when you took a photograph? No. And I will give to
25 him, I was incorrect. I thought on the re-enactment video

CLOSING ARGUMENT BY MR. COOK:

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1 at one point my client said they moved the bed. But he
2 said they moved the safe underneath the bed. And I thought
3 all right I was wrong but then I was thinking. Wait a
4 second. How can you move the safe under the bed if you
5 don't move the bed to get to it?

6 Let's take a photograph and say to the jury this is
7 how the bed was at 6:30 a.m., on January 22nd, four inches,
8 bring out your tape ruler. Huh-huh. The truth is we have
9 no idea how much of a space was between that bed. The
10 truth is also we know exactly how high that floor board is
11 off the floor and how high that crown molding is. Look at
12 your photographs.

13 And then the detective says or actually I believe it
14 was the coroner playing detective says that bed couldn't
15 have moved. Your client said the baby was wedged in
16 between the bed it couldn't have moved. Again, please just
17 stick to forensic pathology. Here's how you're wrong.
18 There could be a wide gap. My client goes and runs and
19 jumps on the bed and the bed squishes the baby. At that
20 point the baby's wedged but does that mean that there was
21 never a gap? Just tell me about the subdural hematomas.

22 Please don't be fooled by the baby that they used in
23 the re-enactment. It was much bigger than the actual
24 decedent and you couldn't fit your head down there because
25 the baby's head was like that. And what is that? If

1 you're going to do a re-enactment do a re-enactment.

2 Did you hear my client in his several different
3 accounts of the story? To date with the DSS worker, with
4 the detectives at the hospital, with the detectives after
5 the hospital, in the re-enactment video, line 'em all up do
6 a little flow chart. Where is he inconsistent about the
7 timing? Really? Are any of us consistent about what
8 happens at 4:00 a.m., in the mornings? Let's just call
9 that the wee hours of the morning. Whether you're high on
10 marijuana or not or whether you're as sober as you can be,
11 at 4:00 a.m., people are groggy on time.

12 Is that the state's entire case? We found the - What
13 did Detective Haire say? Quite obvious inconsistencies,
14 numerous and obvious inconsistencies in the defendant's
15 story. And I ask him, well what are they? Well. What is
16 that? I thought they were obvious. Can't you just spout
17 'em off? Well it's all about the timing. And see, once he
18 says he fed the baby at nine o'clock, once he says he fed
19 the baby at four and then he fed at five then at six. He
20 got to 5:37 wrong. Is that the - beyond a reasonable doubt
21 extreme indifference to human life because you can't tell
22 what time it is at 4:00 a.m.?

23 Here's some forensic evidence. Somebody measured
24 the side of this wall. It's twelve feet. Somebody
25 measured the width of the bed. Thirty-seven inches.

CLOSING ARGUMENT BY MR. COOK:

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1 Whether the door was open or not, whether he saw the baby
2 was missing from the next two - with the brown wide or
3 whether the door - he had to open the door to go in.
4 What's thirty-seven inches minus twelve feet? I don't know
5 somewhere around nine feet.

6 It's not perfect science. I don't know if you're
7 parents or not. If you walk in a room you hear that baby
8 on the floor she's not on the bed and you're gonna run that
9 far and jump on the bed is that enough force?

10 I submit that the amount of force it would take to
11 cause the linear forehead injury that caused the subdural
12 hematoma's that cause the blow on the brain that nobody
13 wants to talk about is also enough injury to cause the
14 collar bone to snap. And if the collar bone snaps go back
15 in the jury room do that to your chin. Where's it gonna
16 bruise? Well how do you account for the bruises on the
17 arms? He says he jerked the baby up. Well how do you
18 account for the bruise on the left other arm?

19 Then he looks at the baby right after he jerked her
20 up. Sure, that's a perfect place to shake it's it? You
21 want to shake your baby when you pull her out from behind
22 the bed? Or are you freaking out, are you okay? Please,
23 dear God, be okay. Everything's okay. She whimpered a
24 little bit I heard that shoooo. And we just laid her back
25 down everything's fine. I didn't do anything wrong just

1 now the baby falling off the bed. Sleeps a little bit.
2 Something hits him in his head. You're in denial about
3 something you might need to check on it right now.

4 He comes out of his sleep he realizes the truth and
5 what does he do immediately at that point? He runs to his
6 mother's room. You've heard testimony from her, you've
7 heard testimony from his brother. Let's talk about his
8 brother. Go in and look at the picture that says seventy-
9 seven degrees. Go in there and cut the temperature up in
10 the jury deliberation room to seventy-seven degrees see how
11 long you can stand it. Is that too hot? Wrap up in a
12 blanket and fall asleep. I'll move on.

13 My client's testimony is corroborated by various
14 outside sources. He immediately - I don't know - I think
15 the state might try to argue neglect - well okay, we'll
16 give it to him, the baby wasn't close - the linear. Okay.
17 But you're client neglected the child. He didn't
18 immediately call 911. He might have been high.

19 I ask Doctor Hart that. How immediate is immediate?
20 He said very immediate and even then I'm not sure anything
21 can happen. And I don't know the science but I think at
22 that point he was talking about the circle with the cables
23 dong down and the swelling and herniated and it cuts off
24 that. Said it doesn't last very long. There's a sad part.
25 My client said, she was crying and then she stopped.

CLOSING ARGUMENT BY MR. COOK:

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1 Doctor Hart also said when you receive a subdural hematoma
2 you become somnolent. Now Doctor Mante who I'm not even
3 going to address because I don't think he deserves it even
4 though he has a doctor in front of his name, the only thing
5 I get from him is yes the baby had acid reflux. He's like
6 well baby's gonna be irritable. Really? Do you want to be
7 irritable with a subdural hematoma? I don't even think
8 your Basel reptilian breathing heart doesn't function at
9 that point. Even the solicitor said in his opening
10 argument a baby is going to cry, an adult can tell you when
11 he's out of breath. No, sometimes the baby isn't gonna
12 cry. Sometimes the baby has a subdural hematoma.

13 Is it enough force with an impact with all those
14 injuries to cause a spinal hemorrhaging? What if the back?
15 What if? That's all I got. What if the back was wedged
16 and the baby was down there and the safe was half way up
17 the back and got pushed against the wall? Why am I having
18 to prove the case?

19 Well that's my take on the coroner and the forensic
20 pathologist. Yeah you're an expert but stick with medicine
21 please.

22 What other things? I said my client's story is
23 consistent throughout. He sat on the stand he subjected
24 himself to cross-examination, he bared his soul about one
25 of the most tragic points - times in his life for you to

CLOSING ARGUMENT BY MR. COOK:

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1 decide. Did he leave the room at the same time with his
2 brother? It doesn't matter. There's always two or three
3 minutes give or take. We left the room at the same time or
4 he was out there fixing a bottle and I walked through the
5 room. I don't know. Did you believe the - Adrian his
6 brother the seventeen-year-old? I didn't hear any crying.
7 This baby is not colicky. We're not sitting there in the
8 eleventh hour after three days of colic. We're not there.
9 It was hot. I left. My brother went out to make the
10 bottle it was kind of awkward but I had to put some
11 pictures in with - while the detective was on the stand and
12 you guys probably thinking what's he showing me these pots
13 and pans and the seventy-seven degrees and the baby stuff
14 for? Here's why.

15 I'm showing you the state's own evidence that they
16 took corroborates my client's story. Why are the pots on
17 the stove? Because he said he was going to heat the baby's
18 bottle up. bottle up. I can't believe they took a
19 photograph of the thermometer for seventy-seven degrees.
20 Thank you.

21 How many twenty-seven year olds with a couple of
22 misdemeanor charges in the worst neighborhood in town have
23 a diaper drawer with talcum powder and get three days
24 visitation without a court order every week? Let's talk
25 about some of the character witnesses for a second. And

CLOSING ARGUMENT BY MR. COOK:

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1 want to - Bless their hearts. I realize it wasn't riveting
2 testimony from the people from the neighborhood. But what
3 character witness stood out most in my mind was the
4 decedents mother Kierra Banks. We can have another baby.
5 Is that what you say to somebody who shakes your child to
6 death? It's okay, I love you, you're a good father.

7 Don't' be beating yourself up Quen I'm driving up
8 there to see you. Now she was a little put off. She
9 wasn't forth coming but she didn't lie. She said what she
10 said. She said I don't know now after I see some of the
11 evidence. I wonder if that was it that makes her a little
12 put off or I wonder if it was the fact that Detective Haire
13 goes out a year later and starts asking questions on the
14 eve of the trial? Well who was sleeping with the baby?

15 What are you gonna think when a detective comes out to
16 your house right before a trial starts asking you questions
17 like that? Was the baby okay when it left your house?
18 You're gonna get a little upset. Wait a minute, what you
19 looking at me for? You might change your story a little
20 bit but you can't back off of the text that you've already
21 sent. You're looking for an objective character witness
22 there you go.

23 More corroboration. You heard his 911 call. Maybe
24 you think he's faking it. Maybe you think that he is
25 intelligent and clever enough to formulate this hypothesis

CLOSING ARGUMENT BY MR. COOK:

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1 at 6:37 a.m., in his house with a dead baby right there
2 here's what I'm gonna do. Let me call 911 real quick.
3 No, ladies and gentlemen, don't fall for that. He's
4 running through a field to hale a ambulance so his daughter
5 doesn't die. It's not time to fake it. Besides and I was
6 gonna close with it but I'm not gonna give you any evidence
7 you can listen to it in the jury room. You go back, play
8 that 911 tape, play everything, please. Play the re-
9 enactment video. How many times have you heard defense
10 attorneys up here please look at all of the evidence? Look
11 at all the evidence, it's right there that proves my
12 client's not guilty.

13 The EMS said he was hysterical. They were doing -
14 The cop who was trying to throw him under the bus as hard
15 as he could go Hey I heard him, some people say fifteen
16 minutes. He said he was distraught, he was crying. Yeah,
17 I bet he was. But what does Detective Haire say? I put
18 quotation marks around this. The only way it could have
19 happened was if you shook her real hard, Quentin. I think
20 he should stop playing doctor and start playing detective.
21 He's painfully honest though. Detective Haire he's an
22 honorable man. I said how do you explain the linear? He
23 said, I don't know. You know why he said that? Cause he
24 doesn't know. Cause his mind hasn't thought threw the
25 hypothesis that I'm putting forward.

CLOSING ARGUMENT BY MR. COOK:

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1 I'm almost done. I don't know what the state is gonna
2 say in their argumentation. But I can guess. Well let's
3 put it this way. I know what they did say in their
4 opening. Again, it could be neglect. Look at the statute.
5 What's the legislators looking for there? If you slept
6 with a baby for thirty minutes to an hour when you weren't
7 sure and then you call the police, is that neglect where it
8 makes you guilty of homicide? Was he doing crack, heroin,
9 methamphetamine, or even a lot of alcohol which is the
10 worst. No. Did he tell from the onset, huh, I smoke
11 marijuana. You can consent everything, rip my phone. I
12 have no idea I'm not an expert. The guy impressed me too
13 with the secret service. I love that. All that cloak and
14 dagger and his black bag and that's awesome, I agree.
15 Yeah, but do you know are you - I'm sure he is absolutely
16 positive. Am I? No. I don't know.

17 I have no idea about electronics and I can't even talk
18 about that. I don't know when was imported and what. I'm
19 sure a lot of you are more adept in that than I am and
20 maybe you can see through it. I don't know. I think what
21 I want you to do is gauge the ques. We're all humans.
22 Again I keep saying some of you are parents. If you're a
23 parent you have children you're children have lied to you
24 at some point. And you know the second they're lying to
25 you.

1 Well, see what had happened or you look at the floor
2 all these little facial ticks and ques. You sat there and
3 you looked at my client for at least a half hour. You
4 gauge it. Do you think he's lying?

5 What else did the state say? A baby is going to fuss.
6 An adult will tell you it's difficult to breath. That's
7 funny. You're doctor said that the baby become somnolent
8 and doesn't fuss. Next: The brother said that the room was
9 hot kind of in a sarcastic tone. Well then don't give us a
10 photograph of a temperature at seventy-seven degrees.

11 Should have sought medical attention immediately.
12 6:37 a.m. Again, what is the state suggesting? Shaken
13 baby. How do you get the line on the forehead? Something
14 had to hit that baby's head or the head hit something. I
15 don't know if they're gonna say he's just making up behind
16 the bed cause the baby never fell between the bed and the
17 wall.

18 Well then how do we get the linear line that you're
19 doctor told us? They're gonna say a lot of stuff and
20 they're real good. When they get done think one word in
21 your head and see if they answered it effectively to your
22 satisfaction. Linear. And if you want to throw in another
23 that's fine with me. Extreme. That's the burden of proof
24 here.

25 The most ironic part about this whole case is the

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 reason he was running in that bed is because he cared for
2 his daughter, his memorial, so much. Thank you, ladies and
3 gentlemen.

4 SOLICITOR BRACKETT: May it please the Court.

5 THE COURT: Mr. Brackett.

6 SOLICITOR BRACKETT: On January 22nd, 2014, Kierra
7 Banks who you saw come into this courtroom delivered into
8 the care and custody of the defendant Quentin Evans a
9 beautiful, healthy, happy, six-week-old little girl in his
10 care. A little girl who had just been to her doctor a few
11 days before.

12 I appreciate Mr. Cook doesn't appear to respect Doctor
13 Mante but I think that man clearly cares about the kids, he
14 loves them and he spent a lot of time with **Minor** and he
15 looked her up and down and said she was happy, she could
16 smile, she was doing everything a six week old child would
17 be expected to do.

18 Delivered that little girl to this man right here, Mr.
19 Evans, Mr. Quentin Evans the defendant in this case. Mr.
20 Evans was supposed to care, protect, provide for the
21 welfare and look out for **Minor** until she came back on
22 Saturday morning and pick her up less than twenty-four
23 hours later. She dropped her off sometime about 9:45, less
24 than twenty-four hours later **Minor** is lying naked on a
25 metal table at PMC with a little tube in her mouth - gone.

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 What happened to **Minor**? What happened to that little
2 girl, that happy, healthy little girl? That's what we're
3 here to decide.

4 Now, there's two theories that have been advanced in
5 this case.

6 Madam Clerk, would you mind?

7 (COURTROOM LIGHTS TURNED DOWN.)

8 SOLICITOR BRACKETT: The defense contends that it was
9 an accident and we have charged by indictment, which is
10 just an allegation, that this is homicide by child abuse.

11 That **Minor** didn't just die as a result of an
12 accident, an unfortunate event that nobody could have
13 prevented reasonably but she was killed through the
14 intentional act of another person. A homicide. That's
15 what homicide means, when a person kills another person
16 intentionally. It's not murder. We're not alleging that
17 this is malice. Murder is a different thing completely.

18 The defense basically in so many words and Mr. Cook
19 just went through all this so I'm not gonna spend a lot of
20 time, that she woke up in the night crying, Mr. Evans went
21 to make a bottle, and **Minor** fell behind the bed sometime
22 while he was gone, sustaining some kind of injuries either
23 during the fall and when he jumped on the bed but that her
24 death was an accident and the defendant is not guilty.

25 That's it in a nutshell what they're case is.

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 The state's case is based on the police investigation,
2 including an examination of the scene where **Minor** was
3 that night, as well as interviews with the defendant.
4 Critically the medical evidence which I'll go over in much
5 more detail, the medical evidence from Doctor Craig Hart
6 who came in here and testified and he is a forensic
7 pathologist, which means he's a medical doctor, he went to
8 medical school, but he's not just any kind of doctor, he is
9 a pathologist. He studies the causes of death and what
10 caused something to happen. And he was qualified as an
11 expert and I believe the judge is going to charge you that
12 an expert is a different kind of witness. You heard from a
13 lot of witnesses who took the stand and they told you what
14 they saw, what they heard, what they smelled, what they
15 picked up what they took a picture of, those are regular
16 witnesses. An expert witness is different.

17 An expert is a individual who because of their
18 training and experience is able to not just tell you what
19 they saw, but what you can deduce from what they saw. In
20 other words, an expert gives you an opinion. So, despite
21 what Mr. Cook has to say it is Mr. Hart's job to come in
22 and tell you what happened and why it happened and how it
23 could have happened. He wasn't in the room so he doesn't
24 know for sure. If he was he would be a direct witness.

25 All he's doing is looking at **Minor**'s little body

1 and checking out all these injuries, documenting them, and
2 drawing conclusions from what he sees and then to come in
3 here and tell you what those are.

4 Now this case as Mr. Thompson told you on direct - in
5 the opening statement has circumstantial evidence in it and
6 I would like to address that right up front because people
7 sometimes think circumstantial, whoo, that doesn't sound as
8 good because you hear that on TV or in movies.

9 Let me tell you, circumstantial evidence is every bit
10 as good and can be even more deadly and devastating and
11 powerful than direct evidence. You can build a
12 circumstantial case that is air tight and cannot be over
13 come before it convince you beyond any doubt of some fact.

14 I'll give you an example. Here we are standing in a
15 courtroom and there are no windows through which you can
16 see outside. You can see into the foyer but you can't see
17 outside. If all of a sudden we heard a loud clap of
18 thunder followed by another loud clap of thunder, and a
19 series of rumblings, and then the sound of slow at first
20 but gradually rising becoming more intense the sound of
21 patter on a metal roof coming down. And then five minutes
22 later the door opens and a guy walks in with a coat and
23 water's falling off of him, and he's got an umbrella in his
24 hand and water is coming off of that, you can't say that
25 you saw it raining outside. But are you convinced beyond

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 any reasonable doubt that it's raining outside?

2 Absolutely. That is the circumstantial case. That is
3 what it is, it is a chain of facts when taken together lead
4 you to a conclusion and that's what we have here. We have
5 a chain of facts that lead us inescapably to the conclusion
6 that Quentin Evans killed his daughter **Minor**.

7 Let's go through the evidence. As I said we've got a
8 police investigation that involves the scene, the
9 defendant's statements, the medical evidence, and
10 circumstantial evidence.

11 First the scene. This is the front of the house,
12 State's Exhibit Seven, **Wright** Street where the EMS
13 pulled up. As you walk through you go in and you see this
14 is the defendant's bedroom. And you can see there's two
15 beds here. This is Adrian Evans' bed and that's the
16 defendant's bed and you can see the pallet that was in the
17 corner there. These are the pictures taken by Paula Neely
18 when she first got to the house.

19 Remember what she told you her job was? Document the
20 house as she found it. Got there are about 7:17 I think
21 she said she arrived at the house and her times are exact
22 because it's her job to be exact. She's supposed to look
23 at her watch and note arrived on scene at this time.

24 A closer picture of the bed. And a view straight down
25 the bed. As you can see this is the gap between the wall

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 and the bed. And look, this is the edge of the mattress.
2 Paula Neely testified she measured from there to the wall
3 and it was four inches.

4 And sometimes it's hard to remember or visualize so in
5 this case I decided to make it a little easier for you and
6 put in a tape measure showing you just exactly how wide
7 four inches is. And that doesn't account for the
8 comforter, that black comforter I ask the defendant about
9 when he was on cross examination. I said there is a
10 comforter over the edge that would have made it even
11 thicker so that's the space that **Minor** supposedly fell
12 down.

13 This is the crime scene diagram and there was some
14 discussion from Mr. Cook talking about widths and so forth.
15 She did a nice job measuring the bed, the two beds, you can
16 just for yourself when you look at the picture they appear
17 to be identical. The head boards appear to be identical,
18 they appear to be made out of the same type of wood. This
19 bed doesn't have the measurements on it. This bed is
20 seventy-four inches long though which is six feet, two
21 inches, which is about right for a bed. Thirty-seven
22 inches wide as Mr. Cook observed during his closing
23 argument. So we also know that this is a twelve-foot-wide
24 room here. It's twelve feet from here to here. So if
25 that's six feet two inches and that's three feet three

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 inches between the bed - between the two beds the length
2 and the width we're over nine feet.

3 Then we have a closet, the door opens inward. If that
4 closet is even two feet which would be an awfully skinny
5 closet, but if it's two feet wide, that's over eleven feet.
6 The whole thing is only twelve. That means inches between
7 here and there; that supposedly this bed was pulled out and
8 nobody knows. I submit it wasn't. The thing is sitting on
9 a carpet and I don't think it slid at all from when he got
10 on it, but, that's for you to decide. But it couldn't have
11 been more than a few inches.

12 And as you will see in a minute I'll show you, I don't
13 believe it was out at all because here's the photograph.
14 There's the car seat. This is the edge of the bed. The
15 edge of the car seat appears to go right up to the edge of
16 the bed and straight over here to the garbage can which is
17 then wedged right up to the TV stand.

18 There is no space really for that bed to move out any
19 further than it already is.

20 Mr. Cook told you in his closing, they're probably
21 gonna tell you or they might tell you that they don't think
22 **Minor** even fell down the side of that bed. I submit
23 that based on the evidence that you have in front of you
24 ask yourself how probable it is. You all can use your
25 common sense and your everyday experience - if any of you

1 have ever had a six-week-old baby - ask yourself, is it
2 even within the bounds of realism could it possibly be that
3 a six-week-old baby - we're talking about a child that
4 isn't even ten pounds, nine - an infant could roll over?

5 I don't think so. I submit to you I think that's
6 improbable. That story is started right from the beginning
7 and I'll talk about it in a minute - right at the beginning
8 the defendant came out in a 911 call, right out of the gate
9 with a story about how she had fallen off the bed because
10 he knew that she was hurt. He knew that her body was gonna
11 show signs of injury and he had to come up with a story of
12 explaining that. So he started from the very beginning,
13 the baby fell off the bed story, and once he committed to
14 that he's got to ride that story all the way through. He's
15 got to stay with it, he can't sudden change his mind and
16 say oh, oh, she didn't fall off the bed. He's got to stay
17 with the same story.

18 Remember, she said it's only twenty-one and a half
19 inches down. And what did the doctor say? Maybe if she
20 fell out of a second story of a building you might see
21 those kinds of injuries because you have enough
22 acceleration. Twenty-one and a half inches down to a
23 carpeted floor. Never. These injuries were not caused by
24 a fall.

25 Now, before I get into this, because this is so muddy,

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 and there are so many statements and so many
2 inconsistencies, I'm just gonna warn you, I urge you to
3 listen to every piece of evidence. Go through it all.
4 That's fine. But you will drive yourself crazy listening
5 to all of the different variations of the stories that he's
6 given. And all the little details and all the different
7 versions and variations and specific things that he talked
8 about, you can drive yourself nuts doing that.

9 There is a simple and direct route to this evidence to
10 a reasonable and just verdict. And that is Mr. Evans was
11 hopelessly caught and guilty by the time Doctor Craig Hart
12 had finished testifying. Because once he went through all
13 those injuries articularly explaining a subdural hematoma,
14 and talking about that once that happened, there was
15 nothing, no theory, no version of Mr. Evans' story, none of
16 it, could possibly explain that child's brain injury.

17 No way based on his testimony alone, coupled with the
18 fact that even by the defendant's own admission that child
19 was happy and healthy and normal all day long and in his
20 care and custody, nobody else could have done this. Those
21 two facts alone are enough to justify a guilty verdict -
22 you can move on.

23 But you want to consider the defendant's story, you
24 want to hear his statements, I'll give you an example.
25 We'll walk though, and I'll give you a few examples of what

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 I'm talking about inconsistencies. His statements are
2 inconsistent even among themselves. They change from one
3 minute to the next. Let's look at the time **Minor** fell.

4 (STATE'S EXHIBIT ONE PUBLISHED TO THE JURY.)

5 SOLICITOR BRACKETT: Okay. We know what time the 911
6 call came, 6:46, so an hour ago is 5:46. Now let's go to
7 the next version. He tells DSS in the interview which is
8 in evidence, the summary of it; that it was sometime
9 between 3:00 a.m., and 4:00 a.m., instead of 5:46 which is
10 what it would have been if he was right on time for 6:46
11 for the 911 call. An hour before would have been 5:46.

12 DSS he says three and four. Christina Westover with
13 the Coroner's office testified, and if y'all have - I'd
14 just like to remind everybody, if you have any questions
15 about the evidence and you can't remember and you say did
16 she say that or did she say this?

17 The court reporter records everything. If you have a
18 specific question and you want to know what did the Coroner
19 or what this witness testify about that, send a note out.
20 We'll bring you back in and play that so you can hear it if
21 you wonder. But if you do that, this is what you're going
22 to hear Christina Westover say. That the defendant told
23 her that the incident where she fell took place between
24 2:30 and three o'clock. So here we're not talking about a
25 few minutes as he tries to "Well I said it was about." You

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 don't say it was about sometime after midnight and before
2 six o'clock cause that's about what he's saying.

3 Two-thirty to three o'clock is three hours from his
4 first statement 5:45. Here he is in the re-enactment.
5 Let's hear what he has to say.

6 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

7 SOLICITOR BRACKETT: Two, two-thirty again. How can
8 all these comments be right? How can you be off so far?
9 How can you be so wildly off? I mean, I can understand
10 twenty, thirty minutes. The guy said he was up all night
11 long looking at his telephone on the internet sending
12 messages, making phone calls, surfing playing games, taking
13 pictures, whatever. He's sitting there with a device in
14 his hand that constantly reminds you what time it is but
15 he's off by three to four hours.

16 Incidentally if you want to just look at one statement
17 to focus on, and you want to spend some time with it, that
18 re-enactment was great. It was phenomenal. There is so
19 much information in that which leaves you shaking your
20 head. We'll talk about it some more in a minute but the
21 Coroner's office did a great job with the re-enactment.
22 You can be proud of the work your Coroner's doing.

23 The statements were inconsistent with the medical
24 evidence. Doctor Hart testified when he did the autopsy
25 that **Minor**'s stomach was empty. There was no food, no

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 trace of food left in there.

2 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

3 SOLICITOR BRACKETT: And that was the 911 call.

4 He's talking about like an hour before he fed her and
5 burped her. He just testified right in front of your very
6 eyes that the last time he fed her was at about ten o'clock
7 the night before; she really didn't eat in the middle of
8 the night. But there's the 911 call where he's saying that
9 it's what, an hour before the 911 call and he fed her and
10 burped her and everything but there's no food in her
11 stomach.

12 They're inconsistent with the photographic evidence,
13 his statements are.

14 (STATE'S EXHIBIT NUMBER FIFTY-SEVEN PUBLISHED TO THE
15 JURY.)

16 SOLICITOR BRACKETT: "Definitely ain't gonna fire up
17 around my daughter." You heard the other expert that
18 testified in this case, Mr. Amick, who is the cell phone
19 forensic data cell phone - This is his whole job, just to
20 pull information out of cell phones, analyze it, study it,
21 prepare reports and come to court's like this one and tell
22 jurors about this type of evidence. And what did he say?

23 Imbedded in each photograph, at the time that it is
24 taken, is the date and the time that the photograph is
25 taken, as the date and the time is reflected in the device

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 that's taking it. So if the device's date and time are
2 right then the time that's on the photograph is right.

3 In this case 10:45 at night on January 22nd, the time
4 he said he wasn't smoking anything, he didn't smoke that
5 night cause that's what he said. And how do we know that
6 the time on the phone was right? Because he went the extra
7 mile and looked at the call records to see what time the
8 911 call was recorded by the phone. 6:36. Then he goes to
9 911. And their records we know are right and the 911
10 operator confirmed in her testimony the call came in at
11 6:36. So we know the phone's time is right, we know that
12 this time is right. The date and the time are accurate.

13 He was smoking pot at 10:45 that night despite the
14 fact that he wants to deny it now.

15 Some of his statements are just bazaar and
16 incomprehensible. There is no explanation for them.

17 (STATE'S EXHIBIT FIFTY-SEVEN PUBLISHED TO THE JURY.)

18 SOLICITOR BRACKETT: That man is lying on the bed
19 where his child died mere hours before talking about she
20 was looking at me like, Dang, I'm in trouble.

21 Who does that?

22 (STATE'S EXHIBIT FIFTY-SEVEN PUBLISHED TO THE JURY.)

23 SOLICITOR BRACKETT: His daughter had rolled and he
24 had been telling her not to do that, this six-week-old,
25 don't roll like she's gonna listen to him.

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 (STATE'S EXHIBIT FIFTY-SEVEN PUBLISHED TO THE JURY.)

2 SOLICITOR BRACKETT: He was at PMC his daughter is in
3 there they whine a little bit they die a little bit.

4 (STATE'S EXHIBIT FIFTY-SEVEN PUBLISHED TO THE JURY.)

5 SOLICITOR BRACKETT: Again, the timing is always down.
6 2:05, 2:06, about 9:02, 9:03.

7 (STATE'S EXHIBIT FIFTY-SEVEN PUBLISHED TO THE JURY.)

8 SOLICITOR BRACKETT: Thirty-five percent woke up.

9 (STATE'S EXHIBIT FIFTY-SEVEN PUBLISHED TO THE JURY.)

10 SOLICITOR BRACKETT: He thought she was playing possum
11 like she might be pretending to be asleep at six-weeks old.

12 And finally the statements are suspicious and
13 incriminating. He told Officer Aiton that he had only
14 slept fifteen minutes the night before because the baby had
15 been crying all night. Now, we're getting somewhere.

16 Now, we're getting to the truth. Now we're finding
17 out what really happened that night to **Minor**. He said
18 that to Officer Aiton. Remember, Officer Aiton was the one
19 who came out to the scene early that morning. He had no
20 idea what was going on. All he knew a baby stopped
21 breathing, EMS was going out there standard protocol send
22 the police to back 'em up. He's standing around on the
23 front steps, he's, you know, standing out on the porch
24 talking to him. He doesn't have a ride to the hospital so
25 out of the goodness of his heart he says I'll give you a

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 ride to the hospital come on with me.

2 He puts him in the patrol car and they drive off to
3 PMC. And what does he say on the ride there? Not in
4 response to anything Office Aiton said. Officer Aiton
5 doesn't even have any clue whether this is just a SID's
6 death or just, you know, did the baby have a bad heart and
7 just die of natural causes. Nobody has any ID. All we
8 have is a baby stopped breathing and EMS is rushing her to
9 the hospital. "I didn't do anything to hurt my baby. I
10 didn't do anything to hurt my baby." No one accused him of
11 doing anything. There is a whole quote from the Bible "a
12 guilty were none pursue" no one had said anything to him
13 but yet he had a guilty conscious and he felt the need to
14 say something like "I didn't do anything to hurt my baby."

15 And he says the same thing at the PMC interview about
16 the baby's crying all night long.

17 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

18 SOLICITOR BRACKETT: "She was like ahhhhhh." That's
19 what happened to **Minor**.

20 And the category of suspicious and incriminating.

21 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

22 SOLICITOR BRACKETT: "It looked like she had snapped
23 her neck." Couldn't support it. Remember how he described
24 just flopped back and in other places he says it was like
25 jelly just bouncing around.

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 Well, first of all Mr. Cook is wrong. You do have an
2 obligation when you think your child has snapped their neck
3 to get the medical care immediately. You do have that
4 obligation. Even if you're the person who did the injury
5 you have an obligation. You convict this man under two
6 theories. You can convict him because he did it and then
7 you could convict him because he didn't do anything about
8 it after he did it. He should have said right then this
9 baby needs help, I screwed up.

10 But you know what Quentin Evans did right then? You
11 know what he did? Quentin made a value judgment. He said
12 if I pick up the phone and call for help I'm gonna have to
13 explain how this happened and put myself in jeopardy.

14 Hum. Help the baby or help Quentin. Guess who won
15 that battle? Lastly:

16 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

17 SOLICITOR BRACKETT: They didn't start talking about
18 shaken baby until they got back to the Rock Hill Police
19 Department after they did this. He's talking about I
20 couldn't shake my baby. You see, the reason why he was
21 saying all this falling off the bed and why he's telling
22 them there that the neck was all wobbly, because he knew
23 that the cause of death was gonna have something to do with
24 her neck. That's what he thought. And why would he think
25 that? Why would he think that she might have snapped her

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 neck and that might be why she died because it wasn't? She
2 didn't die from a broken neck.

3 Why did he think that? Because he was the one
4 standing there watching her head whip back and forth and
5 back and she's only nine pounds and her head is going back
6 and forth and inside of her head her brain is bouncing back
7 and forth against the walls of her skull. You can't see
8 any of those injuries on the outside. That's why it's
9 called a subdural hematoma - inside - he knew that.

10 But he's watching her head whip back and forth and
11 he's watching her neck and then her neck probably was
12 wobbly after that. But he's thinking that must be what
13 killed her. He was wrong but that's why he built that
14 explanation in there. That's why in the previous slide
15 that's why he said what he said about her neck was all
16 wobbly. He's thinking he's got to relate her neck to the
17 fall to explain how this child died.

18 The other thing that was unusual and suspicious in the
19 second interview at Rock Hill P.D. - the long one - thought
20 the collar bone was broken. Right there. It is broken.
21 But how did he - Listen to him.

22 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

23 SOLICITOR BRACKETT: He's telling Bruce Haire at the
24 Rock Hill Police Department after Bruce Haire tells him the
25 autopsy showed that her collar bone was broken. He's

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 saying, "I said that, I said that too. I said I thought
2 her collar bone was broken." How in the world could he
3 have ever known that her collar bone was broken? How could
4 he have known that unless he felt the break under his thumb
5 as he's hold her like this? I told you you should have
6 called for help when you saw that her neck was hurt.

7 The other suspicious thing in all this was one phone
8 call made that night after he went to bed about ten
9 o'clock. At 3:45 in the morning who does he call? Baby
10 momma Kierra Banks. And then he hangs the phone up. The
11 call doesn't go through but it goes through enough connect
12 to register on the system and register on the phone but he
13 cancels the call before it connects to her.

14 Why would he do that? Why would he call her at 2:45
15 in the morning in the first place? And why would he hang
16 before the call come in? He panicked and he called and
17 then said what am I gonna tell her? I got to think this
18 through.

19 The medical evidence from EMS: Never any signs of
20 life. Pupils are fixed and dilated. That's what Steve
21 Pursley from EMS testified to. Her extremities are cool,
22 her core temperature was warm. The thickest part of your
23 body is gonna be the slowest part to cool down. But your
24 fingers, the thinnest part, moving up through your arms,
25 your extremities, are gonna cool faster and they were

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 starting to cool already. And the reason that we took the
2 picture of the thermometer; the reason it was taken was to
3 document the temperature of the house. And the reason we
4 put it into evidence was to show you how warm it was.
5 Because the hotter the house is the slower the body is
6 gonna cool. If the house had been 98.6 degrees, the body
7 would have remained 98.6 degrees. It can't cool down. If
8 it had been hotter it would have been even hotter. If it
9 had been 60 degrees it would have cooled faster. That
10 information is relevant and should be considered by you.
11 That's why it was put in.

12 Now the autopsy. And I apologize for having to go
13 back through this information but it's important. This is
14 an important case. This is the linear bruise, right here,
15 on the forehead. It's very faint. Its not very well
16 developed yet. That means its fresh it hasn't started to
17 yellow. Doctor Hart told you that.

18 I agree Mr. Cook, I can't tell you how that happened.
19 There's only one person that knows how it happened. Mr.
20 Evans. It's not important that we know exactly how it
21 happened. How could it have happened? There are a number
22 of ways it would have happened. He could have taken a
23 piece of wood and hit her on the forehead. He could have
24 held her and - and banged her into something. Maybe in a
25 moment of frustration early in the night when she's crying

1 she won't shut up, she won't take a bottle, she won't take
2 the pacie, he's tired, he's been up all day he just can't
3 take it any more, he's like shut up, shut up. Then he
4 takes her and he turns her around and throws her back down
5 on the bed and she hits her little head on the - the
6 forehead on the headboard. Right there, there's a little
7 inset there in the picture, you can go back and see it.
8 She might have hit her head right there.

9 There's any number of ways it could have happened.
10 That's not what's important. What's important is that it's
11 there; it's a sign of abuse. It's linear and the only
12 relevance of the linear - I included this blue line -
13 that's the linear shape of it. On the outside the bruise
14 is linear. That means its' like a line running across the
15 forehead. It's a straight line.

16 More bruising on the neck, right there. Again, on the
17 arm. Again, on the left arm. And three places, two places
18 on the arm or three places on the arm, here, here, appears
19 to be another one there a mark. Doctor testified there was
20 one right here. And then on the outside of the arm you
21 have another one here which is consistent with what - and
22 these are pinpoint bruises, some of these are like
23 fingertip bruises where you might grab someone. That's
24 what the doctor characterized them as. Grab marks. And
25 that's where you would grab them if you were angry.

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 And you can't just hold an infant and give bruises to
2 them because if you could just hold them by - If you could
3 bruise them by holding them, there would be bruised babies
4 coast to coast cause they're held all the time. You'd have
5 to hold them aggressively, angerily.

6 More on the neck here, here, here. And this one
7 clearly defined right outside the ear. Another side here.
8 Under the neck here and here. And this one again right by
9 the ear. What could that come from if a baby is screaming
10 and crying and you're angry and you're frustrated and
11 upset?

12 (SOLICITOR BRACKETT DEMONSTRATED.)

13 SOLICITOR BRACKETT: "Shut up." From the front maybe
14 from the back, more bruising on the back. He's holding her
15 shifting his grip. Coming back to this, the bruised
16 clavicle, the fractured clavicle again. This is also
17 important. I like this slide because you can see the ribs
18 here. I'll come back to it in a minute. Then the backbone
19 along here you can see the ribs where they come forward
20 like this ---

21 (SOLICITOR BRACKETT DEMONSTRATED.)

22 SOLICITOR BRACKETT: --- and close the lungs in the
23 heart like a cage to protect it. But they stop. The tips
24 of the ribs are here and they roll around to the back and
25 connect at the backbone.

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 This - There was no bruise over the clavicle. But
2 that tells you because what does the doctor say? You can't
3 bruise and - You have to be alive when you bruise and if
4 you get hurt it takes a little while for a bruise to form.
5 I submit to you her collar bone was broken right before the
6 end of her life because bruising didn't have time to form.
7 And tragically what this tells us, the fact that there is
8 no bruise there, a really faint one here, darker ones on
9 her face, is that this probably wasn't the one single
10 episode, one quick five second thing; that **Minor** was
11 crying through the night, and gradually got more and more
12 frustrated and inflicted the injuries on her first grabbing
13 her face, shut up, shut up, and then he later throwing her
14 head down onto the bed hitting her head somewhere and then
15 ultimately grabbing her like this ---

16 (SOLICITOR BRACKETT DEMONSTRATED.)

17 SOLICITOR BRACKETT: --- and shaking her, and shaking
18 her, snapping her collar bone with his thumb. And then she
19 faded, she became somnolent and he thought well she's
20 asleep now, she finally got the message, and he puts her
21 back down and then she slowly dies over the course of the
22 next hour or two. She was alive when this was done because
23 if she wasn't she wouldn't have hemorrhaged.

24 The micro fractures in the ribs: As I told you from
25 that previous slide the ribs come around to the back

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 connect to the backbone and those little tiny spurs that
2 they connect with are protected by heavy walls of muscle.
3 And Doctor Hart testified you have to have that leveraging.
4 And what did he mean leveraging? He explained you're
5 holding the baby the ribs come out like this and you're
6 grabbing them. And you know what he said? Anterior
7 lateral posterior. Lateral and postural pressure so
8 squeezing the sides and the back at the same time and
9 pushing in. Expanding the rib cage and pushing it back
10 like that. That's what's happening to her immediately
11 until all those little bones that's connected to the
12 backbone start snapping causing these hemorrhages.

13 Right here, one, two, three, four, five, six ribs.
14 All that's blood. Two underneath from where the bones
15 broke. And on the other side hemorrhaging there too.

16 The injuries to the head, and these were the ones that
17 were fatal. This is the oblong patch of hemorrhaging
18 that's underneath the linear bruise. As you can tell it
19 was much more severe under the skin. There was a lot of
20 blood vessels that broke under the skin. It just hadn't
21 had time to materialize. Had she survived this would have
22 been a nasty bruise on her forehead but it just hadn't had
23 time to develop yet. No knot, it was a large bump on her
24 forehead. As the doctor said when the blood has no place
25 to go it just bulges out. Didn't have time, but it had

1 time for the blood vessels to break and the blood to start
2 spreading so you have this oblong injury here.

3 And that's the hemorrhaging from that. And inside,
4 the subdural hematoma. This is what ultimately was fatal
5 to **Minor**. And this, is where his story fails, fails
6 hopelessly. There is no possibility that his story could
7 be anything close to the truth about her falling. Even -
8 And they ask the doctor - Even if he slid into the bed and
9 jumped on it and the bed slid into her pushing her against
10 the wall, that's a compression injury, her head would have
11 been bruised on the back side from where it was pushed from
12 the bed and the wall has to be pushed between something
13 there would have been a contusion, there would have been
14 bruising on the other side of the head. But there wasn't.
15 This can only be caused by severe acceleration, rapid
16 acceleration and sudden stops. And not just one, multiple.

17 He said there were multiple retinal hemorrhages,
18 multiple retinal hemorrhages bilaterally. Lateral sides by
19 both, both eyes have retinal hemorrhaging inside of them.
20 He said it couldn't have been just one shake. It has to be
21 multiple shakes to cause the multiple hemorrhages that he
22 saw. And what happens inside the brain? This line here,
23 and you see the skull cap, that line while inside the skull
24 cap corresponds with this line here and it fits down and
25 there are blood vessels inside your brain between the skull

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 and the brain. There's subdural and then there's blood
2 vessels that feed the brain and all those blood vessels are
3 connected and they sit right on top of your brain.

4 Well, when you're a little baby there's more room
5 inside your head and when your head is forced to whip back
6 and forth sudden stops, start, stop start, your brain is
7 moving inside the skull slamming back and forth inside of
8 it and all those little blood vessels that connect it sheer
9 off. They're tightly connected and when you pull them
10 suddenly they snap off and the blood leaks out onto the top
11 of the brain - right here - and causes the brain to swell
12 down into the subacrodial region - It's what his testimony
13 was; you can go back and listen to it - causing the brain
14 stem to swell which is where all of your autonomic central
15 nervous function is, the lower part of your brain that says
16 beat heart beat, breath lungs breath. All that shut down
17 as it swelled and closed that off and she was no longer
18 able to breath, her heart stopped beating and she died.

19 The folly of their defense and where it has to fail is
20 that at best if you even believe everything he says it
21 explains a little bit of this. Maybe the bruising on her
22 forehead. Maybe some of the bruising on one of the arms.
23 But there is no way, even if everything they say is true,
24 there is no way all of these injuries could have come from
25 what his version of events is.

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 I can't say it any better than Mr. Evans.

2 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

3 SOLICITOR BRACKETT: And injuries do not lie. "And I
4 was the only one watching her last night."

5 When I stood up to cross-examine Mr. Evans, I really
6 had only one thing that I wanted to get from him. I ask
7 him a bunch of questions but there was one thing that I
8 wanted to confront him with. Something that his lawyer had
9 suggested on cross-examination of another witness.

10 Because you see, Evans is prophetic.

11 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

12 SOLICITOR BRACKETT: "Time is everything." What did
13 Mr. Evans say? He said he got up and he ran into the
14 living room and he looked down at the clock and that's the
15 one time he knew the time was right. He looked down and
16 saw that clock and the digital clock said 5:37. But when
17 he got - And that's what he told the police. The time was
18 5:37, 5:37, 5:37. But then later when he's thinking about
19 coming into court and preparing his defense he's like, how
20 can I say it was 5:37? How can I do that? Because if I
21 say that they're gonna go, if it was really 5:37 why did I
22 wait an hour to call 911 cause they didn't get called until
23 6:36?

24 He knew time was important so he knew he had to
25 explain that. He knew that he had to come up with an

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 explanation for why it wasn't really 5:37 so that's why he
2 said that he misread the clock. He saw a 5, he saw a 6,
3 and he thought that it was a 5. He missed the loop that
4 closed it all. And I said, now if you're lying about
5 that, if somebody would lie and make up a story about that
6 that was such a significant fact, that wouldn't look very
7 good for them would it? No it would not.

8 And I of course would not have ask him that question
9 --

10 Where's the 911 tapes, Madam Court Reporter?

11 MADAM COURT REPORTER: 911 Re-enactment, State's One.

12 SOLICITOR BRACKETT: State's One.

13 MADAM COURT REPORTER: State's One is by Quentin Evans
14 and State's Two is Neal. 911 call?

15 SOLICITOR BRACKETT: Yes, ma'am.

16 MADAM COURT REPORTER: Yes, sir, State's One and Two.

17 SOLICITOR BRACKETT: They don't seem to be in here.

18 MADAM COURT REPORTER: I just saw them. I just put
19 them in there. They're together.

20 SOLICITOR BRACKETT: Yes, ma'am. Nope.

21 MADAM COURT REPORTER: No their not in there.

22 SOLICITOR BRACKETT: Nope.

23 MADAM COURT REPORTER: They're not.

24 SOLICITOR BRACKETT: They certainly are not.

25 MADAM COURT REPORTER: That's Courts, that's an ID.

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 I don't' know, Mr. Brackett.

2 SOLICITOR BRACKETT: Did you take them, Mr. Cook?

3 MR. COOK: No, sir. Did you compile them onto one?

4 SOLICITOR BRACKETT: No, they were two separate ones.

5 MADAM CLERK: No, it was two separate ones. There's
6 two, State's One and Two is 911 calls.

7 THE COURT: Did they give you copy?

8 MR. COOK: Sir?

9 THE COURT: Did they give you copy?

10 SOLICITOR BRACKETT: Well we have a digital copy. We
11 can have it - play it off your copy off if you wouldn't
12 mind. Just a short one.

13 MADAM CLERK: I'm sorry, Mr. Brackett.

14 SOLICITOR BRACKETT: That's quite all right. We'll
15 find it.

16 MADAM COURT REPORTER: No it's not.

17 SOLICITOR BRACKETT: It's around here somewhere. I
18 don't' think anybody would want to steal it.

19 (PAUSE.)

20 SOLICITOR BRACKETT: He's picked up the phone. He just
21 looked at the clock a moment ago running from his bedroom
22 to get his mother. They grab the baby they carry her over
23 to the living room they're checking on her condition. He's
24 glanced at the digital clock as he ran to his mother's room
25 and thought that it said 5:37 and that's what he's basing

CLOSING ARGUMENT BY SOLICITOR BRACKETT:

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1 on. So moments later, one or two, maybe three at the most,
2 he's picking up his phone and making this call.

3 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY.)

4 SOLICITOR BRACKETT: "Earlier, earlier at about six
5 o'clock." But he just looked at the clock and it said
6 5:37. If he was so - He's saying earlier but he thinks its
7 5:37. Earlier at six o'clock he went to make a bottle.
8 Why would he say "I went to make a bottle twenty minutes
9 from now" cause in his mind it's 5:37? He just looked at
10 the clock and that's what it said. Right? Why would he
11 say earlier at six o'clock unless he really knew what time
12 it was? He knew exactly what time it was but he knew he
13 couldn't explain why he said 5:37. He had to make a
14 mistake when he misread the clock to account for the hour.

15 This is a tragedy. The world will never get to know
16 **Minor**. And she died a horrible and lonely death
17 that night. She died in the hands of the man who was
18 obligated by the very laws of nature to protect and nourish
19 and care for her. She died at the hands of the man who
20 valued his own interest above hers, who spent hours with
21 her in that room that night listening to her cry,
22 frustrated, angry, until he finally lost his patience
23 picked her up and shook her however briefly but fatal.

24 Quentin Evans is guilty of homicide by child abuse.
25 Quentin Evans' guilt is sometime in the early morning hours

CHARGE TO THE JURY:

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1 of January 23rd, 2014. Quentin Evans is guilty and you
2 should find him guilty. Thank you.

3 THE COURT: Is any juror need to take a short break
4 before we continue?

5 No one? All right.

6 Ladies and gentlemen, you of course have heard and
7 seen all the evidence in the case. You've also now heard
8 the final summations of the lawyers. It therefore becomes
9 my duty and obligation to instruct you on the law that's
10 applicable in the case. And of course you will be ask to
11 go back and begin with your deliberations and through that
12 process you will examine all of the evidence, you will
13 decide the facts, you will apply the law and arrive at a
14 fair and just decision whatever that decision may be.

15 It is your exclusive duty as jurors to determine what
16 the facts are. You do that through your own common sense
17 examination and evaluation of all the testimony and the
18 other evidence received in the course of the trial.

19 You twelve jurors alone will decide what weight,
20 value, and effect to give any particular witnesses'
21 testimony or other evidence in the case. You're sole
22 obligation and duty is to render and reach a fair and
23 impartial decision based upon the evidence presented and
24 the law that's applicable as I will then have provided it
25 to you.

CHARGE TO THE JURY:

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1 Now as you know in this case the defendant has been
2 charged by the State with the crime of homicide by child
3 abuse which is a statutory offense set forth in 16-3-85.
4 As to those allegations and as to that charge he has
5 entered a plea of not guilty. And as I have told you that
6 plea of not guilty has placed upon the State the burden of
7 proving the allegations that they have made in the
8 indictment. The burden of proving each of the essential
9 elements of the crime alleged against the defendant and
10 therefore the burden is upon the State to establish his
11 guilt to the satisfaction of you twelve jurors beyond a
12 reasonable doubt before a verdict of guilty could be
13 returned.

14 The burden is never upon a defendant to prove that he
15 or she is not guilty or to prove that he or she is innocent
16 because in some cases that might not be possible. The
17 burden is always upon the State because they have made the
18 accusation and they have brought the charge against the
19 defendant to establish his guilt to your satisfaction
20 beyond a reasonable doubt.

21 You are further instructed that it is a vital
22 important and cardinal rule of law that every defendant in
23 a criminal trial, no matter how great or serious the
24 offense might be, for which that person stands charged that
25 person shall always be presumed innocent of that charge and

CHARGE TO THE JURY:

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1 that presumption of innocence remains with any defendant as
2 it does with this defendant from the time he is placed
3 under arrest and throughout the course of the criminal
4 process and even throughout the course of the actual trial
5 in the case.

6 As I told you that presumption of innocence will be
7 with Mr. Evans even as you go back into your jury room to
8 begin with your deliberations in this case. And that
9 presumption of innocence will be with him in that jury room
10 and it will be with him forever unless you twelve jurors
11 determine that he's no longer entitled to that presumption
12 of innocence.

13 In other words after you've carefully considered all
14 of the evidence in the case and from that evidence in the
15 case and from that evidence you have determined the facts
16 and upon deciding those facts you apply the law that I will
17 have provided you if you twelve jurors unanimously determine
18 that his guilt has been proven beyond a reasonable doubt
19 then he would no longer be entitled to that presumption of
20 innocence. But it is only if unless and until you are
21 satisfied of his guilt beyond a reasonable doubt that
22 presumption of innocence would no longer be applicable.

23 Now while the State does have the burden of proving
24 the defendant's guilt to your satisfaction beyond a
25 reasonable doubt that doesn't mean that the State is

CHARGE TO THE JURY:

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1 required to prove his guilt to your satisfaction beyond all
2 doubt or beyond any possible doubt, but it does require the
3 State to prove his guilt to your satisfaction beyond a
4 reasonable doubt. And the term reasonable doubt should be
5 given it's plain and ordinary meaning. A reasonable doubt
6 is the kind of doubt that would cause a reasonable person
7 to hesitate to act upon the information provided.

8 The defendant is entitled to any reasonable doubt that
9 arises from the evidence or lack of evidence in the case.
10 And if upon any factual issue essential to a finding of a
11 verdict of guilty you have some reasonable doubt as to how
12 that issue should be resolved it would be your duty to
13 resolve that reasonable doubt in favor of the defendant.

14 Now the State may rely upon direct evidence or
15 circumstantial evidence or a combination of both direct and
16 circumstantial evidence in order to prove the commission of
17 a crime as well as to prove any essential element of that
18 crime. Now while there are various forms of evidence such
19 as testimony, photographs, documents, charts, and other
20 types of physical exhibits, there are really only two types
21 of evidence, and either or both of those types of evidence
22 may be used independently or a combination to prove any
23 fact and issue, but the two types of evidence are direct
24 evidence and circumstantial evidence.

25 Direct evidence is the testimony of a person who

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1 testifies from actual knowledge of that fact. It is
2 testimony by a person who has perceived the existence of
3 some fact by means of their senses and then they come into
4 court and they testify as to what they had previously
5 perceived.

6 Circumstantial evidence on the other hand is the proof
7 of some other fact or a set of facts which taken either
8 singly or collectively may prove the existence of a fact in
9 question as a necessary consequence, that is, by an
10 inference. And an inference is simply a deduction of fact
11 that may logically and reasonably be drawn from the proof of
12 some other fact or set of facts. In other words it's not a
13 fact which is proven by the direct testimony of a witness
14 based upon that person's perception but it is a conclusion
15 which might reasonably be drawn from the proof of other
16 facts.

17 In other words, you may infer that a particular event
18 occurred or that a particular fact exist based upon the
19 proof of sufficient factual circumstances which would
20 reasonably warrant your arriving at a particular
21 conclusion.

22 The commission of a crime as well as any particular
23 element necessary to establish that crime may be proven by
24 direct evidence or by circumstantial evidence or by a
25 combination of direct and circumstantial evidence. The law

CHARGE TO THE JURY:

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1 makes no distinction between the weight or value to be
2 givne to direct evidence or to circumstantial evidence.
3 However, to the extent that the State relies upon
4 circumstantial evidence to establish the commission of a
5 crime all the circumstances proven must be consistent with
6 each other and when taken together point conclusively to
7 the guilt of the accused beyond a reasonable doubt.

8 If these circumstances merely portray the defendant's
9 behavior as suspicious, the proof is insufficient and
10 fails. This burden rest with the State regardless of
11 whether the State relies upon direct evidence or
12 circumstantial evidence or some combination of the two
13 types of evidence to prove the defendant guilty of beyond a
14 reasonable doubt.

15 Proof beyond a reasonable doubt is proof that leaves
16 you firmly convinced of the defendant's guilt. There are
17 very few things in this world that we know with absolute
18 certainty and in criminal cases the law does not require
19 proof that over comes every possible doubt. If based upon
20 your consideration of the evidence in this case you are
21 firmly convinced that the defendant is guilty of the crime
22 alleged against him then you are to find him guilty.

23 And if on the other hand you think there is a real
24 possibility that the defendant is not guilty then you must
25 give the defendant the benefit of that doubt and find him

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1 not guilty.

2 Now the same law that provides that you are the judges
3 of the facts also provides that I am the judge of the law.
4 And that simply means that nobody's gonna tell you how to
5 arrive at your determination of fact in this case. You do
6 that as I've already stated through the exercise of good
7 judgment and common sense consciously applied to the
8 testimony and evidence received during the course of the
9 trial.

10 You must however under your oath as a juror accept the
11 law as I provide it to you as being the law that you are to
12 apply to the case. In other words you are never to concern
13 yourselves with what you thought the law was before you
14 came to serve as a juror this week, or, what you think the
15 law ought to be.

16 Under your oath as a juror you must simply accept the
17 law as I provide it to you as being the law that you are to
18 apply in the case. Then you simply take that law and you
19 apply it to the facts as you twelve jurors determine those
20 facts to be based upon your common sense examination and
21 evaluation of all the evidence received during the course
22 of the trial.

23 Now, as you know you are the sole judges of the facts
24 in this case and you are therefore necessarily the sole
25 judges of the credibility and the believability of any

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1 witness that has testified during the course of the trial.

2 You would determine what weight value and effect to
3 give any particular witnesses' testimony or even portions
4 of that testimony. But as the sole judges of the facts in
5 this case you must evaluate the testimony and you should
6 consider certain factors in order to arrive at your
7 evaluation or your assessment as to a witnesses'
8 credibility and believability. And I'm going to list those
9 factors for you.

10 You should consider the demeanor or a witness, that
11 is, how the witness appeared to you as the witness
12 testified from that witness stand. Was the witness
13 straightforward in responding to questions, or, was the
14 witness hesitant or evasive in responding to questions that
15 were ask of that particular witness? Simply put, did the
16 witness appear to you to be telling the truth, and, to have
17 knowledge of the facts to which that witness has testified?

18 You should also consider whether or not the testimony
19 of a witness was consistent or was it inconsistent? Not
20 only with that witnesses' testimony provided in court, but
21 also, with other witnesses' testimony as well as any
22 statements made by that same witness whether they were in
23 court or outside of court. And you should consider how the
24 witness came to know the facts to which each witness has
25 testified.

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1 In other words, what was a particular witnesses'
2 opportunity and ability to perceive the existence of those
3 facts to which that witness has testified. And then what
4 has that witnesses' ability to be able to come into court
5 and accurately recollect to you as to what they had
6 previously perceived.

7 You should also consider any bias or prejudice or
8 interest that a witness might have with respect to the
9 case. In other words do you find some reason that a
10 particular witness would come into court would testify one
11 way or another to help or hurt one side or the other. And
12 you may consider any interest that a witness might have in
13 the outcome of the case if you determine that a witness
14 does have such an interest and you find that that interest
15 would bear upon that particular witnesses' credibility.

16 And you should also consider whether or not the
17 testimony of a witness was strengthened or weakened by
18 other testimony or other evidence received during the
19 course of the trial.

20 Now during the course of this trial you have heard
21 certain testimony that was elicited from certain witness's
22 that were qualified as experts in a particular field.
23 Please understand that I have to determine whether or not a
24 person can testify as an expert in a particular field. But
25 the fact that I qualify a witness as an expert should not

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1 be taken by you as any indication by me as to how I think
2 you are to judge that witnesses' testimony or credibility.
3 That is something that you have to determine based upon
4 your consideration of all the evidence in the case.

5 Lay witnesses are ordinarily not permitted to testify
6 in an opinion form. They can testify about facts that they
7 have perceived of their own personal knowledge or
8 perception but they are not usually allowed to testify in
9 an opinion form. However, certain witnesses who have
10 special training or education or experience with respect to
11 a particular matter may be qualified as an expert in that
12 particular field. And where that person is qualified as an
13 expert in a particular field then that person may testify
14 in an opinion form based upon the facts of the matter in
15 controversy and their conclusions and their opinions
16 constitute evidence for the jury to consider.

17 If you should determine that the opinion testimony of
18 an expert is not based upon sufficient qualifications, or
19 sufficient education, training, skill, knowledge and
20 experience, or a proper consideration of the facts that
21 relate to this particular case, then you may disregard that
22 expert's opinion in it's entirety or you may choose to
23 believe some of it and reject some other portion of it.

24 In other words, you must judge the credibility of an
25 expert witness just as you do any other witness that has

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1 testified during the course of the trial. And because you
2 are the judges of the credibility of each witness you are
3 permitted to believe as much or as little of what a witness
4 has testified to as you deem is appropriate. And so, you
5 can believe everything that a witness testified to, you may
6 choose to believe none of it. You may believe some portion
7 of a witness's testimony and reject some other portion of
8 that same witnesses's testimony.

9 In a given can you could believe one witness as
10 opposed to several or several as opposed to one. But
11 whatever your good judgment and common sense tells you is
12 the most believable and credible testimony is the testimony
13 you should accept, and you should reject any testimony that
14 you find not to be credible or believable. Again, your
15 sole objective is to simply render a fair and impartial
16 decision in the case.

17 Now as you know the defendant in this case is charged
18 by the State with having committed the crime of homicide by
19 child abuse. That crime and those allegations are set
20 forth in the indictment that I previously read to you, but
21 please understand, the indictment will be in the jury room
22 with you, but the indictment itself is not evidence in the
23 case. It does not establish anything, it does not prove
24 anything, it's simply the means by which any person is
25 brought into this court and formally accused of a crime and

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1 of course it puts them on notice as to what crime the State
2 claims they have committed.

3 But it's not proof or evidence of anything. But it
4 will be in the jury room because it will serve as the
5 verdict form, Mr. Foreman. You will see on the back of the
6 indictment at the bottom left the word verdict and it's
7 beneath that word that you will indicate the jury's
8 unanimous decision whatever that decision is. But other
9 than serving as the verdict form the indictment serves no
10 purpose so far as you juror's are concerned.

11 But, the State does allege by way of this indictment
12 that Mr. Evans did here in York County on or about January
13 the 23rd of 2014, commit the crime of homicide by child
14 abuse, in that he caused the death of **Minor**
15 **[REDACTED]**, a child under the age of eleven years at the
16 time of her death, while committing child abuse or neglect,
17 and, that the death occurred under circumstances
18 manifesting an extreme indifference to human life in
19 violation of Section 16-3-85.

20 Section 16-3-85 provides that a person is guilty of
21 homicide by child abuse if the person causes the death of a
22 child under the age of eleven years while committing child
23 abuse or neglect, and, the death occurs under circumstances
24 manifesting an extreme indifference to human life.

25 Now also within that statutory provision are certain

CHARGE TO THE JURY:

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1 definitions and the term child abuse, or neglect, means an
2 act or an omission by any person which causes harm to a
3 child's physical health or welfare. And the term harm to a
4 child's physical health or welfare means the infliction of
5 physical injury upon a child, or, the failure to supply the
6 child with adequate health care, and, the failure to do so
7 causes a physical injury or condition resulting in the
8 death of the child.

9 The term extreme indifference to human life refers to
10 the deliberate omission of an act, or, failure to act with
11 a conscious indifference to the probable consequences of
12 the act or omission which culminates in the death of
13 another human being, and in this case a child.

14 It may be further described as the intentional
15 commission of an act or a failure to act with a conscious
16 indifference to any risk created thereby which culminates
17 in the death of the child. And therefore based upon that
18 statute, before you could find the defendant guilty of
19 homicide by child abuse in the context of this case, it
20 would be necessary that the State and the evidence
21 establishes beyond a reasonable doubt the following four
22 essential elements.

23 First of all, it must be proven that the defendant
24 deliberately or intentionally committed an act or failed to
25 act under circumstances revealing an extreme indifference

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1 to human life. Secondly, that the act or omission caused
2 physical injury to a child. Thirdly, that the child was
3 under the age of eleven years. And fourthly, that the
4 physical injury culminated in the death of the child.

5 Now, Mr. Foreman, ladies and gentlemen of the jury, I
6 am not in any way concerned with what your decision is, but
7 you are instructed that your verdict must be unanimous, all
8 twelve of you must be in agreement before any decision may
9 be returned. In this particular case you have two possible
10 verdict forms. Those two possible verdict forms are guilty
11 and not guilty. So whatever that decision is, Mr. Foreman,
12 as I've indicated to you, you will reflect that on the back
13 of the indictment by inserting that in the space provided.
14 And, you will also sign your name as the foreperson. You
15 are the only juror that needs to sign the verdict form.
16 There is also a space for the appropriate date which today
17 is the 19th.

18 Now during the course of your deliberations there may
19 come a time when you have some questions about the evidence
20 in the case or you may wonder if there is something else
21 out there that you can have that might assist you in coming
22 to a unanimous decision. Now understand that all of the
23 evidence is gonna be introduced in the trial of this case
24 has been introduced. No additional evidence may be
25 received even if it does exist so as you go back we will

1 review all of the exhibits to be certain that everything
2 that was introduced is in the jury room with you.

3 But if you decide and say, well we might need
4 something else so could we get it, do you have it, or where
5 is it, or does it exist? It doesn't matter whether it
6 exist or not, if it has not been introduced now, it cannot
7 be introduced after you go back and begin your
8 deliberations. So don't inquire about any additional
9 evidence because it cannot be received.

10 Now if at any time you have some question about the
11 testimony of a witness, while I do not have transcripts of
12 a witnesses' testimony to send back to the jury room with
13 you, if you have a question about a witnesses' testimony
14 that can be answered by having that witnesses' testimony
15 replayed in whole or in part, we can bring you back into
16 the courtroom to have a witnesses' testimony reheard. The
17 court reporter will simply play it back by way of a tape.

18 And you can listen to all of it if you need to or only
19 some portion of it if that's all you need. So if you need
20 some clarification of a witnesses' testimony, or you have a
21 question that can be answered by having it replayed, let me
22 know of that fact and we'll bring you back into the
23 courtroom to have that testimony - have that testimony
24 reheard.

25 If at any time you have any question about the law

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1 that is applicable, I am permitted to answer those
2 questions. So if at any time you need for me to provide
3 you a re-instruction that I've already given, or you need
4 for me to provide you with some explanation or
5 clarification of some point of law that I've already
6 provided, you just simply need to let me know through the
7 bailiff and I will be happy to respond to those inquiries.

8 Mr. Foreman, if at any time you need to address a
9 matter to me if you will write it on a piece of paper, give
10 it to the bailiff, he will provide it to me and I will
11 respond accordingly.

12 I don't know if we have any smokers on the jury but if
13 we do you can smoke during your deliberations but you cant'
14 smoke in the jury room. You have to outside for that
15 purpose so if you need to smoke let the bailiff know and
16 he'll take you outside. You are instructed that
17 deliberations have to stop if any juror is absent from the
18 jury room for some authorized purpose. And deliberations
19 may only be engaged in when all twelve are present so that
20 all may participate.

21 I think that covers everything but if it doesn't' I'm
22 sure one of these lawyers will tell me I neglected to
23 provide you with some information that I should have. If
24 that's the case I will bring you back and provide you with
25 additional information. If I don't need to bring you back

CHARGE TO THE JURY:

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1 I will simply send word by way of the bailiff that you may
2 begin with your deliberations. In that event he will bring
3 to the jury room all of the exhibits which have been
4 introduced during the trial of the case.

5 And to, Mr. Foreman, he will also bring the indictment
6 which will serve as the verdict form. So I'm going to ask
7 the two alternate jurors to stay in the courtroom with me
8 right now. I'll ask the twelve primary jurors to please go
9 with the bailiff to your jury room but do not begin
10 deliberations until I send you word to do so.

11 (JURY EXITS COURTROOM FOR DELIBERATIONS AT 03:37
12 P.M..)

13 THE COURT: I've got the two alternate jurors and you
14 all are not permitted to deliberate with the jury as you
15 know, but, I don't know if something might happen during
16 deliberations that one or more of the jurors may become ill
17 or cannot continue for some reason, so based upon that
18 potential occurrence I'm gonna ask you to stay with us.
19 The bailiff will take you to a separate room where you will
20 be alone just the two of you. You still are not to discuss
21 the case in any fashion. And if one or more the jurors now
22 deliberating cannot continue, then one or both of you will
23 be called upon to take their places, so I'm gonna ask you
24 to go with the bailiff to a separate room but do not
25 discuss the case while you are in that room. Okay.

JURY VERDICT:

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1 Thank you.

2 (ALTERNATE JURORS EXIT COURTROOM AT 03:38 P.M..)

3 THE COURT: Are there any exceptions taken to the
4 instruction or request for additions to the instructions by
5 the State?

6 SOLICITOR BRACKETT: No, Your Honor.

7 THE COURT: By the Defense?

8 MR. COOK: None, Your Honor.

9 THE COURT: All right, let me ask you all to verify
10 all the exhibits, please, before they go back.

11 Court is not in recess yet. Court is not in recess.

12 (PAUSE.)

13 THE COURT: All right, all the exhibits are accounted
14 for?

15 SOLICITOR THOMPSON: Yes. We just went to get the
16 computer that they play the disc on.

17 THE COURT: All right. Send 'em back and tell the
18 jury to begin deliberations and notify us when they
19 conclude.

20 (COURT IN RECESS AT 03:46 P.M..)

21 (COURT BACK IN SESSION AT 05:15 P.M..)

22 THE COURT: Thank you. Be seated.

23 I'm told that the jury has reached a decision.

24 You all ready to receive it?

25 SOLICITOR BRACKETT: The State is ready, Your Honor.

JURY VERDICT:

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1 MR. COOK: The Defense is ready, Your Honor.

2 THE COURT: Okay. Bring 'em in please.

3 (JURY REENTERS COURTROOM AT 05:17 P.M..)

4 THE COURT: Mr. Foreman, have you and your fellow
5 jurors reached a unanimous decision?

6 MR. FOREMAN: We have, Your Honor.

7 THE COURT: Have you reflected that decision on the
8 verdict form as requested?

9 MR. FOREMAN: I have, Your Honor.

10 THE COURT: Did you sign your name and date it?

11 MR. FOREMAN: I did.

12 THE COURT: If you will please hand that verdict form
13 up by way of the bailiff?

14 (VERDICT RECEIVED UP BY THE COURT.)

15 THE COURT: You may publish the verdict.

16 MADAM CLERK: In the State of South Carolina versus
17 Quentin Jarvis Evans under Indictment 2014-Gs-46-0-1-2-2-9
18 for homicide by child abuse verdict is guilty. Signed by
19 the Foreperson dated today's date.

20 If this be your verdict so say you all by raising your
21 right hand. Let the record show all jurors affirmed this
22 verdict.

23 (WHEREUPON, ALL JURORS AFFIRMED VERDICT.)

24 THE COURT: Does the Defendant wish to have the jury
25 polled?

JURY VERDICT:

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1 MR. COOK: Please, Your Honor.

2 THE COURT: All right. Poll the jury please, ma'am.

3 MADAM CLERK: Please stand.

4 Number Seventy-six, is this your verdict?

5 JUROR SEVENTY-SIX: It is my verdict - guilty.

6 MADAM CLERK: Is it still your verdict?

7 JUROR SEVENTY-SIX: It still is.

8 MADAM CLERK: Please be seated.

9 Number Seventy-nine.

10 JUROR SEVENTY-NINE: Yes.

11 MADAM CLERK: Is this your verdict?

12 JUROR SEVENTY-NINE: Yes.

13 MADAM CLERK: Is this still your verdict?

14 JUROR SEVENTY-NINE: Yes.

15 MADAM CLERK: Please be seated.

16 Number ninety-one, is this your verdict?

17 JUROR NINETY-ONE: Yes.

18 MADAM CLERK: Is this still your verdict?

19 JUROR NINETY-ONE: Yes.

20 MADAM CLERK: Please be seated.

21 Number 2-0-2, is this your verdict?

22 JUROR 202: Yes, ma'am.

23 MADAM CLERK: Is this still your verdict?

24 JUROR 202: Yes.

25 MADAM CLERK: Please be seated.

JURY VERDICT:

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1 Number one eighty-four.

2 JUROR ONE EIGHTY-FOUR: Guilty.

3 MADAM CLERK: Is this still your verdict?

4 JUROR ONE EIGHTY-FOUR: Yes.

5 MADAM CLERK: Please be seated.

6 Number 1-0-9, is this your verdict?

7 JUROR 109: Yes.

8 MADAM CLERK: Is this still your verdict?

9 JUROR 109: Yes.

10 MADAM CLERK: Please be seated.

11 Number two eleven, is this your verdict?

12 JUROR TWO ELEVEN: Yes.

13 MADAM CLERK: Is this still your verdict?

14 JUROR TWO ELEVEN: Yes.

15 MADAM CLERK: Pleas be seated.

16 Number one forty-three.

17 JUROR ONE FORTY-THREE: Yes, ma'am.

18 MADAM CLERK: Is this still your verdict?

19 JUROR ONE FORTY-THREE: Yes, ma'am.

20 MADAM CLERK: Please be seated.

21 Number fifty-four.

22 JUROR FIFTY FOUR: Yes.

23 MADAM CLERK: Is this your verdict?

24 JUROR FIFTY FOUR: Yes.

25 MADAM CLERK: Is this still your verdict?

JURY VERDICT:

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1 JUROR FIFTY FOUR: Yes.

2 MADAM CLERK: Please be seated.

3 Number two fourteen.

4 JUROR TWO FOURTEEN: Yes.

5 MADAM CLERK: Is this your verdict?

6 JUROR TWO FOURTEEN: Yes.

7 MADAM CLERK: Is this still your verdict?

8 JUROR TWO FOURTEEN: Yes.

9 MADAM CLERK: Please be seated.

10 Number one nineteen.

11 JUROR ONE NINETEEN: Here.

12 MADAM CLERK: Is this your verdict?

13 JUROR ONE NINETEEN: Is this still your verdict?

14 JUROR ONE NINETEEN: Yes.

15 MADAM CLERK: Please be seated.

16 Number ninety three, is this your verdict?

17 JUROR NINETY THREE: Yes.

18 MADAM CLERK: Is this still your verdict?

19 JUROR NINETY THREE: Yes.

20 MADAM CLERK: Please be seated.

21 THE COURT: Are there any other matters we need to
22 address with the jury present?

23 MR. COOK: No, sir, Your Honor.

24 THE COURT: All right, thank you, ladies and
25 gentlemen, for your participation as jurors this week and

SENTENCE OF THE COURT:

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1 of course for your services in the trial of this case.

2 I do hope that your service has not imposed too much
3 of a hardship on you. I do sincerely hope that it has been
4 an educational and beneficial experience for you. You will
5 not need to return tomorrow. You're gonna be excused now
6 for the balance of the week so again thank you for your
7 willingness to serve as jurors this week in the manner in
8 which you've carried out your services.

9 All right, if you will go with the bailiff he will
10 take your tags and you won't - will not need to report back
11 any further. Thank you again.

12 (JURY DISMISSED AT 05:21 P.M..)

13 THE COURT: Can I see you all just a minute please?

14 (BENCH CONFERENCE OFF THE RECORD AT 05:22 P.M..)

15 THE COURT: All right, any other matters that need to
16 be addressed prior to the imposition of the sentence?

17 MR. COOK: Your Honor, I'd like to make a motion for a
18 judgment non-obstante veredicto and a judgment for a new
19 trial, a motion for a new trial.

20 THE COURT: All right. That motion is denied.

21 MR. COOK: Yes, sir.

22 THE COURT: Is the Defendant ready for sentencing?

23 MR. COOK: Yes, sir.

24 THE COURT: All right.

25 MR. COOK: May it please the Court.

SENTENCE OF THE COURT:

-608-

1 THE COURT: Wait a minute, Mr. Cook.

2 Anything further on behalf of the State?

3 SOLICITOR BRACKETT: Yes, sir, Your Honor, just
4 briefly. I believe that [REDACTED] Minor's aunt would like to
5 address the court on behalf of the family and the victim.

6 A. I want to speak to - -

7 Talisha Banks, B-a-n-k-s. I want to let Mr. Evans and
8 his family know we don't hate them. We forgive - we
9 forgive you.

10 (MS. BANKS CRYING.)

11 MS. BANKS: This is a loose loose situation. I'm
12 sorry that you all have to go through this but at the end
13 of the day we can no longer see our child. His mother
14 still can see him. I'm sorry that she has to go through
15 this. But my sister is going through a lot right now. We
16 don't hate you. Okay?

17 THE COURT: Okay. Thank you, ma'am.

18 SOLICITOR BRACKETT: Your Honor, I won't belabor the
19 point. We have been in a four day trial. You've heard 11
20 the evidence. The evidence in this case was overwhelming
21 given the fact the defendant was in charge of the child and
22 without question received her when she was healthy and in
23 good condition, had no injuries and through the night
24 through the evening hours she obviously suffered from a
25 series of very very violent brutal attacks upon her body

SENTENCE OF THE COURT:

-609-

1 that resulted in her death.

2 The only thing I wish I could be standing up here and
3 hearing is that this family has not been put through what
4 they have had to suffer through over the last four days in
5 light of the overwhelming evidence against Mr. Evans. He
6 did not accept responsibility and I think this sentence
7 should reflect that fact.

8 THE COURT: All right. Thank you.

9 Anything further?

10 MR. COOK: All right, Mr. Cook.

11 MR. COOK: Your Honor, I don't' believe any of my
12 client's family members wish to address the court other
13 than just to say that they are throwing themselves on the
14 court's leniency. And again, Your Honor, not to belabor
15 the point, this has been a four day trial and your Honor
16 has heard a lot of evidence. My client is twenty-six years
17 old, I think he just hopes that your Honor might consider
18 fashioning some type of sentence that perhaps lets him see
19 some daylight at some point in his life.

20 He didn't have a lot of education and - I'll rest
21 there, your Honor.

22 THE COURT: All right. Mr. Evans, is there anything
23 you would like to tell me?

24 MR. EVANS: I'm sorry. I'm sorry for all the
25 circumstances it happened. Hopefully my family - I hope

SENTENCE OF THE COURT:

-610-

1 there is some way to get through this. I want to tell the
2 mother I'm sorry. I want to apologize to my family and I'm
3 sorry. I love everybody. That's it.

4 THE COURT: Mr. Cook, you and Mr. Evans want to sign
5 that sentencing sheet?

6 All right, on Indictment 2014-46-1-2-2-9 the State
7 versus Quentin Jarvis Evans in indictment for homicide by
8 child abuse wherein you have been found guilty by the jury,
9 the sentence of the court is you, Quentin Jarvis Evans, be
10 confined to the South Carolina Department of Corrections
11 for a period of forty-five years.

12 Give him credit for any time he's entitled pursuant to
13 24-13-40.

14 Mr. Evans, you have a right to appeal the verdict of
15 the jury and the sentence of the court. You must file any
16 notice of your intention to appeal those decisions within
17 ten days of today's date.

18 (DEFENDANT QUENTIN JARVIS EVANS ESCORTED FROM
19 COURTROOM.)

20 THE COURT: Let me see you all just a minute.

21 (BENCH CONFERENCE OFF THE RECORD AT 05:29 P.M..)

22 THE COURT: Court is in recess.

23 (COURT IN RECESS AT 05:30 P.M..)

24 (END OF TRANSCRIPT OF RECORD.)
25

SENTENCE OF THE COURT:

-611-

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 16th, 17th, 18th and 19th days of March, 2015.

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

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021
DATE: July 25 / 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 01 2015

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

J. Derham Cole, Circuit Court Judge

Case No. 2014-GS-46-1229

 The State,

Respondent,

v.

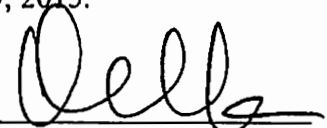
Quentin Jarvis Evans,

Appellant.

NOTICE OF APPEAL

Quentin Jarvis Evans appeals his conviction and sentence in this case. The sentence was imposed by the Honorable J. Derham Cole on March 19, 2015.

March 30, 2015


David C. Cook
Post Office Box 1449
Lancaster, South Carolina 29721
(803) 285-4848
Attorney for Appellant

Other Counsel of Record:
Willy Thompson
Solicitor
1675-1A York Hwy.
York, South Carolina 29745
(803) 628-3020
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 01 2015

APPEAL FROM YORK COUNTY
Court of General Sessions

SC Court of Appeals

J. Derham Cole, Circuit Court Judge

Case No. 2014-GS-46-1229

State of South Carolina,

Respondent,

v.

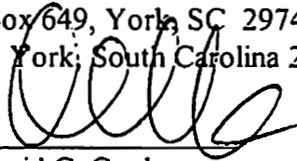
Quentin Jarvis Evans,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal and Anders Brief on The Clerk of Court for York County, David Hamilton by depositing a copy of it in the United States Mail, postage prepaid, on March 30, 2015 addressed to Post Office Box 649, York, SC 29745, and Willy Thompson, Solicitor addressed to 1675-1A York Hwy, York, South Carolina 29745.

March 30, 2015


David C. Cook
Post Office Box 1449
Lancaster, South Carolina 29721
(803) 285-4848
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUENTIN J. EVANS,

APPELLANT

APPELLATE CASE NO. 2015-000671

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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Tory A. Weigand, <u>Raise or Lose: Appellate Discretion and Principled Decision-Making</u> , 17 Suffolk J. Trial & App. Advoc. 179, 222 (2012).....	9
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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge committed plain error by not charging the jury on the defense of accident when such a charge was supported by the evidence, the defendant's testimony, and the defense's theory of the case as stated in its arguments to the jury?

STATEMENT OF THE CASE

On April 17, 2014, a York County grand jury indicted appellant for homicide by child abuse. R. 612. On March 16, 2015, appellant was tried before the Honorable J. Derham Cole and a jury. R. 1. Kevin S. Brackett and Willy Thompson represented the State. R. 1. David C. Cook represented appellant. R. 1. The jury convicted appellant. R. 603, ll. 4 – 23. Judge Cole sentenced appellant to forty-five years' imprisonment. R. 610, ll. 6 – 17. This appeal follows.

ARGUMENT

The trial judge committed plain error by not charging the jury on the defense of accident when such a charge was supported by the evidence, the defendant's testimony, and the defense's theory of the case as stated in its arguments to the jury.

Relevant Facts

On January 23, 2014, paramedics responded to a 911 call “for an unconscious child not breathing.” R. 77, l. 21 – 78, l. 12. Appellant, the infant's father, was outside and “very upset.” R. 79, ll. 3 – 7. Appellant directed the paramedics into the house and they attempted CPR on the infant (“Minor”). App. 79, ll. 3 – 20. Minor's pupil's were fixed and dilated and she showed no signs of life. App. 81, l. 2 – 83, l. 6. Appellant told the paramedic that Minor had fallen off of a bed earlier in the night. App. 83, ll. 7 – 14.

The State presented no direct evidence that appellant harmed Minor. Instead, the State built its case around the testimony of its forensic pathologist, Dr. Craig Hart (“Hart”). R. 109, l. 21 – 110, l. 5. Judge Cole qualified Dr. Hart as an expert in forensic pathology. R. 114, ll. 9 – 13. Dr. Hart autopsied Minor on the afternoon of her death. R. 114, l. 15 – 115, l. 1. He opined that Minor's death was a homicide. R. 184, ll. 11 – 15.

Dr. Hart based his opinion on several injuries he found during the autopsy. R. 184, l. 11 – 185, l. 18. He believed that Minor's injuries were consistent with “shaken baby with impact.” R. 182, l. 16 – 183, l. 1. Dr. Hart first pointed out several bruises that he believed were fresh on Minor's body, including on the arms, face, neck, and forehead. R. 118, l. 12 – 119, l. 12. Importantly, Dr. Hart described the bruise on Minor's forehead as “linear.” R. 120, l. 23 – 121, l. 13. Minor had a fractured collar bone, injuries to the “junction of the ribs to the vertebral column,” a subdural hematoma, and retinal

hemorrhages. R. 134, ll. 1 – 2; R. 146, ll. 13 – 25; R. 160, l. 4 – 162, l. 25; R. 170, ll. 13 – 20.

Dr. Hart opined that Minor's injuries could not have occurred in a single fall from the bed. R. 181, l. 4 – 185, l. 18. However, on cross-examination, Dr. Hart was forced to admit that the "linear bruise" he described on Minor's forehead could have been from the side of a headboard or footboard on a bed. R. 193, ll. 13 – 20. Dr. Hart also admitted that had Minor's head hit the floorboard or the ground, it could cause a single retinal hemorrhage, but denied it could cause multiple retinal hemorrhages. R. 187, l. 2 – 190, l. 9.

Shortly after appellant's daughter died, the police filmed appellant reenacting his daughter's fall for the coroner. State's Ex. 52. R. 227, l. 6 – 228, l. 24. Appellant's daughter was asleep on a small pallet on his bed. State's Ex. 52. He placed Minor to sleep on her side. State's Ex. 52. Appellant got up in the night to fix Minor a bottle. State's Ex. 52. When he returned from the kitchen, he did not see Minor on the bed. State's Ex. 52. He ran to the bed and found Minor had fallen off the side of the bed nearest the wall. State's Ex. 52. He pulled Minor up by her arm and comforted her. State's Ex. 52. Minor had trouble holding up her head. State's Ex. 52. Appellant put Minor back down on her side and he positioned himself in the bed so he could watch her. State's Ex. 52. Appellant fell asleep for ten or fifteen minutes and when he awoke, he could tell that Minor was having trouble breathing and was not responding to him. State's Ex. 52. He ran to the next room to get his mother. State's Ex. 52.

Appellant testified in his own defense. Nothing was wrong with Minor during the day. R. 475, ll. 13 – 23. She ate, slept, and had dirty diapers. R. 475, ll. 13 – 23.

Appellant gave Minor a bottle at approximately 9:30 PM. R. 476, ll. 3 – 7. Minor woke up during the night and appellant tried to give her a pacifier. R. 477, ll. 11 – 23. Appellant’s brother had been sleeping in the room and then got up to move to another room because it was hot. R. 449, ll. 16 – 17. R. 477, l. 24 – 482, l. 21. Appellant got up at the same time to fix a bottle. R. 477, l. 24 – 482, l. 21. As he returned, he heard Minor crying. R. 477, l. 24 – 482, l. 21. Appellant “ran and jumped on the bed.” R. 479, ll. 1 – 5. When the baby calmed down, he put her back on her left side. R. 479, ll. 7 – 20.

Appellant dozed, but as he was sleeping he described that an image of his “daughter falling pops in my brain” and suddenly awoke. R. 481, ll. 1 – 5. Appellant could not feel her breathing and could not feel her pulse. R. 481, l. 9 – 482, l. 21. He held up her arm and it fell limp. R. 481, l. 9 – 482, l. 21. He ran to his mother’s room and his family called 911. R. 482, l. 6 – 483, l. 20. Appellant also called 911. R. 483, ll. 7 – 20. Appellant’s father performed CPR until the ambulance arrived. R. 483, l. 7 – 484, l. 15. Appellant ran outside to direct the ambulance to their house. R. 483, l. 7 – 484, l. 15.

In the first lines of his opening statement, trial counsel told the jury that appellant had always maintained his innocence from “the day of this terrible accident.” R. 70, ll. 10 – 16. In his closing, trial counsel implored the jury: “What do you do with an accident even if it’s a terrible horrific accident that takes a human’s life? Is it still an accident? Does it become a crime just because somebody passes away?” R. 536, ll. 19 – 24. The solicitor responded in his closing: “The defense contends that it was an accident. . . . That [Minor] didn’t just die as a result of an accident, an unfortunate event

that nobody could have prevented reasonably but she was killed through the intentional act of another person. A homicide.” R. 557, ll. 8 – 17.

Discussion

The trial judge did not charge the jury on the law of accident. R. 585, l. 3 – 601, l. 10. Appellant concedes that he did not request a charge on the law of accident or obtain a ruling on the charge from the trial judge. R. 532, l. 17 – 534, l. 14. R. 602, ll. 3 – 8. However, a trial judge has a duty to craft his charge to fit the facts of the case. State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989) (“In charging self-defense, we instruct the trial court to consider the facts and circumstances of the case at bar in order to fashion an appropriate charge.”).

“The law to be charged must be determined from the evidence presented at trial.” State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 394 (2001). “If there is any evidence to support a charge, the trial court should grant the request.” State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011).

The evidence entitled appellant to a charge on the law of accident. “Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer.” State v. Brown, 205 S.C. 514, 32 S.E.2d 825, 828 (1945). “If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident.” Id. Because the homicide by child abuse statute requires a mental state of “extreme indifference,” even if appellant acted negligently, he would still be entitled to the defense of accident. See S.C. Code Ann. § 16-3-85(A)(1). “[T]he State must prove the defendant performed a deliberate

act that he or she knew would create a risk of death to the child. A deliberate act in the face of such knowledge is a reckless disregard of the risk, and thus demonstrates an extreme indifference to the child's life." State v. Phillips, 411 S.C. 124, 135, 767 S.E.2d 444, 449 (Ct. App. 2014).

Appellant's testimony far exceeds the "any evidence" threshold necessary to charge the jury on accident. He testified that Minor fell off of the bed while he was fixing a bottle. R. 477, l. 24 – 482, l. 21. Appellant's re-enactment provided visual evidence of how the child fell off of the bed and how appellant retrieved the child from between the wall and the bed. State's Ex. 52. Nothing in appellant's testimony demonstrates that appellant acted unlawfully. While the pathologist rejected appellant's explanation of the accident, this Court does not weigh the evidence when determining whether a jury charge is proper. Furthermore, the pathologist admitted that the linear bruise on Minor's forehead could have been caused in the fall. R. 193, ll. 13 – 20.

This evidence entitled appellant to a charge of accident. While appellant did not ask for such a charge, the need for it was plain from the evidence and the arguments of counsel and the trial court should have given the jury an accident charge. While "the plain error rule does not apply in South Carolina state courts," this rule is in conflict with the rule from Fuller that judges must fashion fact-specific charges on defenses. State v. Sheppard, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011). Only a handful of states have refused to adopt any form of plain error review. See Tory A. Weigand, Raise or Lose: Appellate Discretion and Principled Decision-Making, 17 Suffolk J. Trial & App. Advoc. 179, 222 (2012) (noting that "[v]irtually all of the states have adopted a plain error type default standard for unpreserved contentions at least in criminal cases with only about

eight (8) states refusing to adopt such an exception or otherwise limiting any plain error review to death penalty cases or erroneous jury instruction claims.”). This Court should apply plain error in this limited circumstance and reverse.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of January, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUENTIN J. EVANS,

APPELLANT

APPELLATE CASE NO. 2015-000671

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quentin J. Evans states:

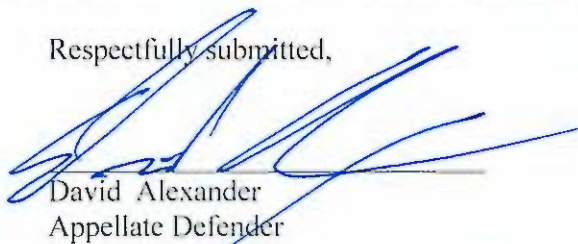
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on March 19, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Quentin J. Evans.

Respectfully submitted,


David Alexander
Appellate DefenderATTORNEY FOR APPELLANT
STATE OF SOUTH CAROLINA

This 29th day of January, 2016.

IN THE COURT OF APPEALS

Appeal from York CountyJ. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUENTIN J. EVANS,

APPELLANT

APPELLATE CASE NO. 2015-000671

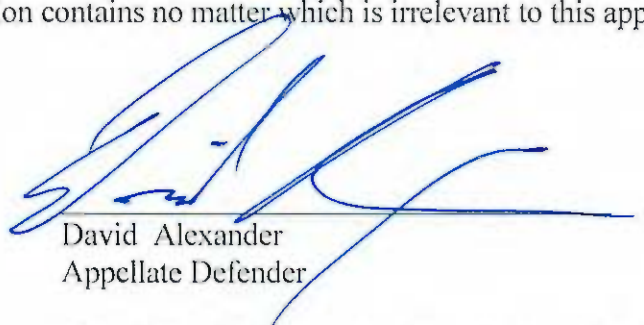
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial Transcript;
- (3) Defendant's Ex. 7;
- (4) State's Ex. 52 (video CD, to be transported).

I certify that this designation contains no matter which is irrelevant to this appeal.

January 29th, 2016

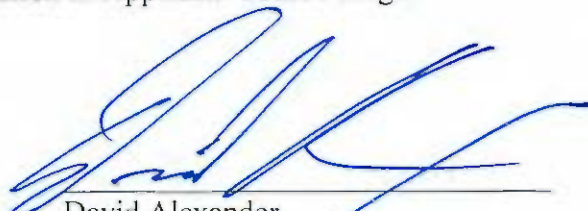

David Alexander
Appellate DefenderSouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 29, 2016



David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York CountyJ. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUENTIN J. EVANS,

APPELLANT

APPELLATE CASE NO. 2015-000671
_____CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Quentin J. Evans, # 363391 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 29th day of January, 2016.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of January, 2016.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Quentin Jarvis Evans, Appellant.

Appellate Case No. 2015-000671

Appeal From York County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2016-UP-495
Submitted November 1, 2016 – Filed November 23, 2016

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia; and Solicitor Kevin Scott Brackett, of
York, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386
U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

HUFF and SHORT, JJ., and MOORE, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 12, 2016

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Quentin J. Evans
Lower Court Case No. 2014GS4601229
Appellate Case No. 2015-000671

Dear Clerk of Court:

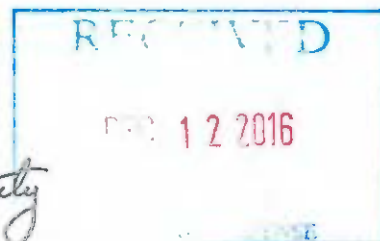
The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The exhibit being returned is: State's Exhibit #52 - Video. Please sign attached copy of this letter and return to acknowledge receipt of this item.

Very truly yours,

V. Claire Allen, Deputy

CLERK



Enclosure

cc: Quentin Jarvis Evans, 363391
Alan McCrory Wilson, Esquire
David Alexander, Esquire
John Benjamin Aplin, Esquire
Kevin Scott Brackett, Esquire

Receipt Acknowledgement:

Name _____ Date _____

Name: _____
Please print

FORM 5

2017 CP4601938

STATE OF SOUTH CAROLINA

County of YorkQuentin Jarvis Evans #363391

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION REVIEW

DAVID HAMILTON
CLERK OF COURT
C.C. & GS
YORK COUNTY, SC2017 JUL -6 PM 2:33
FILED-RECEIVED
2017 JUL -6 PM 12:04
DAVID HAMILTON
CLERK OF COURT
C.C. & GS
YORK COUNTY, SCINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386 Redemption Way, McCormick, South Carolina 29849
2. Name and location of Court which imposed sentence York County Court of General Sessions - York, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Homicide By Child Abuse - 2014 - GS - 46 - 01229
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 19, 2015 - 45 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXXXXX
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court Of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 23, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Quentin J. Evans, Op. No. 2016-UP-495
- ii. (S.C. Ct. App. Filed November 23, 2016)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel See Attached Memor-
- (b) andum
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel was ineffective for failing to investigate this case.
- (b) Counsel has a duty to investigate. See Attached
- (c) Memorandum
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Anders Brief S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals Columbia, SC 29211
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. November 23, 2016
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. See Copy of ORDER page 8 of this application
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the first opportunity the Applicant has had to present
 (b) these issues.
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. David C. Cook Attorney At Law
P.O. Box 1449 Lancaster, South Carolina 29721
 ii. David Alexander, Appellate Defender
South Carolina Commission On Indigent Defense Columbia
S.C. 29211
 (b) the proceedings at which each such attorney represented you:
 i. 18(a)(i) - 17(a)(b)(c)
 ii. 18(a)(ii) - 17(d)(e)
 iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction and sentence and remand for a judgement of acquittal and any other relief this court deems just and proper.

20. Are you now under sentence from any other court that you have not challenged?

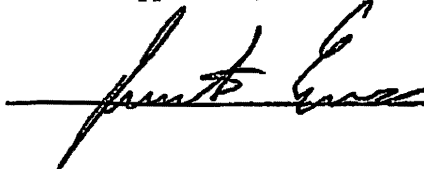
No

STATE OF SOUTH CAROLINA)

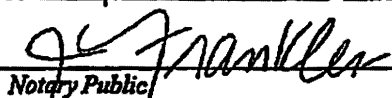
County of York)

VERIFICATION

I, Quentin Evans #363391, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 03
day of July, 2017.

 (L.S.)
Notary Public

My Commission Expires: 12-16-2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Quentin Evans #363391, hereby apply for leave to
-proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress. _____
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
03 day of July, 2017.


Notary Public

My Commission Expires: 12-16-2017

FILED-RECEIVED
2017 JUL -6 PM 12:05
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

State of South Carolina
County of York

FILED-RECEIVED

In the Court of Common Pleas
Case No. 1401231077

Quentin J. Evans SEC# 369391
Applicant,

2017 JUL -6 PM 12: 05

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Amendment To
Post-Conviction Relief
Application

vs.

The State of South Carolina
Respondent,

The applicant hereby amends answers to number 10 and number 11 of his application for Post-Conviction Relief to state the following:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The applicant was denied effective assistance of counsel in violation of the Sixth Amendment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(1) Counsel failed to request for a jury instructions on the defense of accident when such a charge was supported by the evidence, the defendant testimony and the defense's theory of the case

(2) Counsel failed to object and argue the state never established a logical connection between the smoking photo's and the crime charged

(3) Counsel abandon cross-examination of Computer Specialist

(4) Counsel failed to obtain an expert witness for the defense

(5) Counsel failed to properly acquaint himself with the law and the facts surrounding my case and as a direct result of his intentional negligence, there was a very serious error in his assessment of both the law and the facts

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS	
COUNTY OF YORK)	OF THE SIXTEENTH JUDICIAL CIRCUIT	
Quentin Jarvis Evans,)	2017-CP-46-1938	
SCDC # 363391)		
Applicant,)		
v.)	RETURN	
State of South Carolina,)		
Respondent.)		

FILED-RECEIVED
2017 OCT 26 AM 9:40
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 6, 2017, would respectfully show this Court

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the York County Clerk of Court. Applicant was indicted at the April 2014 term of the York County Grand Jury for homicide by child abuse (2014-GS-46-1229). David Cook, Esquire, represented him. Solicitor Kevin Brackett and Deputy Solicitor Willy Thompson represented the State. On March 16-19, 2015, Applicant proceeded to a jury trial before the Honorable Derham Cole after which he was found guilty. He was sentenced to imprisonment for forty-five years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Appellate Defender David Alexander filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction by an unpublished opinion. State v. Quentin Evans, Op. No. 2016-UP-495 (Ct. App. Filed November 23, 2016). The remittitur was sent December 12, 2016.

II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel was ineffective for failing to investigating the case"
 - b. "Counsel failed to request for a jury instructions on the defense of accident when such a charge was supported by the evidence, the defendant testimony and the defense's theory of the case."
 - c. "Counsel failed to object and argue the state never established a logical connection between the smoking photos and the crime charged."
 - d. "Counsel abandon cross examination of computer specialist."
 - e. "Counsel failed to obtain an expert witness for the defense."
 - f. "Counsel failed to properly acquaint himself with the law and the facts surrounding the case and as a direct result of his intentional negligence, there was a very serious error in his assessment of both the law and the facts."

Attached herewith and incorporated herein by reference are the York County Clerk of Court records regarding the subject convictions, Applicant's relevant appellate records, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id., 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The

applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

[SIGNATURE ON FOLLOWING PAGE]

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's counsel was ineffective.

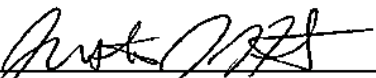
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

October 17, 2017

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2017-CP-46-1938

QUENTIN JARVIS EVANS, #363391,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

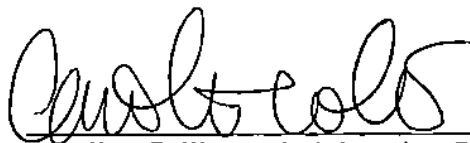
AFFIDAVIT OF SERVICE BY MAIL

FILED-RECEIVED
2017 OCT 26 AM 9:40
DAVID H. SHELTON
C.C.P. CLERK
YORK COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Nathan J. Sheldon, Esquire
The Law Office of Nathan J. Sheldon, LLC
Post Office Box 36682
Rock Hill, South Carolina 29732

DATED this the 17th day of October, 2017.



Caroline Collins, Administrative Coordinator
For Respondent

1 STATE OF SOUTH CAROLINA.

2 -----x

3 QUENTIN JARVIS EVANS,

4 Petitioner,

5 Case No.

6 -against-

2017-CP-46-01938

7 STATE,

8 Respondent

9
10 -----x

11 April 17, 2023

12 York, S.C.

13
14 B E F O R E:

15 HONORABLE EUGENE C. GRIFFIN

16
17 A P P E A R A N C E S:

18 MR. ZACHAR W. JONES

19 Attorney for the Plaintiff

20
21 MICHEAL BROWN, Esquire

22 Attorney for the Defendant

23
24 Aileen Butler

25 Official Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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QUENTIN JARVIS EVANS

Mr. Brown	5			
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LINDA EVANS

Mr. Brown	36			
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DAVID COOK

Mr. Brown	41		75	
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Mr. Jones		69		
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KEVIN BRACKETT

Mr. Jones	79			
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Mr. Brown		84		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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(No exhibits entered)

MR. JONES: This is matter of Quentin Jarvis

1 Evans versus the State of South Carolina. Case
2 number 2017-CP-46-1938. My name is Zachary
3 Jones for the State of South Carolina. Mr.
4 Evans is present along with his attorney Mr.
5 Mike Brown.

6 Your Honor, Mr. Evans was indicted at the
7 April 2014 term of the York County Grand Jury
8 for homicide by child abuse. Case number
9 2014-GS-46-1229. He was represented by David
10 Cook and Solicitor Kevin Brackett and Deputy
11 Solicitor Willy Thompson represented the State.

12 He proceeded to a jury trial from March 16th
13 to March 19th before the Honorable J. Durham
14 Cole after which he was found guilty and he was
15 sentenced to imprisonment for 45 years.

16 A timely Notice of Appeal was filed on his
17 behalf and a appeal was perfected by appellant
18 defender David Alexander filing a brief pursuant
19 to Anders v California. South Carolina Court of
20 Appeals affirmed his conviction and sentence by
21 unpublished opinion and a remittitur was sent on
22 December 12, 2016. This application for post
23 conviction relief was filed on July 6th of 2017
24 and with that I'll turn it over to Mr. Brown to
25 begin his case.

1 THE COURT: All right, Mr. Brown, good
2 afternoon.

3 MR. BROWN: Good afternoon, Your Honor. We
4 will begin our case by way of testimony.

5 THE COURT: Okay. Call your witness.

6 MR. BROWN: Call Mr. Evans.

7 THE COURT: Come forward.

8 QUENTIN JARVIE EVANS, called as a witness, was
9 sworn by the clerk and testified as follows:

10 THE COURT: All right. Your witness.

11 MR. BROWN: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. BROWN:

14 Q Sir, if you could please state your name?

15 A Quentin Evans.

16 Q And sir, are you currently a defendant in the
17 South Carolina Department of Corrections?

18 A Yes, I am.

19 Q Where are you housed at?

20 A Allendale Corrections.

21 Q How long have you been there?

22 A Maybe a year.

23 Q All right. Where were you previously housed?

24 A Tiger River, for six months and before that I
25 was at McCormick Correctional for eight years.

1 Q Okay. How long have you been in Department of
2 Corrections?

3 A Slightly over ten.

4 Q So in beginning of your time period at
5 McCormick as you heard previously stated sentence is
6 that where you first started doing you're a sentence in
7 the Department of Corrections?

8 A Yes, sir.

9 Q What was it for?

10 A What was what for?

11 A Homicide by child abuse.

12 Q You received this sentence here in York
13 County?

14 A Yes, sir.

15 Q In this court house?

16 A Yes, sir.

17 Q Based upon the -- you took your case to trial?

18 A Yes, sir.

19 Q And who was your counsel at that time period?

20 A David Cook.

21 Q All right. And in response to your conviction
22 at some point did you file an application for post
23 conviction relief?

24 A Yes, sir. I did it myself.

25 Q Okay. In doing that yourself as best as you

1 recall, what was the reason for that application?

2 A The reason for the application is because I
3 felt my counsel was not adequately sufficient.

4 Q So based upon your Sixth Amendment right you
5 filed your application for ineffective assistance of
6 counsel?

7 A Yes, sir, I did.

8 Q In principal when you filed the application
9 why do you feel he was ineffective?

10 A There is a few reason why. He didn't to me he
11 didn't get a jury no chance to had the charge of
12 accident considering the fact that my defense was upon
13 accident. He didn't know a lot of facts of the case to
14 me personally.

15 Q Okay, and when say he didn't know the fact of
16 the case, were you able to help him during the course of
17 your defense?

18 A No, sir.

19 Q Why not?

20 A Certain times certain stuff was happening in
21 the pod so he may come and we might not get enough time
22 or when we do have time maybe like an hour. We didn't
23 get to come up with a strategy to me. Like a
24 foundation. Like I basically was going to trial unaware
25 of what was going on the defense state.

1 Q You feel that you were both you and your
2 counsel were unprepared because you really enforcement
3 didn't have time to prepare for your case?

4 A As a team, yes.

5 Q During the course of your charges pending did
6 you ever have the opportunity to receive bond on what
7 you were being charged for?

8 A I don't know the name of the lower court
9 that's in the city but they gave me a \$100,000 bond like
10 the first five minutes and then I you was transferred to
11 York County. After I was transferred they brought me
12 back to the city and revoked the bond and after that I
13 stayed in York County until I was sentenced.

14 Q Did you ever have a chance to request of your
15 lawyer, Mr. Cook, that you wanted a bond hearing?

16 A No.

17 Q Did you ever have a opportunity to speak with
18 your lawyer about having a bond hearing?

19 A No.

20 Q If you were able to get out bond would Mr.
21 Cook have been able to come to your home and a speak
22 with you freely?

23 A Sure.

24 Q Do you feel that if you had a bond -- not
25 saying you were have been guaranteed to have a bond, but

1 if you had a bond would that have assisted in your
2 defense?

3 A Yes, sir.

4 Q You previously stated because of the situation
5 at the county, you couldn't talk to him freely if you
6 had been out on bond you would have been able to have
7 the opportunity to assist you in your defense without
8 any of those complications?

9 A Yes, sir, because he spoke more frequently
10 with my mom versus me.

11 Q Do you know if you ever had a conversation
12 with him about trying to secure a bond for you?

13 A No. No conversation.

14 Q Did he ever suggest that to you?

15 A No, sir.

16 Q Did he ever indicate to you that communication
17 with you was difficult at times based upon you being in
18 the county?

19 A No, we really ain't verbally say that to each
20 other, but I can kind of read what's going on. You
21 know, like we in there for like five minutes. I can
22 give you example. One morning they called me to come
23 see Cook and we were in the booking area. Somebody went
24 before me, an inmate before me, and when he came out by
25 the time I went in there we were only in there for five

1 minutes maybe. Tops. And lunch was coming around so we
2 had to break a part. Separate our ways. That is one of
3 the examples.

4 We never got to really sit down and come up with a
5 defense as a team and maybe he came up with a defense by
6 himself. When I went to trial I didn't know what our
7 defense was.

8 Q So once you went to trial did you have a
9 chance to talk with him after the case started?

10 A Yeah. Yeah. We talked a little while.

11 Q You do agree and recognize that trial went
12 from March 16th, 17th, 18th and ended on the 19th?

13 A Yes, sir.

14 Q Did he have an opportunity during those four
15 days to come speak with you in great detail about your
16 case?

17 A Yes, sir.

18 Q So you guys had time to talk about your case
19 at that point?

20 A Yes, sir.

21 Q Do you feel that it was too late at this point
22 in time to kind of formulate a defense that would have
23 be adequate to present in front of a jury based upon
24 your trial starting on March 16th?

25 A To me, yes.

1 Q You mentioned that I guess a defense of
2 accident?

3 A Yes, sir

4 Q Was something that both you and your counsel
5 had discussed or did you gather that from the course of
6 your presentation, meaning your side of the presentation
7 during the course of the trial?

8 A Yeah, I got that all through my own
9 assumptions. We never -- yeah, watch the evidence and
10 listen to the solicitor, got sentenced. Studied my case
11 and came up with the conclusion that our defense was
12 accident.

13 Q Okay. In terms of your conversation with Mr.
14 Cook, what did he lead you to believe your defense was?

15 A I can't say because when we went to trial I
16 didn't even know what our defense was.

17 Q He hadn't discussed the strategy with you?

18 A Nothing.

19 Q Before the case even started, meaning the
20 actual trial, he didn't discuss whether you were going
21 to testify or not?

22 A Yeah, we communicated about that.

23 Q Okay, and why was that?

24 A I guess to get me prepared or try and help me
25 learn. I really can't give you a reason. I don't know.

1 Q Would you have felt that would have been a
2 part of the strategy of a defense or was it merely your
3 opportunity to testify or both?

4 A I think it was a little bit of both.

5 Q But overall you're saying you still did not
6 know your overall defense in the case?

7 A No, sir.

8 Q And did you ever request of Mr. Cook to
9 develop a strategy or defense in the case?

10 A Now knowing what I know, I should have had,
11 but I didn't. I just figured that him being my lawyer
12 he was going there. I guess knowing what he was doing.
13 So I kind of had an expectation that he already know
14 what he's doing so there ain't no need for me to say
15 something to somebody that already know what they're
16 doing, not knowing that two minds are better than one.

17 Q So based upon trial being conducted and being
18 convicted and you having a chance to review the elements
19 of your case you now feel there should have been some
20 type of strategy that should have been formulated by you
21 two?

22 A Yes, sir.

23 Q Accident and facts of the case you mention.
24 What were the facts became factors in your consideration
25 in filing your application for post conviction relief.

1 A It's a multitude of facts that made me draw
2 the conclusion. My daughter's linear bruise. My
3 daughter's chin bruise. The fact that the prosecution
4 said that I broke all of her ribs by squeezing her.

5 Q In mentioning those, it seems to me that you
6 are relating some type of medical issue in the course of
7 your trial?

8 A Yes, sir.

9 Q Did you not have a chance to cross examination
10 any medical experts or medical witnesses in the course
11 of your trial through your attorney?

12 A Yes, sir.

13 Q Did that happen?

14 A Yeah, he cross examined.

15 Q Did you have a chance to have your own
16 witnesses being presented to discuss the very things
17 that you're talking about here today?

18 A No, we had no experts with us.

19 Q And why was that?

20 A That's something you got to ask him. I mean,
21 I don't his personal reason why he wouldn't bring his
22 own experts, but I guess he may have wanted to cross
23 examine prosecution experts.

24 Q Again by way of preparation of your trial that
25 took place, did Mr. Cook ever have the conversation with

1 you about having your own medical expert involved?

2 A Yeah, he had spoke one time about a guy name
3 Doctor Sexton.

4 Q Doctor Sexton. And when you say he spoke
5 about Doctor Sexton what was Doctor Sexton suppose to
6 do?

7 A I guess lend an opinion because he's a
8 forensic pathologist. So I guess Doctor Sexton was
9 maybe like a crutch or a shoulder to lean on, or for
10 information I guess.

11 Q Do you know based upon your conversation with
12 Mr. Cook if Doctor Sexton in fact did go through some
13 type of forensic review of the evidence in your case?

14 A Can you ask me that again?

15 Q Based upon the medical evidence that was
16 presented in the course of your trial do you know if Mr.
17 Cook took that evidence and gave it to Doctor Sexton to
18 take a look at it. Got an opinion from Doctor Sexton
19 and he came back and told you about it?

20 A I think that happened.

21 Q So he told you that Doctor Sexton looked at
22 your case?

23 A I think so.

24 Q Based upon that did he say that he wanted to
25 use Doctor Sexton as an expert or not?

1 A No, we didn't have a conversation about that.

2 Q So he just said he reviewed your records and
3 left it at that?

4 A Yes, sir.

5 Q Anyone else that may have been consulted with
6 as it relates to your case?

7 A Medically wise, I think that's it.

8 Q Did you anticipate or expect that Mr. Cook
9 would have called a medical expert in your case?

10 A Yes, I thought he would.

11 Q Why?

12 A Now knowing what I know, the fact that our
13 defense was an accident and I feel as if you are going
14 to have medical personnel the ones that got the
15 education in the field, the jurors would not believe
16 just a lawyer saying, well, speaking upon medical terms
17 it just be like blabish (phonetics) to me.

18 Q Well, in mentioning the jurors, along with
19 medical expert, was that ever taken into consideration
20 in your selection of the jury?

21 A Yes, sir.

22 Q Why would you say that?

23 A Me and Cook had conversations a few times
24 while he we was selecting jurors about X'g all the
25 medical people because they may know the literature of

1 the medical terms and history so it would be harder to
2 convince them beyond a reasonable doubt that I didn't
3 kill my daughter.

4 Q So you're saying during the jury selection
5 process there was a conversation between you and your
6 lawyer or it was decided between you and your lawyer not
7 to include people who may have had a medical background?

8 A Yes, sir.

9 Q Would it have included emergency medical
10 technicians?

11 A Yes.

12 Q Would it have included nurses?

13 A Yes.

14 Q Would it include orderlies that worked at the
15 hospital?

16 A Yes, sir.

17 Q Would it have included doctors if you even had
18 a doctor on the jury?

19 A Yes, sir.

20 Q So based upon your recollection, were there
21 any medical people on your jury?

22 A Not one.

23 Q And based upon as you have said in your
24 testimony from what you know now, would you have
25 preferred there would have been some medical personnel

1 on your jury or people who had some background as it
2 relates to medical terms or just the field of medicine?

3 A Yes, sir. I felt like we should of had at
4 least two or three due to the fact that they know the
5 actual medical literature and exercise the proper
6 exercises to go through and stuff like that. So I felt
7 like we should at least had two or three.

8 Q And that's just your personal feeling?

9 A That's my personal feeling.

10 Q Based upon your conversations with Mr. Cook
11 and the strategy or lack thereof, did he ever discuss
12 with you that he would have a medical expert available
13 to talk to the jury?

14 A No.

15 Q So based upon what you now know you would have
16 preferred he would have had an expert to talk with these
17 people that did have any medical background?

18 A Yes, sir.

19 Q And why is that?

20 A Because if you have knowledge or understanding
21 of the situation at hand I feel like the medical person
22 could have convinced the jury maybe beyond a reasonable
23 doubt or cast reasonable doubt so that maybe it would
24 have helped my case a whole lot better than it did.

25 Q But that's not something that you and Mr. Cook

1 discussed in preparation for your trial that actually
2 took place?

3 A No, sir.

4 Q And you did discuss that during the course of
5 your trial?

6 A Discuss what?

7 Q In terms of having a medical expert or having
8 someone come testify?

9 A No, sir.

10 Q Do you recall that the State presented its
11 case first?

12 A Yes, sir.

13 Q You recall at some point the State rested its
14 case?

15 A Yes, sir.

16 Q There was some time period from when the first
17 case started with your trial up until your case was
18 called for your side or for you to present a defense?

19 A Yes, sir.

20 Q In between the time period in which the case
21 first started up until you presented a defense, was
22 there any discussion about calling a medical expert
23 between you and Mr. Cook?

24 A No, sir.

25 Q When did you find out about Doctor Sexton

1 then?

2 A Towards the end of me about to go to trial.
3 Like months and months until me being in York County
4 Detention Center. It was a couple months before I went
5 to trial.

6 Q Okay. Along the same lines as having a
7 medical personnel involved at some point there was an
8 issue that involved the use of marijuana. What do you
9 recall about that?

10 A Yeah, they were saying I was high. Under the
11 influence of marijuana when my daughter's death
12 occurred.

13 Q That was something that came out during the
14 course of the trial?

15 A Yes, sir.

16 Q Was there any objections as far as you recall?

17 A Not that I recall.

18 Q Was there any discussion as it relates to this
19 issue coming up in the course of your trial?

20 A No, sir.

21 Q Was there anything in -- well, had your lawyer
22 talked to you about your use of marijuana?

23 A No, sir.

24 Q Did he find out why you were using marijuana?

25 A No, sir.

1 Q Did he ask you how long you had been using
2 marijuana?

3 A No, sir.

4 Q One of the things you presented in your
5 application that you filed was that you felt that your
6 counsel did not cross examine a specialist, a computer
7 specialist. What was so significant about that?

8 A The computer specialist used this thing called
9 exif. An exif is when you snap a picture if you go on
10 your phone all photos's time of when the photo was
11 snapped and they use the photos to say within a timeline
12 of my daughter's death that I was high, under the
13 influence of marijuana. So the reason why I put that he
14 should have cross examined him on the exif date because
15 those pictures that I have in my motion to discovery,
16 the ones that has the exif dates they also have no exif
17 dates too, so, who is to say that those pictures go in
18 that timeline because I have the same pictures that has
19 no exif date. Exif, e-x-i-f if people don't understand.
20 I felt like he should have cross examined him on that.
21 He just let it go.

22 Q So you're saying there was no attempt by your
23 counsel to unravel what the specialist was saying?

24 A Correct.

25 Q And you refer this person as a specialist

1 because obviously that's how they were presented during
2 the course of the trial?

3 A Yeah, he was a computer specialist, his name
4 Trey Amick.

5 Q Based upon Trey Amick testifying had you
6 talked with Mr. Cook prior to Mr. Amick taking the stand
7 and offering his expert opinion?

8 A No, sir.

9 Q Based upon your months in the county and your
10 attempt to have conversations with Mr. Cook in
11 preparation for your trial, did the issue of the photos
12 ever come up that they would be used in the course of
13 your trial?

14 A No, sir.

15 Q But they were part of your discovery?

16 A But they was part of my discovery.

17 Q And you had a chance to see those photos at
18 the county prior to coming in to court for your trial?

19 A No. Those photos came after I filed -- I
20 filed a Rule 5 at McCormick and that's when I got those
21 photos. I didn't have the photos in the county. Only
22 got them after I got sentenced.

23 Q So you're saying you filed your own request
24 for basically discovery?

25 A For my own discovery.

1 Q And from that you were able to get photos?

2 A I was able to get those photos of me smoking.

3 Q In terms of your discovery requested, did it
4 also include discovery items that you saw during the
5 course of your trial?

6 A It included some of the stuff that I had in
7 trial, but it had a lot of stuff that I didn't have.

8 Q Is this after you were convicted?

9 A It was after I was convicted.

10 Q And who did you send that Rule 5 to?

11 A Clerk of Court, David Hamilton.

12 Q So, is it your contention that information or
13 evidence that was provided in the course of your trial
14 was not initially provided to you for your review?

15 A No, sir. When I seen those photos of me
16 smoking on the big screen that they presented, I was
17 kind of in awe, or shock, because I didn't have those.
18 So I was like, well, what do you mean.

19 Q Did you have a consideration with Mr. Cook
20 about those photos prior to them being shown on the
21 screen?

22 A No, sir.

23 Q Do you know they were coming in to evidence or
24 they were going to be shown during the course of the
25 case?

1 A No, sir.

2 Q Or during the course of trial?

3 A No, I had no recognition of even that there
4 were some photos of me smoking.

5 Q So in the course of your preparation or
6 leading up to your defense, meaning after the time
7 period had passed and the State had presented their case
8 and you being able to prepare, you're saying that you
9 didn't know that had occurred?

10 A No, sir.

11 Q Meaning it had been part of your discovery?

12 A No, sir.

13 Q And days prior to that it was shown to the
14 jury that was the very first time you had a chance to
15 see it?

16 A Very first time I had even seen the pictures.

17 Q At that moment is when you had a discussion
18 with Mr. Cook?

19 A About those photos?

20 Q Yes.

21 A We didn't really have a big discussion.

22 Q So he caught you off guard?

23 A He caught me off guard. I mean, what kind of
24 defense would I have if they are already up there.

25 Q And as far as you recall he didn't make an

1 objection?

2 A No objection.

3 Q Some times there are things that occur in the
4 course of a case that may not be recorded, via certain
5 sentences of words.

6 Were there any moments of that taking place by the
7 prosecution and your attorney approaching the judicial
8 stand?

9 A Yes, sir.

10 Q Was the reference to the photos as it relates
11 to your drug use, was that one of the time periods?

12 A Yes, sir.

13 Q Could you please explain that?

14 A I don't know which solicitor it was at the
15 time, but Cook and the solicitors got together and Cook
16 handed me a computer with my cousin, me and my cousin
17 Keith. We exchanged photos about me getting into some
18 trouble with some guys about some guns and they were
19 going to use those messages to I guess as a "X" factor
20 for my character witnesses. So we really didn't examine
21 the character witnesses like we should because the guy's
22 messages was like a cloud over my head.

23 Q Okay, so this was around the same time period
24 in which you got caught off guard with the photo for the
25 alleged marijuana usage?

1 A Yes, sir, that was in the middle of trial.

2 Q Did that ever come on record? Did you ever
3 hear any lawyer say anything about there is a photo or a
4 series of photos alleging that Mr. Evans and another
5 person or persons were involved in some kind of violent
6 action or something involving guns and we want to either
7 present it or we want to make sure that it didn't come
8 into this courtroom, Your Honor.

9 A No, that didn't happen.

10 Q There was never an open discussion concerning
11 that?

12 A No, sir.

13 Q You had a discussion with your lawyer about
14 this potential photo also coming in?

15 A Yes, sir.

16 Q Just like the drug photo, marijuana photo came
17 in?

18 A Yes, sir.

19 Q But that never was said out loud?

20 A No, sir.

21 Q What happened with that photo?

22 A I don't know. I still don't have it. I don't
23 even have text messages.

24 Q But it was shown to you?

25 A But it was shown to me.

1 Q So how did it impact your case? Why is that
2 important?

3 A To me it impacted it because I guess the
4 character witnesses wasn't able to I guess fully say
5 what they wanted to say or be questioned like I wanted
6 them to be questioned because of the text messages
7 between me and my cousin, Keith, that they kind of held
8 over our head.

9 Q Did you ever hear anyone say out loud in the
10 courtroom prior bad acts?

11 A No, sir.

12 Q Did your lawyer ever discuss with you prior
13 bad acts?

14 A No, sir.

15 Q Did your lawyer ever deem this particular type
16 of activity if it was going to be alleged that you and
17 your cousin or anybody else had some kind of gun play
18 and they got you on film or with a photo that this
19 speaks to your character as prior bad act?

20 A You're asking me is that prior bad act?

21 Q Well, I'm asking did anyone ever have that
22 discussion?

23 A No, sir.

24 Q Did it come out in court that way?

25 A No, sir.

1 Q Did -- once you say a laptop was brought to
2 you, you were able to see it. Was it whispered to you,
3 hey, this is a prior bad act. This is going to go
4 against you. Is that what you're saying?

5 A Yes, sir.

6 Q Did you already have somebody on the stand
7 that was testifying about your character or was this
8 just before someone was going to testify about your
9 character?

10 A Yeah, from my remembrance, Doris Castle was on
11 the stand at the time.

12 Q Based upon what you feel to be what was shown
13 to you, did that interfere with her being able to
14 testify for you?

15 A Yes, sir.

16 Q Did she -- was she able to testify for you?

17 A Yeah, she testified for a little while, I
18 guess the way her emotions was that she had to come off
19 the stand because of the text messages on the computer.

20 Q Okay. So did she see the text messages on the
21 computer?

22 A No, nobody seen except me, Cook and the
23 solicitor.

24 Q So did the solicitor bring this up to your
25 counsel while she was testifying?

1 A I think, yeah, from my memory I think it was a
2 while.

3 Q And you feel from that she wasn't able to be
4 thoroughly questioned by your lawyer?

5 A Yes, sir.

6 Q So her testimony wasn't complete?

7 A To me.

8 Q You referenced as one of your last factors in
9 your case that you were not apprised of certain aspects
10 of the law as it relates to intentional negligence.
11 That it was I guess an error of assessment as it related
12 to the law and the facts that you really weren't able to
13 participate in your defense because of that. Why did
14 you raise that?

15 A Because I felt like as a lawyer and defendant
16 you all should come together as one, as a team, in
17 unity, and come up with a game plan instead of one man
18 doing what he think is right and maybe he missed a fact
19 that is substantial to the case. So I brought up that
20 fact like I thought that me and Cook we were just lawyer
21 and defendant. We really wasn't a team so when we went
22 to trial the prosecution had a stacked case and we
23 really just had just me and him. So how was I suppose
24 to win when it is stacked against me.

25 Q Mr. Evans, do you suffer from any kind of

1 mental health issues?

2 A Yeah, I'm diagnosed with PTSD.

3 Q Was there a timeframe put on your PTSD,
4 meaning it started on a certain date and you're
5 currently still facing a PTSD condition?

6 A No, it wasn't like a specific start, stop
7 date. It kind of like I guess grew on me because I was
8 being evaluated by a mental health counselor.

9 Q All right. Did Mr. Cook ever try to gain or
10 ascertain anything about your background? How you grew
11 up? Your mental health? How you did in school?

12 A Not that I remember.

13 Q You never had those kinds of conversations
14 with him?

15 A No, sir.

16 Q That wasn't something he asked?

17 A No, sir.

18 Q Or that wasn't something you talked about?

19 A No, sir.

20 Q So since you have been in the Department of
21 Corrections, however, you have had a chance to see
22 medical professionals?

23 A Yes, sir, I have.

24 Q And are you currently being treated for any
25 condition?

1 A No. Actually they just took me off the
2 medicine maybe ninety days ago, if that long.

3 Q Okay, and what was the medicine for?

4 A PTSD.

5 Q Well, in terms of PTSD, let me ask you. I
6 know your family has had a difficult history. I know
7 your mother is present. I haven't asked her, but based
8 upon how you grew up, what were the conditions of your
9 youth leading up to the timeframe in which as a young
10 man you had this child?

11 A My youth wasn't that great. It was a lot of
12 ups. It was a lot of downs, but the majority of the
13 time it was downs. I grown up at -- where I grew up at
14 in the neighbor I can't blame my mom because she was
15 just making ends meet. Doing what she had to do. But
16 growing up in that violent neighborhood it turned you to
17 a person you don't want to be. You know what I mean.
18 Shooting people. Selling drugs. Just normal
19 traumatized kid. That was me.

20 So growing up it was really, really, really hard,
21 but then my mom made everything all right, you know.

22 Q So in sharing this with your history that was
23 ultimately diagnosed, that's a part of what you had in
24 terms of PTSD?

25 A Yes, sir.

1 Q And you have learned techniques, you received
2 medication for it, and you have been able to gain some
3 coping skills now?

4 A Yes, sir. I cope by drawing, coloring, making
5 music. You know, studying my cases.

6 Q The day in question as it relates to you being
7 charged, homicide by child abuse, you hadn't had any
8 treatment for this?

9 A No, sir.

10 Q Hadn't had any coping skills put in place for
11 you?

12 A No, sir.

13 Q Had you even finished school?

14 A Yes, sir, I got my GED.

15 Q Back then when you were charged with these
16 charges how far did you go in school?

17 A I made it to the tenth grade.

18 Q Were you in tenth grade at the time or had you
19 dropped out of school?

20 A I had dropped out by then.

21 Q You never had a discussion about what you
22 could have been possibly charged with in this case
23 beyond homicide by child abuse?

24 A No, sir.

25 Q As far as you know when you went to trial you

1 were facing homicide by child abuse, potentially as
2 guilty or not guilty?

3 A That's it.

4 Q There was no discussion of any other kind of
5 charges?

6 A Not with me.

7 Q Is there anything else that you want this
8 court to consider based upon your application seeking
9 post conviction relief from the sentence that you
10 received from Judge Cole when he gave you 45 years?

11 A No, sir, not that I can think of at the
12 moment.

13 Q One last question, based upon your character
14 witnesses, who was Officer Marques?

15 A That's my officer from the elementary school.

16 Q Did he testify?

17 A No, sir, he wasn't subpoenaed.

18 Q What would have been the nature of his
19 testimony?

20 A He would have been a character witness to tell
21 people he knew from elementary school so I wasn't a bad
22 kid, you know. I tried to do right, you know.

23 Q And as it relates to testimony of Miss Talisha
24 Banks, was she able to testify?

25 A Yes, sir, she testified.

1 Q Well, specifically, was she able to testify
2 about the potential movement of your daughter?

3 A Yes, sir. I'm thinking that stemmed from me
4 telling the prosecutor -- not the prosecutor, the
5 investigators that my daughter fell. But once a couple
6 of days before trial, Rosell, the investigator went to
7 Chester and interviewed Talisha and her mother
8 Glendeline and she said that she also seen my daughter
9 kind of scooch a little. So to me that was two people
10 that seen the same thing. So that was -- that's
11 important.

12 Q When you say scooch, scooch is like to move up
13 or --

14 A A form of movement.

15 Q Why is that important?

16 A Because that's two witnesses that seen the
17 same thing. Two different sides of the party. So if one
18 person seen it and you don't believe it we got two
19 people. One person from one side. One person from the
20 other side claiming the same thing.

21 Q When you say from the other side, why would it
22 be perceived as being from the other side?

23 A To me the reason why I say the other side is
24 because during trial I felt like that if we all was
25 united as one family for Minor then all of us would

1 have been together, but instead they had my family on
2 one side, the other family on the other side and we're
3 not communicating.

4 Q And so you're saying an officer had went out
5 to the house to meet her the day before the trial and
6 interviewed her. She provided information. Did that
7 come in in the course of the trial?

8 A No, sir.

9 Q And why is that? If you don't know that's
10 fine.

11 A I guess I don't know.

12 Q How did you find out about it?

13 A Through me filing a Rule 5.

14 Q So again, Rule 5 -- you filed a Rule 5.
15 You're saying this is after --

16 A After trial.

17 Q And how did you know? Did you see a report?

18 A Yes, I'd seen a statement in my motion.

19 Q In the course of your case coming to trial was
20 it a part of your Discovery as far as you know?

21 A No, sir.

22 Q Was it ever shared with you?

23 A No, sir.

24 Q Was it ever discussed with you?

25 A No, sir.

1 Q Was it ever mentioned to you?

2 A No, sir.

3 Q And based upon that, do you feel that would
4 have been very important for a jury to know and consider
5 that? Again, clearly on your side someone would have
6 said the child moved. Was able to scooch, and obviously
7 someone on the other side -- meaning the family that had
8 a perception of you that wasn't positive, but still gave
9 the same kind of information about the child moving.

10 Do you feel that would have been something that
11 would have helped the jury as it relates to your
12 defense?

13 A Very substantial.

14 Q Anything else that you want the court to
15 consider.

16 A Nothing I can think of.

17 Q I guess for the record you and I have
18 previously discussed the nature of bodily injuries,
19 whether it was head injuries, perception of you grabbing
20 the child, things that you still feel that if there had
21 been an expert presented on your side as you say, that
22 could have dealt with the merits of the case if you had
23 had someone to provide information --

24 A Yes, sir.

25 Q -- in response?

1 A Yes, sir.

2 Q And you did not have that provided to you or
3 you didn't have that discussion?

4 A No, sir.

5 Q That's all the questions I have.

6 THE COURT: All right, Mr. Jones.

7 MR. JONES: Beg the Court's indulgence.

8 I have no questions for this witness Your
9 Honor.

10 THE COURT: Very well. Then you may step
11 down.

12 MR. BROWN: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 MR. BROWN: Your Honor, we would call Miss
15 Linda Evans.

16 LINDA EVANS, called as a witness, was sworn
17 by the clerk and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BROWN:

20 Q Ma'am, could you please state your name for
21 the record.

22 A Linda Evans

23 Q And ma'am, do you know this young man to my
24 left?

25 A He's my son.

1 Q You have been present during the course of his
2 testimony before the court today?

3 A Yes.

4 Q You heard the things that he has stated based
5 upon an application he filed for post conviction relief?

6 A Yes.

7 Q Were you present during the course of his
8 trial March the 16th to the 19th of 2015?

9 A Yes.

10 Q Are you familiar with the facts of this case?

11 A Yes.

12 Q Do you know Mr. Cook?

13 A Yes, he was my son's lawyer. My
14 brother-in-law introduced me to him because at the time
15 I ain't never been -- you know, I had to try to get a
16 lawyer for my son so my brother-in-law introduced me to
17 Mr. Cook.

18 Q And by way of introduction at some point you
19 hired Mr. Cook?

20 A Yes.

21 Q And you worked with him for the representation
22 of your son?

23 A Yes.

24 Q Based upon what you you know did Mr. Cook ever
25 indicate to you of any difficulties of communicating

1 with your son?

2 A No, not at the time when he was coming to see
3 us, me and my sister we would be sitting there. So we
4 was telling him about Kierra, the mother of the child,
5 he was asking for some information from that. And so as
6 the trial went on for about week -- I think it was a
7 week. He kept promising me that Quentin was going to
8 come home and I feel like that he made false statements.
9 Had me believing that he was coming home.

10 We didn't have no expert witnesses. It was only us.
11 Just only family characters and I feel that his trial
12 was not fair because we didn't have no one on our side.

13 Q Based upon you saying he provided some false
14 statements, what do you mean by that?

15 A I'm just saying that when during trial he
16 wouldn't really discuss the case with us, but he kept
17 coming outside where we were sitting there in the lobby
18 and well, his father was here also. So I also have a
19 couple more people here could verify what he was saying
20 that day when he had trial. It was this last day.

21 Q Excuse me. In terms of information being
22 withheld. What do you mean information was being
23 withheld?

24 A We was telling him something about we had --
25 he was looking into before we got **Minor** before the

1 accident -- I mean after after the accident had
2 happened, he had went to go visit Kierra Banks. He
3 looked into her case and he wouldn't show us or tell us
4 what he had found on her during that time. So I can't
5 say because he never did tell us what it was, but he did
6 find something on her.

7 Q Did he ever discuss with you the need to have
8 an expert witness of any sort?

9 A No.

10 Q Did he ever come to you and say that I will
11 need an expert witness. We need to be able to address
12 any fees with an expert witness?

13 A No.

14 Q Did he ever indicate to you that he any
15 conversation with a Doctor Sexton?

16 A Not that I can remember, no, because if he did
17 -- I mean, some things he would tell my son. Me and my
18 son would talk. He would call me on the phone and he
19 would talk about some things. Most of the time he
20 wouldn't really say anything about the case.

21 Q If he had discussed with you about an expert
22 you would have done your best or you would have done
23 your part to help out in terms of securing an expert?
24 If you had known what it with would have been to
25 potentially hire an expert would you have tried to do

1 your best or would have done what you had to do?

2 A Yeah. When it came down to the expert witness
3 he stated that the State hired another -- someone to
4 examine [Minor]'s case after the first one, Miss Gast
5 had did it, and he said that something about \$5,000 to
6 get an expert witness for Quentin. He said that he was
7 going to apply for it but he never said anything else
8 about it.

9 Q So he did discuss getting an expert witness
10 for him -- for your son?

11 A Yes.

12 Q But you didn't hear anything else about it?

13 A Nothing else.

14 Q And this is before trial?

15 A Yeah.

16 MR. BROWN: That is all questions I have.

17 THE COURT: Mr. Jones.

18 MR. JONES: Nothing from the State, Your
19 Honor.

20 THE COURT: You may step down.

21 MR. BROWN: Your Honor, I would call Mr.
22 David Cook.

23 DAVID COOK, called as a witness, was sworn
24 by the clerk and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BROWN:

2 Q Good afternoon, sir

3 A Good morning -- or afternoon.

4 Q If you could please for the record state your
5 name.

6 A David Clayton Cook.

7 Q Mr. Cook, where are you from?

8 A Well, I was born in Charlotte. Grew up near
9 Asheville, in Brevard area. Went to high school in
10 Spartanburg area, Chapman High and then went to Clemson,
11 and have been.

12 Living in this area ever since. I commuted to
13 go to law school in Columbia.

14 Q And finished when?

15 A 2006.

16 Q So the time period of this case, is it safe to
17 say maybe a decade you had been practicing law, a little
18 bit over?

19 A Correct.

20 Q How long have you been practicing criminal
21 law?

22 A The entire time.

23 Q You have been present clearly during the
24 testimony of Mr. Evans as well as his mother?

25 A Yes, sir.

1 Q The entirety?

2 A Yes, sir.

3 Q From the events surrounding both your initial
4 opportunity to begin his defense up until the ruling
5 that was handed down by Judge Cole, were you able to
6 gather all the evidence as far as you understand that
7 was involved in the case?

8 A Yes.

9 Q You have been present for the testimony and
10 you heard Mr. Evans say he filed subsequent to his
11 conviction a Rule 5?

12 A I have.

13 Q He also mentioned certain pieces of evidence
14 that he says he was unfamiliar with or hadn't seen
15 during the course of the time period leading up to his
16 trial in March of 2015. Are you familiar with those
17 pieces of evidence that he referenced?

18 A Yes, the pictures.

19 Q Okay. As far as you recall did you share
20 those pictures with him or had a discussion with him
21 concerning those pictures?

22 A You know I had -- in looking through the file
23 to prepare for today I had two contact visits with
24 Quentin. I reviewed the evidence with him and I think
25 at a point -- I can't -- it's been so is long that I

1 can't specifically -- I don't have a memory of going
2 over that photograph with him in preparation for the
3 trial. There was a lot of evidence. I can remember
4 Quentin saying that, you know, there were certain parts
5 of the evidence that he didn't want to see. He didn't
6 want to see the autopsy evidence at all, and so I'm
7 sorry I don't have a definitive answer for you as far as
8 whether I have a memory of going over that photograph
9 with him or not.

10 It has been so is long. I may not have shown it to
11 him, but I gave him an opportunity to see it all.

12 Q Okay. Do you understand the evidence that he
13 was talking about the pictures had nothing to do with an
14 autopsy?

15 A I do.

16 Q And based upon what you're saying today you
17 don't know if you still reviewed those pieces of
18 evidence?

19 A I don't. I mean, he wasn't interested in
20 seeing a lot of it, but I sat there with him and, you
21 know, offered to go over it with him.

22 Q Based upon your two visits -- I'm not saying
23 there should be an expansion of time to determine how
24 well your conversations are going with your client. Do
25 you feel that you had an adequate time period to talk

1 with him about his case as he was going to trial?

2 A Absolutely. You know, the two visits that I
3 mentioned were contact visits, but I saw him numerous
4 other times with the glass between us.

5 Q And with the glass between you did you
6 constantly talk to him? Hold up stuff to the glass?
7 Discuss evidence, paper work, documents, statements,
8 those kind of things?

9 A Sure, but -- yes, I can imagine, I do that a
10 lot when I see clients in the jail. I hold things up
11 through the glass. A lot of those discussions were
12 actually about the strategy of the case.

13 Q And as you recall since there were so many
14 discussions, what was the ultimate strategy that you two
15 discussed?

16 A That's what -- if you may, I'm just reaching
17 for my bag. That's what surprised me most. We had
18 numerous discussions about the strategy of the case. I
19 disagree with him when he says I never went over the
20 strategy with him. The strategy of the case was that it
21 was an accident what happened and you know, that he says
22 that he laid her down and when he came back to the room
23 he noticed that she wasn't on the bed and he ran across
24 the room and jumped and the bed slid into the wall and
25 that's when he was talking about that lateral injury.

1 That there was a lateral injury. A line across the back
2 of the head of the decedent and we thought that was from
3 perhaps the bed frame or the headboard -- I mean the
4 foot molding on the wall and that -- you know, that he
5 never shook the baby he told me. That was what we were
6 going to take to the jury.

7 I went over to the house and spoke with the family.
8 Looked at the room. Looked at the bed. Looked at the
9 board. I went over -- you know, and again it's been
10 eight years, but I think we went over the re-enactment
11 video with my client from the evidence, you know, and we
12 had discussed that often.

13 Q So when you say re-enactment video, was that a
14 video that you had produced?

15 A No, it was at video from the detectives. I
16 believe that we did that. I remember that there was a
17 re-enactment video.

18 Q But you're not sure if he saw the video?

19 A I just have to be candid. I thought that we
20 did.

21 Q Based upon the entirety of the case even it
22 being concluded with the trial and the verdict, would it
23 have been helpful to him or dispositive in terms of your
24 defense in working with him?

25 A Sure. I think he may have seen it. I don't

1 have memory that we didn't.

2 Q Do you remember discussing the elements of the
3 video with him?

4 A I can't remember.

5 Q Do you recall him discussing where he was
6 standing at the time these allegations were made --

7 A I'm sorry, I didn't mean to interrupt your
8 question.

9 Q Go ahead.

10 A We had numerous conversations about that.

11 Q Based upon anything that came out during the
12 course of the trial that was given to the jury to
13 consider, for those things that were given for a jury to
14 look at -- those things that a jury had a chance to hear
15 directly about, do you recall having those direct
16 conversations with him?

17 A Yes, absolutely about what I was going to take
18 to the jury.

19 Q And what about what you could have or should
20 have anticipated the evidence and what came out?

21 A I'm sorry.

22 Q Things that you should have anticipated. The
23 evidence that ultimately was shown to the jury by the
24 State. Did you have time to work with him and have him
25 to look at that and consider that?

1 A I believe so.

2 Q Prior to the case going to trial?

3 A Prior to the case going forward.

4 Q The issue of character witnesses. There was
5 some discussion about some evidence that -- or something
6 that could have been offered into evidence. Apparently
7 part of the discovery that did not make it for the court
8 to hear about or to the jury to consider. Photograph of
9 some alleged violent activity. Do you recall what that
10 was?

11 A You know, to be entirely honest as I sit right
12 here, no. When that testimony came out earlier today, I
13 had no memory of any of that. I'm not trying to be coy.
14 It's been so long. I don't have a recollection of that.

15 Q Do you understand the nature of that type of
16 offering?

17 A No, I don't. I mean, I don't understand your
18 question. I'm sorry sir.

19 Q I can recall Mr. Evans, but if that was being
20 presented as a way of not presenting certain witnesses
21 that could provide character evidence to him or to
22 shorten, truncate, cut off, maybe you don't want the
23 people to talk about that Quentin because this is what
24 they're showing me that they're going to say if you
25 allow this sweet old lady that you're trying to present

1 to say these things about you. Maybe we need to get off
2 the stand Quentin before she says something that they're
3 going to contradict by saying that you're violent guy?
4 Do you recall a photo showing something like that?

5 A I have -- no, sir, I don't. I mean, I have a
6 vague memory of something about what you're talking
7 about, but not enough to state on the record with any
8 specificity.

9 I can say this. I think that I called every
10 character witness that my client asked me to call.

11 Q Well, I'm just trying to substantiate that the
12 photo that he referenced was a photo that you saw?

13 A I still don't understand the photo that you're
14 talking about.

15 A A photo that allegedly showed Mr. Evans and
16 someone of his acquaintance, whether it was family
17 member or not, offering some text messages that were
18 discussing potential violent acts that were going to be
19 committed?

20 A I mean, if I would have seen that I would have
21 told him I don't think that needs to go in front of a
22 jury, but, you know, I'm having to speak conditionally.
23 I don't have a memory of that.

24 Q So you don't remember?

25 A No, but, you know, just in my standard course

1 of operations, I wouldn't want something like that to go
2 in front of a jury, no.

3 Q Would you have wanted something like that to
4 come out on the record or can we just go handle it.
5 Let's just approach Judge Cole and let's talk about it?

6 A I wouldn't want the jury to see him having
7 anything to do with a gun at all.

8 Q Well, in terms of your discussion, did you
9 mind approaching the bench or would you have wanted that
10 to come in front of a jury?

11 A I mean, if you're asking me I have no
12 compunction I'll approach a bench. I'm sorry, I don't
13 understand your question.

14 Q Is it part of your practice -- Your Honor, we
15 have a matter of law. Get the jury up. Let them walk
16 out?

17 A I've said that before plenty of times.

18 Q Okay, you then at that point -- it doesn't
19 matter who is here --

20 A Yeah.

21 Q -- unless you got witnesses you don't want
22 them to hear them ask the question, you have a
23 conversation with the court. Do you recall doing that
24 in the course --

25 A I don't recall, but to be candid I don't, you

1 know.

2 Q Okay. So as a part of your practice in terms
3 of trials it may vary just based upon what you have in
4 front of you at the time period, would that have been
5 something standard that you would do, or if someone is
6 going to show you some damning evidence, well, let me
7 just go clear this up. Let's approach the judge to let
8 the judge know we're done with this witness. We don't
9 want to go into it any more.

10 A Are you saying some damning evidence that I
11 haven't seen heretofore.

12 Q Heretofore witnesses sitting in the box
13 providing some character witness --

14 A Uh-huh.

15 Q In the course of that, there's a photo the
16 prosecution shares with you.

17 A Okay.

18 Q In the mist of that that is not being
19 recorded, but the laptop is brought over to Mr. Evans --

20 A Okay.

21 Q -- while this person is continuing their
22 testimony or there's a pause.

23 A Uh-huh.

24 Q I'm showing you what's going on. Maybe we
25 don't want the next person to talk about what's going to

1 come up.

2 A Are you saying that happened?

3 Q Yes. That is what has been relaid by Mr.
4 Evans.

5 A You know, I have some faint memory of
6 something like that perhaps happening, but I don't have
7 a specific memory of that enough to comment on it. I'm
8 not trying to evade your question.

9 I can tell you that if I've got somebody on the
10 stand and I'm privy to something that I don't want the
11 jury to see I would definitely tell him, you know, it
12 would be my advice to not pursue it.

13 I don't remember taking a sidebar on that issue.

14 Q And if you didn't receive any type of
15 instruction as to the way that the Court would deem
16 it --

17 A Maybe I just assumed that I knew how the Court
18 would deem it.

19 Q Yes.

20 A Again, it's obviously conjecture.

21 Q I understand.

22 A Yes, sir.

23 Q And so without Mr. Evans knowing the law or
24 relying upon your counsel, if that's something that a
25 jury may have been able to hear about, meaning whatever

1 additional character evidence that a witness could
2 provide --

3 A Yeah.

4 Q -- if that had been excluded -- no prior bad
5 acts. It doesn't matter what you all are trying to say.
6 It's not related to this trial. It's not going to come
7 in. The judge says that's not to coming in. That
8 hadn't been put on the record. Would that have effected
9 this trial potentially?

10 A I have no idea, but what I can say is, he had
11 a slew of character witnesses. One after another that I
12 called essentially to placate my client. I didn't think
13 any of it was helping his case whatsoever to be entirely
14 honest. In fact some of them began making some
15 inconsistent statements. But I know this, that I called
16 every expert witness that he asked me to call. I can
17 remember something about that coach. I can't remember
18 what the reply about it was, but I guarantee you I asked
19 that coach. If I didn't subpoena somebody it was
20 strategic because they said maybe you don't want to put
21 me on the stand, and when we get to the expert witness
22 that's exactly what happened. But I don't need to jump
23 ahead of your questions.

24 Q No, no, and I know you referred to a slew of
25 witnesses as being expert. You meant character?

1 A No, I meant character witnesses. If I said
2 expert I meant to say character. I apologize.

3 Q And there was only one character witness that
4 was called into question. That was Dr. Sexton.

5 THE COURT: You did it.

6 Q Expert. I did, that's right.

7 A I can tell you all about Dr. Sexton, yes, sir.

8 Q All right. I'm not trying to throw you off.

9 A Yes, sir. Not at all. I didn't think you
10 were. Would you like me to speak about the expert
11 witness?

12 Q Please.

13 A Okay. I can't remember how I came across Dr.
14 Sexton. It may have been from SCACDL. Maybe somebody
15 referred him. He was highly sought after and, you know,
16 I saw his curriculum vitae. He had testified numerous
17 times. I have some emails here in my bag if you'd like
18 to see them to just substantiate what I'm saying. He
19 said -- you know I had to go get the micropsy and
20 autopsy from the coroner's office. So I went and made a
21 request there. It wasn't like necessarily a Rule 5
22 request. They were more than glad to give it to me.

23 Dr. Sexton's office was -- I can't remember -- it's
24 the town Newberry and I went and spoke with Dr. Sexton
25 in his office when I took the micropsies and the

1 autopsy. He said -- you know, I told him my client was
2 indigent. I told him quite frankly the family hadn't
3 paid me all the money per our contract and he said, you
4 know, if I testify and I'm helpful to you we can talk
5 about a payment plan. That may have been what I was
6 talking to the mom about. I can't remember. But I have
7 vivid and specific memories about Dr. Sexton and I took
8 him all that stuff. He looked at it and he said you
9 don't want me to testify.

10 I pressed him. You're the only hope that I got.
11 He said, there's no way you want to put me on that stand
12 because I'll testify that I think that...

13 Q Okay. What is SCACDL?

14 A South Carolina Association of Defense Lawyers.

15 Q So trial lawyers lists service -- defense
16 lawyers that list resources that also includes a list of
17 potential experts?

18 A Sure. It's a great resource and you can go on
19 there and say, hey, I need this type of expert witness
20 and somebody will, you know, give you recommendations
21 on. I just had this trial with him and he knows this
22 area, etc.

23 Q Two things. Why would you discuss fees up
24 front?

25 A With the expert witness?

1 Q Yes, in the way that you did. You alert him
2 that you may not get your money?

3 A I knew he was going to be wanting to get paid.
4 Every expert witness does and I explained to him that,
5 you know, my client is indigent. He was already retired
6 and he, you know, I tried to charm him and persuade him
7 to take this case. To be entirely honest, I said, let's
8 just do one last case and he said okay and I think he
9 would have charged us had he testified. I was amazed
10 that he didn't charge us for having to review the
11 microposies and the autopsy at length.

12 Q So you knew that he was retired?

13 A Yes, sir.

14 Q You knew he didn't want to do this any more?

15 A I wouldn't say -- no, I didn't know that. I
16 kind of assumed that maybe he wanted to have --

17 Q But he didn't?

18 A I have no idea what is in his mind whether he
19 wanted to do this or not. I know he was willing to do
20 this from the conversations that we had. And he never
21 didn't act like I was putting him off or that he didn't
22 wanted to mess with this.

23 Q But if you were told you don't want me to
24 testify you didn't call him to testify did you?

25 A No, because he would have said he thought the

1 defendant shook the baby.

2 Q Okay. In terms of saying the things that you
3 said to him and knowing that he is retired, knowing that
4 he didn't charge you to review what he did, you didn't
5 take that as something he didn't want to be involved?

6 A Absolutely not. He never led me to believe
7 that. We met in person. We spoke on the phone and
8 quite frankly I explained all that to my client as well.

9 Q And you took him as your only hope. Only
10 resource?

11 A I took it that after he said that, I didn't
12 want to -- yes.

13 Q Why? Why did you view it as your only
14 resource?

15 A Because I believed he was my only resource.

16 Q Do you think doctors in Newberry as being the
17 penultimate forensic experts in South Carolina?

18 A He was highly recommended by whoever referred
19 him to me. Highly and I got his CV right here.

20 Q Okay. And knowing some of the experts in
21 Newberry. I think a lot of members of our bar had cases
22 in Newberry. Did you ever hear the name of Dr. Wren?

23 A You know, we're going so far back in my
24 memory. It seems like maybe I did hear something about
25 doctor, W-R-E-N, may be I did.

1 Q Forensic pathologist out of Spartanburg?

2 A You know, I wasn't constrict to any
3 geographical area. I would have taken anybody.

4 Q Somebody that would potentially be deemed as
5 the dean of forensic pathology in South Carolina?

6 A Wasn't aware that he was that. I maybe have
7 heard that name. I may not have heard that name. When
8 you said it a little spark hit, but that's about it.

9 Q Someone who more that likely handled twice --
10 maybe three times the amount of cases that Dr. Sexton
11 would have handled?

12 A Wasn't aware.

13 THE COURT: You got facts on that?

14 A Maybe I should have looked at a hundred other
15 forensic specialists.

16 THE COURT: All right, hold on.

17 A I apologize, Your Honor.

18 THE COURT: Dr. Sexton had a huge practice
19 in Newberry. Bodies were brought from all over
20 the state of Newberry because of him. His
21 successor autopsy specialist position took over
22 his practice did over 16,000 autopsies because
23 he did so many. You don't want to attack Dr.
24 Sexton any more.

25 Q I understand.

1 A I'm sure it would have been beneficial for my
2 client if I would have interviewed every forensic
3 specialist in the world, but I'm constricted on time and
4 resources to do that.

5 Q So you only talked to one?

6 A I only talked to one.

7 Q And you said he was your savior?

8 A I didn't say he was my savior. I said I put a
9 lot of stock in what he said and he said don't put me on
10 the stand because I think your client shook the kid and
11 I thought if he thought that maybe the rest would also
12 perhaps. He was highly regarded.

13 Q But you didn't check on anybody else?

14 A No, sir, I did the not. I can give you that.
15 I did not check on anybody else.

16 Q As it relates to anything else that you heard
17 today, in terms of Rule 5's being issued after the
18 course of the trial, does that catch you off guard in
19 terms of things that Mr. Evans said he discovered that
20 he didn't have a conversation with you about?

21 A No.

22 Q So is it possible that he got some things that
23 you didn't share with him? Well, look man, we have this
24 long file. It's a bunch of stuff in here --

25 A Yeah.

1 Q -- we get to the crux of it. Shaken baby
2 case. All this other stuff. I can't go through all
3 this with you.

4 A I can't guarantee you that I did show you
5 those photos, but I know that we sat down in discovery.
6 I mean, in the contact visits and went over a lot of
7 discovery with him.

8 Q The sister of the young lady that he had the
9 baby with that would have presumptively had a certain
10 opinion about Mr. Evans upset with him. He gotten
11 charged. He's in trial. She feels a certain kind of
12 way. She has a conversation with law enforcement. They
13 go see her days before all this stuff occurs. She gives
14 the opinion about the movement of the child. Did you
15 discuss that with Dr. Sexton or did you even know about
16 that?

17 A I have no -- I can't -- once again, I know it
18 sounds like my go to statement. I don't know if I have
19 a memory of what Detective Hare did. I know he went
20 back out and interviewed somebody, I believe. I think
21 that I went over every single incident report with my
22 client.

23 You know, I'm sorry. In fact as I'm sitting here I
24 don't remember Detective Hare talking to the sister of
25 the mother of the descendant. I don't if that's because

1 it's been eight or nine years since this happened.

2 Q Would that have mattered?

3 A I suppose that's up for the Court to decide.
4 I'm being candid. I don't know exactly what these
5 events that you're talking about so that I can even
6 access whether that mattered.

7 If you're asking me, do I think it would have
8 mattered that somebody saw -- she didn't see -- when
9 did she see the kid move? Are you saying that she saw
10 the kid -- what was the word that you used?

11 Q Scooch.

12 A Scooch. When did she see this child scooch?

13 Q Prior to the incident. The time period that
14 the young child was alive.

15 Q So she saw the child after the ambulance was
16 called?

17 Q No, in terms of the child's life. Meaning a
18 child of the age or size or it's in question that the
19 child could move by itself.

20 A Oh, I see.

21 Q If the sister is saying, well, yeah, I've seen
22 this child move and then someone else that would be in
23 favor of Mr. Evans would have offered the same
24 testimony. Meaning weeks before I saw this baby move.
25 This was a big baby. The baby could move.

1 A Yeah, that would have been relevant. But I'm
2 not sure after me talking with the mother and her sister
3 that they were on Quentin's side whatsoever.

4 Q Okay. But that didn't come out?

5 A I remember that I got the mom on the stand and
6 I crossed her and she said a lot of things in favor --
7 in our favor.

8 Q But not the sister?

9 A I can't remember whether I had the sister on
10 the stand or not.

11 Q Do you recall talking to law enforcement,
12 ma'am? Do you recall making a statement to law
13 enforcement? Did you say anything about this child
14 moving to law enforcement, yes or no, ma'am? Objection.
15 You can't ask her that. Okay. Was it put on the
16 record? Was that heard by anybody?

17 A I don't --

18 Q You don't recall doing that, do you?

19 A Sir?

20 Q You don't recall doing that, do you?

21 A No, sir.

22 Q Okay.

23 A I don't. It would have be in the transcript
24 if I had done it.

25 Q Exactly.

1 A Yeah.

2 Q But if that was a dispositive piece of
3 evidence or something that could have shown that this
4 conversation or anything that you had with law
5 enforcement and someone was saying something that could
6 be deemed in favor of Mr. Evans. You don't recall
7 having that direct conversation with him about that
8 particular piece of evidence and that statement that was
9 made to law enforcement prior to this incident
10 occurring?

11 A Are you asking if I recall having that
12 conversation with Quentin prior to the trial?

13 Q Yes.

14 A No, sir. It doesn't mean it didn't happen,
15 but I don't have a recollection of it if that's your
16 question.

17 Q Were you familiar with Quentin's state of mind
18 during the course of his representation?

19 A There's nothing at all that ever made me think
20 that he lacked capacity or had any type of inability to
21 assist in his defense or to take the stand or to
22 understand what was going on or I would have done a
23 Blair and McNaughton motion.

24 Q Do you know if he had any emotional issues
25 leading up to the time period in which he was accused of

1 this crime?

2 A No, sir.

3 Q Do you know if he was depressed?

4 A I mean, I think everybody that's charged with
5 a crime is depressed.

6 Q Do you know if he suffers from anxiety?

7 A No, sir, I don't.

8 Q You knew that it was alleged that he was
9 violent prior to this issue with the baby?

10 A You know, no.

11 Q Okay, but this photograph that was in question
12 supposedly showed information that led to that
13 conclusion?

14 A Yes, sir. I'm not sure where you're going
15 with this and I'm not trying to be elusive, but there's
16 nothing about his demeanor that ever made me think that
17 he lacked the capacity or that he was violent.

18 Q And I'm moving on. Just in terms of just his
19 history, his upbringing, just who he is, did you have a
20 sense of that, not just his state of mind at the time in
21 terms of having a conversation with you -- or several or
22 few.

23 A I think I had several.

24 Q But based upon that --

25 A Let me say this. I'm sorry to interrupt.

1 They have records in the jail. We're arguing over a
2 definitive number that I believe we can go and ask the
3 lady at the desk. She can tell you how many times I
4 visited him. I didn't know that was going to be an
5 issue. I'm sorry. I just wanted to mention that.

6 Q It's not because I hadn't brought it up.

7 A Yes, sir.

8 Q I understand you met him several times and
9 talked to him and I'm not saying it wasn't enough. But
10 my question is, just accessing who he is, his
11 background, did you know anything -- did you know t

12 A I did. I know he went to job fair -- the job
13 core in Virginia.

14 Q Do you know if he had a special IEP in school?
15 Did you know about his PTSD?

16 A No.

17 Q Did you know about his upbringing?

18 A No, sir, I did not.

19 THE COURT: Let him answer. You're rattling
20 off pretty quickly.

21 A I didn't know any of that. I didn't know about
22 his IEP or did he had PTSD and I had limited knowledge
23 of his upbringing.

24 Q Would that potentially have been something
25 that you could have talked to the prosecution about or

1 could have been his defense if you had known those
2 things based upon your ability to --

3 A I'm not sure how that would garnered any
4 defense to the charge. I mean, as I said, if I thought
5 that he lacked capacity I would have done the very
6 typical Blair and McNaughton. Outside that, I've never
7 experienced any prosecutorial discretion where you can
8 go to the solicitor's office and said my client is
9 depressed. Do you think you could change the name of
10 the crime.

11 Q That's interesting. What would you have --
12 what you have potentially have change it to then?

13 A I heard you say that earlier. I had no
14 discussions with the prosecutors. They had never given
15 me any inkling whatsoever that they were willing to
16 negotiate this down to a lesser included offense. They
17 gave him an offer. I extended that offer to him. It
18 was mandatory minimum of 20 years. That's the only real
19 discussion about anything along those lines.

20 Q What would have that been?

21 A Sir, I didn't hear.

22 Q Obviously that would have resulted in a plea.
23 What would he have been pleading to if he had been given
24 20 years?

25 A He would be pleading to the homicide. What he

1 was charged with, by child abuse.

2 Q Okay. No manslaughter, no voluntary,
3 involuntary, obviously not?

4 A No, sir.

5 Q And there was no exploration of him having
6 mental illness, guilty but mentally ill, nothing like
7 that ever came to your mind?

8 A No, sir.

9 Q Okay.

10 A And I've made Blair and McNaughton motions in
11 the past on several clients and one of them resulted in
12 a not -- you know, twice they failed that. So something
13 I'm experienced with, but that thought never crossed my
14 mind about Mr. Evans.

15 Q Well, not debating, but I just wanted to
16 inform you that you don't have to fail a Blair and
17 McNaughton to get guilty by mentally ill?

18 A Understood, yes, sir, but I'm thinking you
19 start with that motion don't you?

20 Q You can. There are other ways you can go about
21 it.

22 A Understood.

23 Q Based upon what he's saying, you don't recall
24 -- you're saying that it didn't mean it happened -- you
25 don't recall that there were certain pieces of evidence

1 he says were not shown to him in the course of leading
2 up to his trial do you think that's important enough?

3 A Yeah, it would be very important.

4 Q Okay, and if he feels based upon certain
5 things that could have came out from those pieces of
6 evidence to come into question that the jury could have
7 considered, do you feel that is something that a jury if
8 it wasn't shown and he feels that it was important to
9 his defense that is important to have that
10 consideration?

11 A I can say this sir, never in my career have I
12 intentionally excluded any type of evidence from my
13 client whatsoever. I just don't have a memory of
14 whether I showed him that photograph. I don't know the
15 relevance that would have to the jury. That's beyond my
16 scope of -- you know, I don't know the relevance. You
17 know, if you want to ask me that question, I don't think
18 the jury would have paid any attention to that at all.
19 I think they were far more focused on the autopsy
20 reports. Not whether his friend had a gun or anything
21 along those kind of lines, since you asked.

22 Q Yes.

23 A But I don't know.

24 Q And you only sought the opinion -- not on
25 record, but the opinion of only one expert?

1 A The only one.

2 Q And as it relates to jury selection, was it
3 your decision not to seat medical personnel on the jury?

4 A I don't remember that talk at all with my
5 client. As I sit here have no memory of trying to
6 exclude medical personnel. In fact I was thinking that
7 -- as I sit here right now I thought that it maybe
8 helpful. I was convinced he was innocent. I tried as
9 hard as I could to win that trial. I believed our
10 theory at the time.

11 Q Well, let me ask you this. Do you recall if
12 there was any medical personnel being offered for the
13 consideration and participation of the jury?

14 A I don't have a recollection. You can check
15 back on the transcript with the voir dire. Maybe there
16 were some is medical people on the jury.

17 Q And if you would have excluded all of them or
18 wouldn't have given them an opportunity, would that
19 changed your view based upon your testimony here today?

20 A It would have made me think that it was a
21 strategy of mine that I don't remember right now.

22 Q Okay.

23 A But no, I don't think it would change my
24 testimony. My testimony is I have no memory of trying
25 to exclude medical personnel.

1 Q One last question. The mother of the child at
2 some point she showed that she was in favor of
3 testifying on behalf of Mr. Evans?

4 A Uh-huh.

5 Q Do you have any knowledge of how she was able
6 to visit him in the county after all this started?

7 A I have no knowledge of that. My memory of
8 that was that her testimony was favorable to her and the
9 next day suddenly because she had some pregnancy she
10 couldn't even attend the trial any more.

11 Q Did you seek to have her come visit him in the
12 jail?

13 A No, sir. Not that I have any memory of, no.

14 MR. BROWN: That's all the the questions I
15 have Your Honor.

16 THE COURT: Any cross?

17 CROSS EXAMINATION

18 BY MR. JONES:

19 Q Good afternoon Mr. Cook. Sir, I believe you
20 testified you don't recall intentionally excluding
21 jurors with medical experience from the jury pool?

22 A That's correct. That's my testimony.

23 Q The -- and your testimony regarding Dr. Sexton
24 was that he would have testified if effect consistently
25 with the State's theory that this was a shaken baby

1 case?

2 A Yes, sir.

3 Q Did you see any other avenues regarding a
4 medical expertise perceptive to refute that?

5 A Not with my limited time and resources at that
6 point.

7 Q Do you recall any photographs regarding the
8 smoking of marijuana?

9 A I recall them, yeah.

10 Q Were those a part of discovery that was sent
11 to you?

12 A I can imagine they were, yeah.

13 Q Do you have any specific recollection one way
14 or the other?

15 A No, I don't to be honest.

16 Q If they were, would you have gone over that
17 when you went over the discovery with Mr. Evans?

18 A Typically yes.

19 Q Do you remember anything about the statement
20 from Talisha Banks regarding the child scooching?

21 A You can refresh my recollection but right now
22 I don't.

23 Q All right. I will just move on for now.

24 Do you anything about an investigation you are did
25 into Kierra Banks and then not disclosing the results of

1 that investigation whatever they were?

2 A There's nothing that I didn't disclose to my
3 client that I was aware of in this or any case.

4 Q So just to go back to make sure I covered
5 everything. You described the investigation you did on
6 this case?

7 A Yes, sir. You know, I went over the discovery
8 with my client in the jail with the contact visits. I
9 saw him numerous other times. I drove out to the house
10 I think more than once. Spoke with the mother, his
11 father. I went and -- you know, spoke on the phone with
12 Dr. Hart who was the State's pathologist before the
13 trial. I had to speak with somebody from the coroner's
14 office. I believe it was Dr. Hart. There was another
15 lady there too to go get the micropsies and autopsy. I
16 had numerous email and phone, and well, maybe one -- at
17 least one maybe two in person meeting with Dr. Sexton.
18 There was a DSS agent when I was looking through the
19 file that I had spoken with. I think I was trying to
20 fair in out some investigation that may have been going
21 on and, you know, I subpoenaed and complied with the
22 reciprocal discovery on the character witnesses. I did
23 everything I knew to do. I tried my very best to win
24 this trial.

25 Q Do you recall the issue of Mr. Evans marijuana

1 use coming up during the trial?

2 A Yes.

3 Q And what was the relevance of these photos to
4 ultimately I suppose the State's case?

5 A I suppose the case was trying to situate him
6 smoking marijuana the night of the fatality.

7 Q And what was your strategy in response to
8 this?

9 A To him to not touch it whatsoever. They had
10 the expert witness. They had their expert witness up
11 there. Quentin kept telling, you know, me he's not
12 right about this QIF things -- which I'm not the best.
13 And, you know, I kept telling him, you do not want me to
14 cross examine this expert witness, this ex-CIA. He was
15 extremely versed in the field of technology. His
16 testimony was that these photographs were taken at this
17 time. I'm not going to sit up there and try and cross
18 him. It's my strategy to abandon that intentionally.
19 The less we talk about that the better off we were in
20 front of that jury.

21 Q And can you go into a little more detail about
22 why you thought --

23 THE COURT: Hang on. Hang on. We got to
24 break. I thought we would be done quicker than
25 this. I was trying to not take a break. So

1 let's stand at ease for a few minutes.

2 (WHEREUPON, there was a brief recess.)

3 THE COURT: All right, let's continue on.

4 Q Thank you. Mr. Cook, very briefly where I
5 left off. Could you just explain why again you thought
6 it would be advantageous to abandon the issue of the
7 marijuana?

8 A Well, I don't think that I could of -- I think
9 that expert was credible to the jury and I don't think
10 that there is anything I could have asked him that would
11 make the jury believe that those photographs were taken
12 in a different point of time. The defendant -- I
13 believe that was part of his testimony and it just
14 wasn't very convincing.

15 Q All right. Ultimately the marijuana evidence,
16 is not what moved the needle in this case, is that
17 correct?

18 A Correct.

19 Q Ultimately what moved the needle would have
20 been that your client took care -- was taking care of
21 this six week old baby that was delivered to him healthy
22 earlier that night and there was no dispute that she was
23 in his care the whole night?

24 A Correct.

25 Q And then ultimately both your expert and the

1 State's expert testified that the injuries she
2 sustained, the broken ribs and subdural hematoma were
3 consistent with shaken baby syndrome, correct?

4 A Well, my expert didn't testify, but the
5 State's witness did.

6 Q And your expert didn't give you any reason to
7 believe differently?

8 A Correct, I strategically chose not to call my
9 expert to the stand.

10 Q One last question. Do you remember anything
11 -- I can't recall what you were saying regarding in
12 direct examination about this issue of the character
13 evidence. You stated you don't recall that photo or
14 those text messages he is eluding to?

15 A Not enough to be able to confidently discuss
16 it.

17 Q But ultimately would you agree that character
18 evidence opens the door once you introduce it to having
19 other negative character evidence come in?

20 A That's correct. I called those character
21 witnesses to placate my client, but I told him, you
22 know, you you don't -- everybody is going to expect your
23 mom and your friend to say good things about you. My
24 idea of character evidence is -- you know, the
25 preacher-- the head preacher at the local Baptist

1 church or somebody with some type of licensure or merit
2 and I told him that you just opening up doors.

3 MR. JONES: All right, I think that's all I
4 have for you Mr. Cook.

5 MR. COOK: Thank you.

6 THE COURT: Any redirect?

7 MR. BROWN: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BROWN:

10 Q Officer Marquez, you don't think he would have
11 been on par with the with the local seminary?

12 A I wish I remember, but I want to say I spoke
13 with him and he didn't want to testify, but I can't with
14 any certainty say that. I know that I followed up on
15 every character witness that my client gave me. And I
16 have just as vague a memory of that as I do about the
17 other things that I stutter about.

18 Q Ex CIA you were saying I'm not the best and
19 then you cut yourself off as far as computer expert.

20 A Yeah.

21 Q That's just a judgement that you made that
22 would have been something to explore in terms of cross
23 examining him?

24 A Absolutely not.

25 Q You're not a lay computer expert are you?

1 A I'm the opposite of lay computer expert.

2 Q You had not prepared yourself obviously for a
3 person such as this computer expert?

4 A I'm not sure I could have.

5 Q Did you know he was going to testify?

6 A I mean, he was on the witness list.

7 Q You didn't have anybody prepared as an expert
8 to go against him?

9 A No, I would not.

10 Q Would that have helped to have your own
11 ex-navy seal, ex-CIA?

12 A If they would have said something differently
13 than what that guy was saying it would have helped.

14 Q But you didn't explore that?

15 A No, sir, I did not.

16 Q And finally as it relates to your forensic
17 expert you strategically chose not to call an expert?

18 A Dr. Sexton?

19 Q Yes.

20 A Absolutely.

21 Q But you didn't pay him?

22 A Correct, I did not.

23 Q He was retired?

24 A Correct.

25 Q So he's unavailable?

1 A What?

2 Q He was unavailable to be you expert?

3 A He would have been available to testify and
4 told me he would have if his findings would have helped
5 my client.

6 Q But he wasn't available because he is retired
7 ultimately?

8 A His retirement didn't make him unavailable to
9 testify.

10 Q But he wasn't paid to come and be an expert?

11 A Correct.

12 Q Did he tell you how much he would charge?

13 A I have no recollection.

14 Q Okay.

15 THE COURT: Now you may step down.

16 MR. COOK: Thank you sir.

17 MR. BROWN: No additional witnesses.

18 THE COURT: All right. I just want to make
19 the record clear. I met Dr. Sexton and his wife
20 and his two daughters and his son in the late
21 70's when they moved to Newberry. He set up a
22 practice in Newberry strategically because of
23 it's location. He practiced more than 25 years.
24 I think he told me one time he testified in
25 every county in the State as an expert. He's

1 still alive. I've seen him recently and his
2 wife not as in good health as he is. He was
3 used by everybody in the state during the 80's
4 and 90's. That's just who everybody went to.
5 And I know your doctor over in Spartanburg well,
6 but Sexton taught everybody. He was the man.
7 So if he says you got a bad case I wouldn't have
8 gone any further either and so if that's a
9 problem and you want me to recuse myself because
10 I think that much of him as I do. He was
11 involved in boy scouts, the youth pistol
12 organization, he was a NRA member. He loved
13 helping young kids. He was straight-up guy and
14 still is.

15 So if you want me to back away from the case
16 I will. But if Dr. Sexton had told me that I'd
17 put that money in the bank.

18 MR. BROWN: That would be like me saying
19 I've know former prosecutors who became judges
20 and I had cases before and with them and all
21 that, Your Honor, so...

22 THE COURT: And Dr. Ross took over his
23 practice because it was that big.

24 MR. BROWN: I don't doubt that.

25 THE COURT: Okay. All right, you're down

1 with yours. You all going to call anybody?

2 MR. JONES: I beg the Court's indulgence.

3 Your Honor, the State calls Kevin Brackett.

4 THE COURT: All right.

5 KEVIN BRACKETT, called as a witness, was

6 sworn by the clerk and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. JONES:

9 Q Thank you, Solicitor Brackett. Could you
10 state your name for the record?

11 A Sure. Kevin Brackett, B-r-a-c-k-e-t-t. I'm
12 the solicitor for the 16th Circuit.

13 Q What was your involvement in this case?

14 A I prosecuted this case along with my Deputy
15 Solicitor Willy Thompson.

16 Q All right. Just few questions for you.
17 First, do you recall the relevance of the marijuana
18 smoking photos to the case?

19 A Yes, sir. The timeline from this case and let
20 me backup and just kind of give a little bit. I don't
21 do a lot of PCR work. I've seen enough of it and I know
22 sometimes for the court it's helpful to have sort of a
23 context, overview, of what the factual scenario is. In
24 it this particular case a 911 was called at about six in
25 the morning in 2014 or '15 I believe. The caller said

1 that there was an infant, a six week old child that was
2 not breathing. An ambulance came out. They could not
3 resuscitate the child. The child was pronounced dead.
4 An autopsy was performed and discovered that the child
5 had suffered catastrophic injuries through abuse. There
6 was bruising all over the child including fingerprint --
7 pinpoint bruising that comes from where you grab
8 somebody. And again, we're talking about a six week
9 old. So ten pounds, 11 pounds. Very, very small child.
10 The child had bruising all over it.

11 There were -- if I remember there were
12 microfractures along the back bone of the child where
13 the rib cage came around. The rib cage wraps around to
14 the back and the ribs join the backbone. Right where
15 the ribs came and join the backbone microfractures along
16 that connected point there which the pathologist I
17 recall saying because it was so graphic -- the hands
18 were over the child like this (indicating). The fingers
19 in the back spreading the rib cage out as you grip it
20 like that and that the force of the ribs being pushed
21 backwards across the sternum caused microfractures.
22 There were petechiae, multitude petechiae in the eyes
23 indicative of brain trauma and ultimately the doctor
24 opined -- the pathologist, Dr. Hart, said there was
25 clear indications that the child's head had been whipped

1 back and forth and when that happens in typically shaken
2 baby cases, the shaking of the baby causes the head --
3 because the child has no control. An infant of that age
4 can not hold its head steady. So the head just whips
5 back and forth and the brain literally sloshes back and
6 forth inside the skull cavity first striking the back of
7 the skull and moving forward hitting the front and the
8 head is whipping back and forth causing go subdural
9 hematomas inside the brain. So this is not the type of
10 injury that you get from an accident, not even a car
11 accident because a car accident is one sudden stop.
12 Where this is a repeated whipping back and forth which
13 causes the type of injuries this child had. So that's
14 what the autopsy showed.

15 The defendant was interviewed by law enforcement as
16 well as the coroner's office. The coroner's office did
17 an outstanding job. They actually went back and they
18 are the ones that did the video of him in the room
19 describing what happened and ultimately what he
20 described happening on that video simply could not have
21 caused the injuries and it was undisputed that he was
22 given custody of this child that evening. The night
23 before the child was reported dead, and was the sole
24 caretaker of the child through the night. So he was the
25 only person that could have inflicted these injuries and

1 his explanation for the injuries was that the child had
2 rolled over, which is not possible for a six week old.
3 A six week old doesn't roll over. It's highly
4 improbable the child was scooching but I won't dispute
5 that. But rolling over is completely off the table.
6 That does not happen with a six week old. That the
7 child rolled itself off of a bed between the bed and the
8 wall and was crying and he came running in and jumped on
9 the bed and slid the bed against the wall slamming the
10 child, which again would not have caused the injuries to
11 the child.

12 So that was essentially the State's case and his
13 defense was that it was accident, but he wasn't
14 disputing that he caused the injuries. It was just a
15 question of how they were caused and the injuries that
16 he claimed to have caused would have been far less
17 significant and probably not fatal given his
18 description.

19 Q So you mentioned the scooching. Was that in a
20 statement taken and provided to the defense in
21 discovery?

22 A Yes. Yes. There was a statement taken from
23 Talisha Banks, I believe it was, that was taken by law
24 enforcement and provided to the defense. And so one of
25 the issues throughout the trial coming back to your

1 question about marijuana was what was the timeline.
2 What happened through the night because he gave various
3 reports of when the child woke up. When attended to the
4 child. How long he slept. The times changed from his
5 report to DSS to the coroner, to law enforcement. His
6 story was all over the place and so the timing was
7 important. So the time that the photographs were taken
8 also the impact of the use of marijuana that night was
9 important because it effected his ability to recollect
10 the events of the evening. So it was relevant to those
11 facts and again, as Mr. Cook pointed out, this was a
12 small infraction in the grand scheme of things. Using
13 marijuana wasn't going to cause a jury to convict him in
14 the face of this overwhelming medical evidence.

15 Q And so do you recall this issue of character
16 witnesses?

17 A I do vaguely recollect when it came up and I
18 don't think this was brought up because I don't recall
19 discussing this with you. This sort of just popped up
20 in this hearing right now. I did not go back and review
21 all that, but my recollection was that he was going to
22 try and call some character witness or did call them,
23 and in a situation like that I will go to the defense
24 attorney and say I want you to be aware this is what's
25 about to happen precisely because it will cause a

1 problem on a PCR. If you call a character witness and I
2 can unload on that character witness and impeach the
3 character witness's knowledge of the defendant by saying
4 are you aware of this. Are you aware of that. And
5 introduce a parade of horrors. That will ultimately
6 come back on PCR because then they'll say well you were
7 foolish for ever calling that character witness and do
8 you see the damage that was done. The jury got to hear
9 all this horrible stuff.

10 Character witnesses are a minefield and so I think --
11 my recollection is we approached Mr. Cook to just say
12 hey, just FWI, be careful because we got this stuff. Do
13 what you want to do but, you know, you need to make a
14 value judgement here. A cost benefit analysis should be
15 done before you call this person because this what we
16 got and if anything it was a courtesy not to prevent him
17 mounting a defense, but just to advise him this is where
18 you may end up.

19 MR. JONES: All right. Thank you solicitor.

20 I think that's all the questions I have for you.

21 CROSS EXAMINATION

22 BY MR. BROWN:

23 Q Parental optimality, are you familiar with the
24 term, the law of diminishing returns?

25 Q I'm familiar with the law of diminishing

1 returns and I'll take your word that parental optimality
2 is the law of diminishing returns.

3 A Well, you did say it. You can deal with a
4 minefield in terms of character witnesses. Would you
5 deem it also to be an opportunity to be gold mine.

6 A They can help certainly, but again, it's a
7 cost benefit analysis. You have to ask yourself, what
8 is this witness going to say and then what's going to be
9 said to the witness. What's going to come out on cross
10 because that could be -- that could completely undermine
11 the value of the witness.

12 Q And so if provided information or not
13 providing information that you would have about the
14 potential aspects of prior bad acts that could be sprung
15 upon a character witness you acknowledge that could
16 cause issues when it comes to post conviction relief
17 based upon your testimony?

18 A If I understand what you just said correctly,
19 if a -- if a lawyer representing a client calls a
20 character witness unaware that a character witness can
21 be cross examined on the depth and completeness of their
22 understanding of the defendant's character, if they
23 don't know that, and all of sudden I start crossing and
24 saying, did you know that he was dishonorably discharged
25 because he was accused of sexual abuse in the army?

1 Does that change your opinion of his character? Were
2 you aware that he had done this terrible thing and you
3 don't even need to be convicted of it. You can just be
4 accused of it because it's your character in the
5 community, your reputation in the community can be
6 impeached and you can challenge the witness's
7 understanding of that reputation by bringing up things
8 that are not the subject of a conviction.

9 So if you are a lawyer and you call a character
10 witness unaware that could happen and it did in fact
11 happen, yes, that could be a problem on PCR.

12 Q Who makes that determination about what you
13 can say to a witness on the stand to show those prior
14 bad acts or things that you could ask of a person that's
15 providing character testimony and you're saying did you
16 know all these bad acts? Who makes that determination?

17 A The presiding judge.

18 Q Okay. So most of the time you would agree or
19 disagree with me that is something that would take up
20 with the judge before you would even get into that after
21 the did you know?

22 A You could, but I don't have to preview my
23 cross examination. I could ask the question and the
24 judge could say no, but I generally know where the line
25 is and try to stay on the right side of it.

1 Q Is that based upon information that's
2 typically share between the prosecution and the defense
3 meaning your witness list do we get a chance to go back
4 and do some background checks of the people that you may
5 potentially call defense witness?

6 A I don't typically go -- I don't have to go --
7 in other words I didn't have to go approach Mr. Cook
8 when he said I'm calling a character witness. I could
9 have just sat back in my chair and waited for the
10 witness to testify. Then stood up on cross and say, now
11 you say you know this man for five years and you say
12 he's got a good reputation in the community for being an
13 honest and decent fella, but are you aware of this?

14 Q Objection. You're familiar with that, right?

15 A Yes, but then you don't know where that's
16 going to go.

17 Q Okay.

18 A You're not necessarily entitled to have each
19 and every question posed outside of the presence of the
20 jury. So you could ask the question and some of it
21 could be admitted, but then it's to late. I'm on cross.
22 So you have to make that decision before you even get
23 up.

24 Q But if Mr. Cook utters out of his mouth based
25 upon some information that's being provided against a

1 character or provided to a character witness and he says
2 objection, that's typical to be heard by the court?

3 A Yes, but then you might hear overruled and it
4 comes in.

5 Q Okay. We understand about the mights and the
6 possibilities, but it will be entertained by the Court
7 typically?

8 A The Court rules on all evidentiary questions,
9 yes absolutely.

10 MR. BROWN: Thank you. No further
11 questions.

12 THE COURT: You may step down solicitor.

13 MR. JONES: Your Honor, the State rests.

14 THE COURT: All right. Anything in reply?

15 MR. BROWN: The two prongs of Strickland,
16 Your Honor, we would say clearly the outcome of
17 the trial based upon things that were not
18 brought to my client's attention as he's pointed
19 out. Discovered some things based upon his own
20 discovery requests subsequent to his conviction
21 as well as the testimony of counsel whether
22 there is some total recall, lack of recall, or
23 the possibilities, we think that the outcome of
24 Mr. Evans's case would have been very different.
25 Therefore he was denied a fair trial based upon

1 factors that involve witnesses, expert
2 witnesses, and the fact based upon the -- we
3 would argue an expert that was sought that was
4 known to have already been retired, well
5 regarded, very capable, very skilled, but was
6 not going to participate based upon just the
7 nature of where he was. It seemed to be a
8 cursory opportunity to show that I went to a
9 person that was an expert to ask these questions
10 but the expert wasn't going to participate any
11 way.

12 I understand the testimony, but the posture
13 that the expert was sought was an expert that no
14 longer was in practice. Was no longer offering
15 any type of paid or complimentary testimony for
16 trials and especially a trial of this magnitude.
17 And of course the issue as it relates to
18 character witness, Your Honor, we would simply
19 ask that the Court to take that into
20 consideration. And based upon that, we think
21 that it was unreasonable in terms of what
22 counsel was pursuing in his defense. That would
23 be based upon the professional norms at the time
24 in which this trial was conducted back in March
25 of 2015, Your Honor.

1 THE COURT: All right, Mr. Jones.

2 MR. JONES: Thank you, Your Honor. Just
3 very briefly. It's worth bearing in mind,
4 again, the test for prejudice under Strickland
5 is whether there is a reasonable likelihood that
6 the result of the proceeding would have been
7 different. The State's position is that there
8 is no reasonable likelihood. All of these
9 allegations are small potatoes compared to the
10 ultimate fact that as Mr. Cook explained was
11 corroborated by Dr. Sexton, the expert he
12 consulted. That the victim was killed in shaken
13 baby scenario. Again, it's undisputed that this
14 was a healthy child when she was delivered to
15 the custody of the applicant and the applicant
16 was the only person that had care of the child
17 during the time in which she died. Ultimately
18 these smaller issues about whether a character
19 witness would have been helpful, the State
20 submits does not move the needle as far as
21 Strickland prejudice is concerned.

22 However, we would also point out that on the
23 PCR -- in the PCR context the burden of proof is
24 on the applicant to establish what would have
25 been presented if not -- if not for the alleged

1 improper acts or omissions of his counsel, and
2 we haven't had any character witnesses come up
3 and say what they would have said if they'd been
4 allowed. And we haven't had a contrary witness
5 come in and say what they would have said if Mr.
6 Cook had consulted them. So -- and we haven't
7 had any computer specialist expert come in to
8 say how they would have refuted the computer
9 specialist brought in by the State.

10 So again, we simply say that -- that Mr.
11 Evans has failed to meet his burden of proof
12 under the PCR standard and therefore post
13 conviction relief should be denied.

14 Thank you, Your Honor.

15 THE COURT: Let me make sure I'm not missing
16 the computer factual issue. There was a witness
17 called by the State that did some sort of
18 extraction of cellphones to try and timestamp
19 the photographs that were introduced regarding
20 marijuana smoke, is that right?

21 MR. JONES: That's my understanding.

22 THE COURT: I just wanted to make sure I
23 understood that.

24 All right. I got it. I will take this
25 under advisement. I got a transcript back there

1 waiting in the box. I'll let you all know.

2 MR. BROWN: Thank you, Your Honor.

3 MR. JONES: Thank you, Your Honor.

4 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 17th day of April, 2023

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

April 8, 2026

Aileen Butler

FILED - 2023
2023 SEP 25 PM 3:25

STATE OF SOUTH CAROLINA -6) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) FOR THE SIXTEENTH JUDICIAL CIRCUIT
)
Quentin Jarvis Evans, #363391,) Case No.: 2017-CP-46-1938
)
Applicant,)
)
v.) **ORDER OF DISMISSAL**
)
State of South Carolina,)
)
Respondent.)

This matter comes before the Court by way of Applicant Quentin Jarvis Evans's application for post-conviction relief filed July 6, 2017. The Court convened an evidentiary hearing into the matter on April 17, 2023, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Michael D. Brown, Esquire. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. Applicant was indicted at the April 2014 term of the York County Grand Jury for homicide by child abuse (2014-GS-46-1229). David C. Cook, Esquire ("Counsel"), represented him. Solicitor Kevin Brackett and Deputy Solicitor Willy Thompson represented the State. On March 16-19, 2015, Applicant proceeded to a jury trial before the Honorable Derham Cole after which he was found guilty. He was sentenced to imprisonment for forty-five years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Appellate Defender David Alexander filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction by an unpublished opinion. *State v. Quentin Evans*, Op. No. 2016-UP-495 (Ct. App. Filed November 23, 2016). The remittitur was sent December 12, 2016.

Factual Summary

On January 23, 2014, paramedics responded to a 911 call at Applicant's residence reporting an unconscious child who was not breathing. The call was received at 6:36 a.m. The child ("Victim") was determined to be Applicant's six-week-old daughter. Paramedics attempted to perform CPR on Victim, but Victim appeared to have been without oxygen for some time and showed no signs of life. Applicant told paramedics that Victim had fallen off a bed. (Tr. pp.77–85).

Dr. Craig Hart performed an autopsy on Victim and determined that her death was a homicide. He noted several bruises, which appeared to be fresh, on Victim's forehead, face, neck, arms, and chest. At the trial, Dr. Hart was qualified as an expert on forensic pathology. He opined that a six-week-old child is too young to control its arms or to walk, so Victim's extensive bruising could not have been caused by hitting herself or by an accidental fall. In addition, some of Victim's bruises were located on parts of the body that were not likely to have resulted from a fall. Dr. Hart testified that many of the bruises fit the pattern of fingers and were more consistent with grasping injuries than with an accidental fall. Dr. Hart also testified Victim had a broken collarbone, which would likely have caused her to be inconsolable with pain. In addition, Dr. Hart noted fractures at the junction of the spine and the ribs, which he opined could not have been caused by blunt force trauma like an impact injury but were more consistent with a forceful grasping injury. When

examining Victim's head, Dr. Hart noticed a large linear bruise on the forehead that was consistent with a severe impact injury. There was significant subdural hemorrhaging inside the skull consistent with an acceleration-deceleration injury (i.e., violent shaking followed by an impact). He also noticed multiple fresh retinal hemorrhages in both eyes, which he testified could not have been caused by a single fall but would have required Victim to be vigorously shaken several times. He testified that Victim's injuries were not caused by post-mortem administration of CPR or by falling off a bed. Based on the totality of Victim's injuries, Dr. Hart opined her death was caused by abuse. (Tr. pp.109–85).

On cross-examination, Counsel asked Dr. Hart whether Victims injuries could have been caused by falling off the bed and then being crushed between the bedframe and the wall when Applicant jumped on the bed. Dr. Hart testified that scenario might explain some of the bruising and the compression injury to the ribs, but it would not explain the pin-point bruises, retinal hemorrhaging, or subdural hemorrhaging observed in Victim. He also testified that scenario would likely have caused fractures in the skull and bleeding from the ears, nose, and mouth, which Victim did not have. (Tr. pp.186–201).

Deputy coroner Christine Westover testified that she interviewed Applicant a few days after the incident. Applicant told her that he was watching Victim while the child's mother was absent. He stated he left Victim alone in the bedroom at about 2:33 a.m. to heat a bottle. When he returned, Victim had fallen in between the bed and the wall and was crying. He picked Victim up by her left arm and noticed her head appeared limp. He then dozed off and woke up again at 5:37 a.m., whereupon he noticed that Victim was limp and was not breathing. Applicant admitted he had been using marijuana, which was confirmed by a drug test. (Tr. pp.204–37).

Detective Bruce Haire obtained a written statement from Applicant in which Applicant again claimed he left Victim alone in the bedroom to heat a bottle, although Applicant stated the time was after 4:00 a.m. Applicant claimed he returned to the bedroom when he heard Victim crying. He saw that Victim had fallen between the wall and the bed, and he jerked Victim up by her arm. He noticed Victim's head was loose. After falling asleep for a few minutes, Applicant woke up to find that Victim was not breathing and did not have a pulse at about 5:37 a.m. Detective Haire noted that Applicant's 911 call was made around 6:37 a.m., an hour later. Applicant denied shaking Victim, but he stated he sometimes played rough with her by tossing her a few inches in the air, and he admitted that he had smoked marijuana at one point in the afternoon while Victim was sleeping. Detective Haire testified Applicant never claimed to have jumped on the bed and inadvertently caused the bed to pin Victim against the wall. (Tr. pp.302-69).

Investigator Trey Amick was qualified as an expert in forensic data recovery from mobile devices. He testified he recovered data from Applicant's mobile phone including photographs, call logs, and internet browsing data. Through him, the State introduced several photographs of Applicant smoking marijuana. Investigator Amick testified the EXIF data from the photographs indicated most of them were taken between 10:46 and 10:47 p.m. on the night of Victim's death. He also testified Applicant's phone showed sporadic internet browsing activity between 9:35 p.m. and 4:22 a.m. that night, as well as telephone activity at 3:44 a.m. (Tr. pp.371-90).

Applicant presented multiple character witnesses from among his friends and family. (Tr. pp.395-465). Applicant also testified in his own defense. He denied abusing Victim. He claimed Victim's injuries occurred when Victim accidentally fell off the bed when he momentarily left the room to prepare a bottle at approximately 5:32 a.m. When he returned to the room a few minutes later, he noticed Victim was crying loudly and was not on the bed, so he ran and jumped on the

bed and dragged Victim out from between the bed and the wall by her arm. He noticed Victim's head was limp and she did not respond when he tried to give her a pacifier. He lay down beside her on the bed and fell asleep for a few minutes. When he woke up, he saw that Victim's eyes were open, and she was not breathing and had no pulse. He ran to alert the rest of his family. He claimed that he initially reported waking up at 5:37 because he thought that was what the clock in the living room said, but later he thought he had mistaken a 6 for a 5. He also denied smoking marijuana on the night Victim died; he claimed the photographs of him smoking marijuana were taken the prior morning, but the timestamp changed later that night when he saved them to a different location on his phone. He acknowledged that he was the only person caring for Victim at the time of the injury. (Tr. pp.465–531).

Present Application

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel was ineffective for failing to investigate the case."
 - b. "Counsel failed to request for a jury instructions [*sic*] on the defense of accident when such a charge was supported by the evidence, the defendant testimony and the defense's theory of the case."
 - c. "Counsel failed to object and argue the state never established a logical connection between the smoking photos and the crime charged."
 - d. "Counsel abandon cross examination of computer specialist."
 - e. "Counsel failed to obtain an expert witness for the defense."
 - f. "Counsel failed to properly acquaint himself with the law and the facts surrounding the case and as a direct result of his intentional negligence, there was a very serious error in his assessment of both the law and the facts."

As relief, Applicant requests the Court "[v]acate conviction and sentence and remand for a judgment of acquittal and any other relief this court deems just and proper."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the York County Clerk of Court regarding the subject conviction, Applicant's appellate records, and the application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at

625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to

consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Allegations a, e, and f: Counsel failed to fully investigate the case.

Applicant argues Counsel failed to investigate the case by not calling certain witnesses or looking into certain issues. Specifically, he claims Counsel did not call a witness, Talisha Banks, who allegedly saw Victim “scootch,” which (if believed by the jury) would have defeated the State’s argument that the six-week-old Victim could not have fallen out of bed on her own. He also claims Counsel failed to call certain character witnesses. He argues that Counsel should have called Dr. Wren, of Spartanburg, as an expert to rebut the testimony of Dr. Hart. He also claims Counsel failed to investigate Applicant’s mental health issues.

At the evidentiary hearing, Counsel testified he called all the witnesses Applicant wanted him to call, except for witnesses who told him they would not testify favorably. Counsel acknowledged that he did not speak to Dr. Wren; however, he recalled that he had numerous conversations with Dr. Joel Sexton, who was highly recommended as an expert in forensic pathology, and he got him to independently review the medical evidence in the case. According to Counsel, after he had reviewed the autopsy evidence, Dr. Sexton agreed with the State’s expert that Victim’s death was consistent with shaken baby syndrome and was likely due to child abuse. Counsel decided not to call Dr. Sexton as a witness because his testimony would have supported the State’s case. Counsel recalled meeting with Applicant’s father, mother, and other character witnesses; he also talked to the forensic pathologist, the coroner, and the DSS agent. He remembered that Applicant was depressed, but he denied that Applicant ever appeared to be mentally incapacitated.

The Court finds Applicant has not met his burden of proving Counsel's performance was deficient. Counsel credibly testified that he thoroughly investigated the case, including the character witnesses Applicant urged him to speak to and an independent expert in forensic pathology. Counsel further credibly testified that he either called those witnesses to testify at Applicant's trial or, as in the case of Dr. Sexton, strategically decided not to call them because he believed they would not be helpful. Counsel credibly testified that Applicant showed no signs of mental problems that would have warranted additional investigation of Applicant's mental health. The Court finds, based on this credible testimony, that Counsel's investigation was reasonable.

Furthermore, Applicant has not met his burden of proving that he was prejudiced by Counsel's alleged failure to investigate. An applicant who claims counsel was ineffective for failing to investigate or present certain evidence at trial must introduce that evidence at the post-conviction relief hearing. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Dempsey v. State* 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his trial counsel's failure to hire an expert because he did not have an expert testify at his PCR hearing), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); *Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation). Although Applicant complains that Counsel should have called additional witnesses and consulted Dr. Wren, he has failed to introduce the testimony of any of those witnesses at the evidentiary hearing to prove that their testimony would have been favorable.

Accordingly, this allegation is denied and dismissed with prejudice.

Allegation b: Counsel failed to request a jury instruction on the defense of accident

Applicant argues Counsel failed to request a jury instruction on the defense of accident. The Court finds this allegation is without merit.

It is clear from the trial transcript that Counsel's strategy was to argue that Victim's death was the result of a tragic accident, rather than child abuse. Counsel attempted to persuade the jury to believe Applicant's account that Victim fell off the bed while he was in another room and that Victim's injuries resulted from the fall combined with the accidental moving of the bed when Applicant jumped on it to extricate Victim from between the bed and the wall. (Tr. pp.535–56). The solicitor, in his closing argument, denied that Victim's death was an accident based on the autopsy evidence. (Tr. pp.556–85). However, while the parties were entitled to rely on the colloquial meaning of the word "accident" in their arguments to the jury, the *accident defense*—as a legal concept—would have to be charged according to its specialized meaning under South Carolina law.

Applicant has not provided this Court with a specific example of an accident instruction that would have been appropriate in this case. One formulation of the defense of accident that has been used in South Carolina is as follows:

The defendant has raised the defense of accident. The burden is on the State to prove beyond a reasonable doubt that the killing was not accidental.

Harm caused to another, including death, cannot entail criminal responsibility for the defendant if the harm was accidentally inflicted without intent to harm and without recklessness or negligence.

Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal



responsibility attaches to the act of the slayer. A homicide will be excusable on the ground of accident when:

- (1) the killing was unintentional;
- (2) the defendant was acting lawfully; and
- (3) due care was exercised in the handling of the weapon.

A homicide is not excusable on the ground of accident unless it appears that the defendant was acting lawfully.

Defense of Accident, Anderson, S.C. *Requests to Charge - Criminal*, § 6-2. This formulation is obviously inapplicable to Applicant's case because this charge posits that the killing was accomplished through the use of a "weapon." Here, neither the State nor the defense claim that Victim was killed by a weapon, and there was no evidence at the trial to support an inference that a weapon was used.

A more general formulation of the defense of accident is this:

Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer. If it be shown that the killing was unintentional, that it was done while the perpetrator was engaged in a lawful enterprise and was not the result of negligence, the homicide will be excused on the score of accident.

23 S.C. Jur. *Homicide* § 3 (quoting *State v. Brown*, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1944)).

While this charge does not include a reference to a weapon, both it and the other charge expressly state that the defense of accident does not apply when the homicide is the result of *negligence*.

Homicide by child abuse, however, requires "extreme indifference to human life," which is a more culpable mental state than negligence. "Under S.C. Code Ann. § 16-3-85(A), a person is guilty of homicide by child abuse if the person causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." *State v. McKnight*, 352 S.C. 635, 644, 576 S.E.2d 168, 172–

73 (2003). Our appellate courts have held that “extreme indifference” is a mental state more closely akin to recklessness or willfulness than to mere negligence. *See id.* at 644–45, 576 S.E.2d at 173 (analogizing the “extreme indifference” standard to that required for reckless homicide cases, namely “a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof”).

Not only does the technical meaning of the accident defense misstate the requisite mental state for homicide by child abuse, but the language of the accident defense is actually *more* favorable to the State than the language of the homicide by child abuse statute. While the statute requires the State to prove “extreme indifference,” the law of accident will be satisfied—and the defense unavailable—if the State proves mere “negligence.” Had Counsel insisted on an accident charge under South Carolina law, it could have misled the jury into believing the State only had to prove negligence to prevail, rather than extreme indifference to human life.

Because the defense of accident does not fit the law or facts of Applicant’s case, Applicant has not met his burden of proving that Counsel was deficient for not requesting such a charge. Moreover, because Counsel was still able to vigorously argue that Victim’s death was an accident according to the colloquial meaning of the word, Applicant has also failed to prove he was prejudiced by the omission of the accident charge. Accordingly, this allegation is denied and dismissed with prejudice.

Allegations c and d: Related to photos of Applicant smoking marijuana

Applicant argues Counsel failed to object to photographs of Applicant smoking marijuana on the ground that they bore no logical connection to the crime charged. At the evidentiary hearing, Counsel testified that the State tried to prove that Applicant was under the influence of marijuana at the time of Victim’s death. Clearly, if the jury believed the State’s theory that

Applicant was smoking marijuana on the night Victim died, it could have inferred a “logical connection” between Applicant’s intoxication and his mistreatment of Victim. Therefore, Counsel was not deficient for failing to object on this ground.

Applicant also claims Counsel abandoned his cross-examination of the computer expert, Investigator Amick, who testified about the timestamp on the smoking photos. The trial transcript shows that Counsel asked Investigator Amick whether Applicant consented to the search of his phone, and the witness agreed that he did. (Tr. p.390). In closing argument, Counsel used that testimony to argue that Applicant cooperated with the investigation and was not trying to hide anything from law enforcement. (Tr. p.554). Although Counsel did not ask any further questions of the witness, he did effectively use his cross-examination to make a point in closing argument. Counsel also credibly testified, at the evidentiary hearing, that he wanted to move on from the issue of his client’s drug use as quickly as possible. He believed that it ultimately did not move the needle, since the most damning evidence against his client was not his marijuana use but the fact that his healthy daughter had sustained fatal injuries while concededly in his care. In addition, on direct examination of Applicant, Counsel successfully brought out Applicant’s alternative explanation that the timestamp of the photos had changed when Applicant saved them to a different location on his phone. Therefore, the Court finds Applicant has not proven Counsel’s performance was deficient as to this allegation.

In addition, Applicant has failed to present any testimony from Investigator Amick to substantiate his claim that additional cross-examination would have been helpful to the defense. And the smoking photos themselves were merely cumulative to other evidence before the jury of Applicant’s marijuana use, including Applicant’s own statements to law enforcement and his own

testimony on the stand. Therefore, the Court finds Applicant has not met his burden of proving prejudice either. Accordingly, these allegations are denied and dismissed with prejudice.

III. CONCLUSION

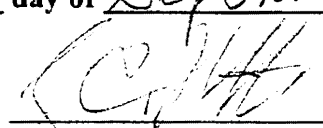
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6th day of September, 2023.


 EUGENE C. GRIFFITH, JR.
 Presiding Judge
 Sixteenth Judicial Circuit

York, South Carolina

FORM 5

2025CP4602258

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of YorkQuentin Davis Evans #363391

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFAPPROVED
C.C.P. & C.S.
YORK COUNTY, SCFILED
2025 JUN 20 PM 12:58
CLERK
A.M.C.**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw Correctional Institution, 4848 Gold Mine Hwy, Kershaw, SC 29067
2. Name and location of Court which imposed sentence York County Court of General Sessions - York, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Homicide By Child Abuse - 2014 - GS - 46 - 01229
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 19, 2015 - 45 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXXXXXXX
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 23, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Quentin J. Evans, Op. No. 2016-OP-495 (S.C.
- ii. Ct. App. Filed November 23, 2016)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance Of Counsel See Attachment A
- (b) _____
- (c) Belated
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel was ineffective for failing to file Notice Of
- (b) Appeal See Attachment B
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Anders Brief S.C. Court Of Appeals
- ii. _____
- iii. Post-Conviction Relief ---
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court Of Appeals Columbia, SC 29211
- ii. _____
- iii. York, South Carolina Post Conviction Relief York, SC 29745
- iv. _____

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. Denied
- iv. _____

(d) the date of each such disposition:

- i. November 23, 2016
- ii. _____
- iii. July 6, 2017
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. See Attachment B
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the first opportunity the applicant has had to present
 (b) this issue
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. David Cook - Lancaster, SC
 ii. David Alexander - SCCID Columbia, SC
 iii. Michael Brown - Spartanburg, SC
 (b) the proceedings at which each such attorney represented you:
 i. David Cook - Trial
 ii. David Alexander - Ander's Brief
 iii. Michael Brown - Post Conviction Relief

19. State clearly the relief you seek in filing this application:

Sentence Reduction, Vacate conviction and sentence and remand for a
judgement and any other relief this court deems just and proper

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Quetta Evans #363391, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 19th
 day of May, 2025.
Donna A. Green (L.S.)
 Notary Public

My Commission Expires: March 03, 2031

Rule 407, SCACR, Rules of Professional Conduct

A lawyer, being a member of the legal Profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the clients or to others.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation.

A lawyer's conduct should conform to the requirements of the law both in professional service to the client and in the lawyer's business and personal affairs.

As a member of a learned profession, a lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

FILED-RECEIVED
 STATE OF SOUTH CAROLINA -6 PM 12:26
 COUNTY OF YORK IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

Quentin Jarvis Evans, #363391 SC Case No.: 2017-CP-46-1938

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of Applicant Quentin Jarvis Evans's application for post-conviction relief filed July 6, 2017. The Court convened an evidentiary hearing into the matter on April 17, 2023, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Michael D. Brown, Esquire. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. Applicant was indicted at the April 2014 term of the York County Grand Jury for homicide by child abuse (2014-GS-46-1229). David C. Cook, Esquire ("Counsel"), represented him. Solicitor Kevin Brackett and Deputy Solicitor Willy Thompson represented the State. On March 16-19, 2015, Applicant proceeded to a jury trial before the Honorable Derham Cole after which he was found guilty. He was sentenced to imprisonment for forty-five years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Appellate Defender David Alexander filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction by an unpublished opinion. *State v. Quentin Evans*, Op. No. 2016-UP-495 (Ct. App. Filed November 23, 2016). The remittitur was sent December 12, 2016.

Factual Summary

On January 23, 2014, paramedics responded to a 911 call at Applicant's residence reporting an unconscious child who was not breathing. The call was received at 6:36 a.m. The child ("Victim") was determined to be Applicant's six-week-old daughter. Paramedics attempted to perform CPR on Victim, but Victim appeared to have been without oxygen for some time and showed no signs of life. Applicant told paramedics that Victim had fallen off a bed. (Tr. pp. 77-85).

Dr. Craig Hart performed an autopsy on Victim and determined that her death was a homicide. He noted several bruises, which appeared to be fresh, on Victim's forehead, face, neck, arms, and chest. At the trial, Dr. Hart was qualified as an expert on forensic pathology. He opined that a six-week-old child is too young to control its arms or to walk, so Victim's extensive bruising could not have been caused by hitting herself or by an accidental fall. In addition, some of Victim's bruises were located on parts of the body that were not likely to have resulted from a fall. Dr. Hart testified that many of the bruises fit the pattern of fingers and were more consistent with grasping injuries than with an accidental fall. Dr. Hart also testified Victim had a broken collarbone, which would likely have caused her to be inconsolable with pain. In addition, Dr. Hart noted fractures at the junction of the spine and the ribs, which he opined could not have been caused by blunt force trauma like an impact injury but were more consistent with a forceful grasping injury. When

examining Victim's head, Dr. Hart noticed a large linear bruise on the forehead that was consistent with a severe impact injury. There was significant subdural hemorrhaging inside the skull consistent with an acceleration-deceleration injury (i.e., violent shaking followed by an impact). He also noticed multiple fresh retinal hemorrhages in both eyes, which he testified could not have been caused by a single fall but would have required Victim to be vigorously shaken several times. He testified that Victim's injuries were not caused by post-mortem administration of CPR or by falling off a bed. Based on the totality of Victim's injuries, Dr. Hart opined her death was caused by abuse. (Tr. pp.109-85).

On cross-examination, Counsel asked Dr. Hart whether Victim's injuries could have been caused by falling off the bed and then being crushed between the bedframe and the wall when Applicant jumped on the bed. Dr. Hart testified that scenario might explain some of the bruising and the compression injury to the ribs, but it would not explain the pin-point bruises, retinal hemorrhaging, or subdural hemorrhaging observed in Victim. He also testified that scenario would likely have caused fractures in the skull and bleeding from the ears, nose, and mouth, which Victim did not have. (Tr. pp.186-201).

Deputy coroner Christine Westover testified that she interviewed Applicant a few days after the incident. Applicant told her that he was watching Victim while the child's mother was absent. He stated he left Victim alone in the bedroom at about 2:33 a.m. to heat a bottle. When he returned, Victim had fallen in between the bed and the wall and was crying. He picked Victim up by her left arm and noticed her head appeared limp. He then dozed off and woke up again at 5:37 a.m., whereupon he noticed that Victim was limp and was not breathing. Applicant admitted he had been using marijuana, which was confirmed by a drug test. (Tr. pp.204-37).

Detective Bruce Haire obtained a written statement from Applicant in which Applicant again claimed he left Victim alone in the bedroom to heat a bottle, although Applicant stated the time was after 4:00 a.m. Applicant claimed he returned to the bedroom when he heard Victim crying. He saw that Victim had fallen between the wall and the bed, and he jerked Victim up by her arm. He noticed Victim's head was loose. After falling asleep for a few minutes, Applicant woke up to find that Victim was not breathing and did not have a pulse at about 5:37 a.m. Detective Haire noted that Applicant's 911 call was made around 6:37 a.m., an hour later. Applicant denied shaking Victim, but he stated he sometimes played rough with her by tossing her a few inches in the air, and he admitted that he had smoked marijuana at one point in the afternoon while Victim was sleeping. Detective Haire testified Applicant never claimed to have jumped on the bed and inadvertently caused the bed to pin Victim against the wall. (Tr. pp.302-69).

Investigator Trey Arnick was qualified as an expert in forensic data recovery from mobile devices. He testified he recovered data from Applicant's mobile phone including photographs, call logs, and internet browsing data. Through him, the State introduced several photographs of Applicant smoking marijuana. Investigator Arnick testified the EXIF data from the photographs indicated most of them were taken between 10:46 and 10:47 p.m. on the night of Victim's death. He also testified Applicant's phone showed sporadic internet browsing activity between 9:35 p.m. and 4:22 a.m. that night, as well as telephone activity at 3:44 a.m. (Tr. pp.371-90).

Applicant presented multiple character witnesses from among his friends and family. (Tr. pp.395-465). Applicant also testified in his own defense. He denied abusing Victim. He claimed Victim's injuries occurred when Victim accidentally fell off the bed when he momentarily left the room to prepare a bottle at approximately 5:32 a.m. When he returned to the room a few minutes later, he noticed Victim was crying loudly and was not on the bed, so he ran and jumped on the

bed and dragged Victim out from between the bed and the wall by her arm. He noticed Victim's head was limp and she did not respond when he tried to give her a pacifier. He lay down beside her on the bed and fell asleep for a few minutes. When he woke up, he saw that Victim's eyes were open, and she was not breathing and had no pulse. He ran to alert the rest of his family. He claimed that he initially reported waking up at 5:37 because he thought that was what the clock in the living room said, but later he thought he had mistaken a 6 for a 5. He also denied smoking marijuana on the night Victim died; he claimed the photographs of him smoking marijuana were taken the prior morning, but the timestamp changed later that night when he saved them to a different location on his phone. He acknowledged that he was the only person caring for Victim at the time of the injury. (Tr. pp.465-531).

Present Application

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel was ineffective for failing to investigate the case."
 - b. "Counsel failed to request for a jury instructions [sic] on the defense of accident when such a charge was supported by the evidence, the defendant testimony and the defense's theory of the case."
 - c. "Counsel failed to object and argue the state never established a logical connection between the smoking photos and the crime charged."
 - d. "Counsel abandon cross examination of computer specialist."
 - e. "Counsel failed to obtain an expert witness for the defense."
 - f. "Counsel failed to properly acquaint himself with the law and the facts surrounding the case and as a direct result of his intentional negligence, there was a very serious error in his assessment of both the law and the facts."

As relief, Applicant requests the Court "[v]acate conviction and sentence and remand for a judgment of acquittal and any other relief this court deems just and proper."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the York County Clerk of Court regarding the subject conviction, Applicant's appellate records, and the application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at

625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to

consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Allegations a, e, and f: Counsel failed to fully investigate the case.

Applicant argues Counsel failed to investigate the case by not calling certain witnesses or looking into certain issues. Specifically, he claims Counsel did not call a witness, Talisha Banks, who allegedly saw Victim "scootch," which (if believed by the jury) would have defeated the State's argument that the six-week-old Victim could not have fallen out of bed on her own. He also claims Counsel failed to call certain character witnesses. He argues that Counsel should have called Dr. Wren, of Spartanburg, as an expert to rebut the testimony of Dr. Hart. He also claims Counsel failed to investigate Applicant's mental health issues.

At the evidentiary hearing, Counsel testified he called all the witnesses Applicant wanted him to call, except for witnesses who told him they would not testify favorably. Counsel acknowledged that he did not speak to Dr. Wren; however, he recalled that he had numerous conversations with Dr. Joel Sexton, who was highly recommended as an expert in forensic pathology, and he got him to independently review the medical evidence in the case. According to Counsel, after he had reviewed the autopsy evidence, Dr. Sexton agreed with the State's expert that Victim's death was consistent with shaken baby syndrome and was likely due to child abuse. Counsel decided not to call Dr. Sexton as a witness because his testimony would have supported the State's case. Counsel recalled meeting with Applicant's father, mother, and other character witnesses; he also talked to the forensic pathologist, the coroner, and the DSS agent. He remembered that Applicant was depressed, but he denied that Applicant ever appeared to be mentally incapacitated.

The Court finds Applicant has not met his burden of proving Counsel's performance was deficient. Counsel credibly testified that he thoroughly investigated the case, including the character witnesses Applicant urged him to speak to and an independent expert in forensic pathology. Counsel further credibly testified that he either called those witnesses to testify at Applicant's trial or, as in the case of Dr. Sexton, strategically decided not to call them because he believed they would not be helpful. Counsel credibly testified that Applicant showed no signs of mental problems that would have warranted additional investigation of Applicant's mental health. The Court finds, based on this credible testimony, that Counsel's investigation was reasonable.

Furthermore, Applicant has not met his burden of proving that he was prejudiced by Counsel's alleged failure to investigate. An applicant who claims counsel was ineffective for failing to investigate or present certain evidence at trial must introduce that evidence at the post-conviction relief hearing. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279-80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Dempsey v. State* 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his trial counsel's failure to hire an expert because he did not have an expert testify at his PCR hearing), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); *Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation). Although Applicant complains that Counsel should have called additional witnesses and consulted Dr. Wren, he has failed to introduce the testimony of any of those witnesses at the evidentiary hearing to prove that their testimony would have been favorable.

Accordingly, this allegation is denied and dismissed with prejudice.

Allegation b: Counsel failed to request a jury instruction on the defense of accident

Applicant argues Counsel failed to request a jury instruction on the defense of accident. The Court finds this allegation is without merit.

It is clear from the trial transcript that Counsel's strategy was to argue that Victim's death was the result of a tragic accident, rather than child abuse. Counsel attempted to persuade the jury to believe Applicant's account that Victim fell off the bed while he was in another room and that Victim's injuries resulted from the fall combined with the accidental moving of the bed when Applicant jumped on it to extricate Victim from between the bed and the wall. (Tr. pp.535-56). The solicitor, in his closing argument, denied that Victim's death was an accident based on the autopsy evidence. (Tr. pp.556-85). However, while the parties were entitled to rely on the colloquial meaning of the word "accident" in their arguments to the jury, the *accident defense*—as a legal concept—would have to be charged according to its specialized meaning under South Carolina law.

Applicant has not provided this Court with a specific example of an accident instruction that would have been appropriate in this case. One formulation of the defense of accident that has been used in South Carolina is as follows:

The defendant has raised the defense of accident. The burden is on the State to prove beyond a reasonable doubt that the killing was not accidental.

Harm caused to another, including death, cannot entail criminal responsibility for the defendant if the harm was accidentally inflicted without intent to harm and without recklessness or negligence.

Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal

responsibility attaches to the act of the slayer. A homicide will be excusable on the ground of accident when:

- (1) the killing was unintentional;
- (2) the defendant was acting lawfully; and
- (3) due care was exercised in the handling of the weapon.

A homicide is not excusable on the ground of accident unless it appears that the defendant was acting lawfully.

Defense of Accident, Anderson, S.C. *Requests to Charge - Criminal*, § 6-2. This formulation is obviously inapplicable to Applicant's case because this charge posits that the killing was accomplished through the use of a "weapon." Here, neither the State nor the defense claim that Victim was killed by a weapon, and there was no evidence at the trial to support an inference that a weapon was used.

A more general formulation of the defense of accident is this:

Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer. If it be shown that the killing was unintentional, that it was done while the perpetrator was engaged in a lawful enterprise and was not the result of negligence, the homicide will be excused on the score of accident.

23 S.C. Jur. *Homicide* § 3 (quoting *State v. Brown*, 205 S.C. 514, 521, 32 S.B.2d 825, 828 (1944)).

While this charge does not include a reference to a weapon, both it and the other charge expressly state that the defense of accident does not apply when the homicide is the result of *negligence*.

Homicide by child abuse, however, requires "extreme indifference to human life," which is a more culpable mental state than negligence. "Under S.C. Code Ann. § 16-3-85(A), a person is guilty of homicide by child abuse if the person causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." *State v. McKnight*, 352 S.C. 635, 644, 576 S.E.2d 168, 172-

73 (2003). Our appellate courts have held that "extreme indifference" is a mental state more closely akin to recklessness or willfulness than to mere negligence. *See id.* at 644-45, 576 S.E.2d at 173 (analogizing the "extreme indifference" standard to that required for reckless homicide cases, namely "a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof").

Not only does the technical meaning of the accident defense misstate the requisite mental state for homicide by child abuse, but the language of the accident defense is actually *more* favorable to the State than the language of the homicide by child abuse statute. While the statute requires the State to prove "extreme indifference," the law of accident will be satisfied—and the defense unavailable—if the State proves mere "negligence." Had Counsel insisted on an accident charge under South Carolina law, it could have misled the jury into believing the State only had to prove negligence to prevail, rather than extreme indifference to human life.

Because the defense of accident does not fit the law or facts of Applicant's case, Applicant has not met his burden of proving that Counsel was deficient for not requesting such a charge. Moreover, because Counsel was still able to vigorously argue that Victim's death was an accident according to the colloquial meaning of the word, Applicant has also failed to prove he was prejudiced by the omission of the accident charge. Accordingly, this allegation is denied and dismissed with prejudice.

Allegations c and d: Related to photos of Applicant smoking marijuana

Applicant argues Counsel failed to object to photographs of Applicant smoking marijuana on the ground that they bore no logical connection to the crime charged. At the evidentiary hearing, Counsel testified that the State tried to prove that Applicant was under the influence of marijuana at the time of Victim's death. Clearly, if the jury believed the State's theory that

Applicant was smoking marijuana on the night Victim died, it could have inferred a "logical connection" between Applicant's intoxication and his mistreatment of Victim. Therefore, Counsel was not deficient for failing to object on this ground.

Applicant also claims Counsel abandoned his cross-examination of the computer expert, Investigator Amick, who testified about the timestamp on the smoking photos. The trial transcript shows that Counsel asked Investigator Amick whether Applicant consented to the search of his phone, and the witness agreed that he did. (Tr. p.390). In closing argument, Counsel used that testimony to argue that Applicant cooperated with the investigation and was not trying to hide anything from law enforcement. (Tr. p.554). Although Counsel did not ask any further questions of the witness, he did effectively use his cross-examination to make a point in closing argument. Counsel also credibly testified, at the evidentiary hearing, that he wanted to move on from the issue of his client's drug use as quickly as possible. He believed that it ultimately did not move the needle, since the most damning evidence against his client was not his marijuana use but the fact that his healthy daughter had sustained fatal injuries while concededly in his care. In addition, on direct examination of Applicant, Counsel successfully brought out Applicant's alternative explanation that the timestamp of the photos had changed when Applicant saved them to a different location on his phone. Therefore, the Court finds Applicant has not proven Counsel's performance was deficient as to this allegation.

In addition, Applicant has failed to present any testimony from Investigator Amick to substantiate his claim that additional cross-examination would have been helpful to the defense. And the smoking photos themselves were merely cumulative to other evidence before the jury of Applicant's marijuana use, including Applicant's own statements to law enforcement and his own

testimony on the stand. Therefore, the Court finds Applicant has not met his burden of proving prejudice either. Accordingly, these allegations are denied and dismissed with prejudice.

III. CONCLUSION

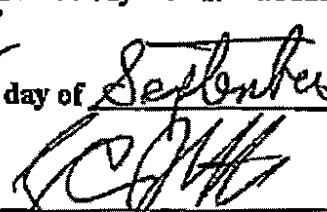
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6th day of September, 2023.


 EUGENE C. GRIFFITH, JR.
 Presiding Judge
 Sixteenth Judicial Circuit

York, South Carolina

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Holding Limited by *Aice v. State*, S.C., September 9, 1991

305 S.C. 453
Supreme Court of South Carolina.

Joseph R. AUSTIN, Petitioner,
v.
STATE of South Carolina, Respondent.

No. 23256.

Submitted May 17, 1988.

Decided Sept. 9, 1991.

Synopsis

After denial of application for postconviction relief (PCR), movant filed second application. The Circuit Court, Orangeburg County, John Hamilton Smith, J., summarily dismissed application. Certiorari was granted. On petition for rehearing, the Supreme Court held that remand was required for evidentiary hearing on issue of whether movant requested and was denied opportunity to seek appellate review.

Reversed and remanded.

West Headnotes (1)

[1] **Criminal Law** ⇨ Remand for Determination or Reconsideration of Particular Matters

Where convict alleged in his second postconviction relief (PCR) application that he expressed desire to seek review of denial of his first PCR application but that his counsel failed to timely seek review, convict stated claim of ineffective assistance, thus requiring remand for evidentiary hearing on issue of whether in fact convict requested and was denied opportunity to seek appellate review. Code 1976, § 17-27-100; Sup.Ct.Rules, Rule 50(9) (Repealed); U.S.C.A. Const.L.Amend. 6.

228 Cases that cite this headnote

Attorneys and Law Firms

****396 *453** D. Mark Stokes, Asst. Appellate Defender, South Carolina Office of Appellate Defense, Columbia, for petitioner.

Atty. Gen., T. Travis Medlock, Chief Deputy Atty. Gen. Donald J. Zelenka, and Asst. Attys. Gen., Frank L. Valenta, Jr., and Miller W. Shealy, Jr., Columbia, for respondent.

Opinion

PER CURIAM:

This case is before the Court on a Petition for Rehearing. Opinion number 23256, filed August 27, 1990, is withdrawn and the following Opinion is substituted as the Opinion of this ***454** Court. This case involves an appeal from the summary dismissal of petitioner's application for post-conviction relief (PCR). We reverse and remand for an evidentiary hearing.

Petitioner's original application for PCR was denied after a hearing. Petitioner subsequently filed this application alleging only that his PCR counsel was ineffective in failing to seek appellate review of the denial of PCR.

The right to seek appellate review of the denial of PCR is expressly authorized by state law. S.C.Code Ann. § 17-27-100 (1985); Supreme Court Rule 50(9). Whether such review is granted is discretionary with this Court. *Knight v. State*, 284 S.C. 138, 325 S.E.2d 535 (1985).

While we are aware the constitutional right to counsel does not extend to discretionary appeals on collateral attack, we have ruled that *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), shall continue to apply in PCR matters. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988); compare *Pennsylvania v. Finley*, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). *Anders* requires appellate counsel to brief arguable issues, despite counsel's belief the appeal is frivolous, as a safeguard of the right to appeal. In applying *Anders* on PCR, we have recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR. Supreme Court Rule 50(6) expressly provides for the appointment of counsel to seek appellate review on PCR.

Because petitioner is entitled to the assistance of appellate counsel on PCR, and because we must craft a remedy to correct the unfairness which has occurred, we find his

allegation that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance.¹ We therefore remand for an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review. If the circuit court finds this to be true, this Court shall review whether the petitioner was prejudiced by the failure to obtain review of a meritorious issue. In deciding *455 this question, we shall use an analysis akin to that of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). If the circuit court finds that the petitioner never in fact sought

discretionary review, the petitioner may appeal that finding and we shall review the appeal based on the normal "any evidence" standard. See *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

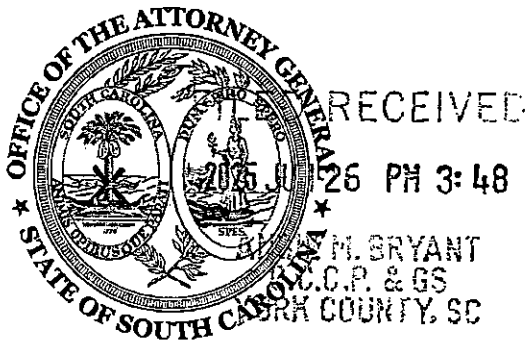
REVERSED AND REMANDED.

All Citations

305 S.C. 453, 409 S.E.2d 395

Footnotes

- 1 But see *Aice v. State*, 409 S.E.2d 392 (S.C.1991), submitted in conjunction with this Opinion, wherein we hold that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel.



ALAN WILSON
ATTORNEY GENERAL

June 24, 2025

The Honorable Angie Bryant
York County Clerk of Court
Post Office Box 649
York, SC 29745-0649

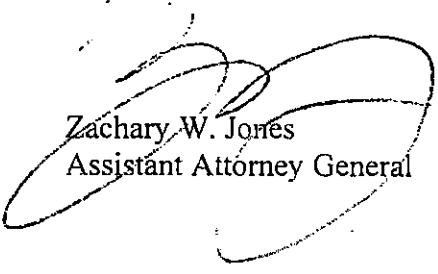
Re: Quentin J. Evans, #363391 v. State of South Carolina
2025-CP-46-02258

Dear Ms. Bryant,

The above-referenced individual has filed an Application for Post-Conviction Relief (PCR) in the Circuit Court and needs to have an attorney appointed to represent him. Please appoint an attorney and serve our office, the applicant, and the attorney with the results of the appointment.

If you have any questions regarding this matter, please let me know.

Sincerely,


Zachary W. Jones
Assistant Attorney General

ZWJ/zew

cc: Quentin J. Evans, #363391

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Quentin Jarvis Evans, #363391

Plaintiff(s),

-vs-

South Carolina State Of,

Defendant(s).

FILED-RECEIVED

2025 JUL -9 PH 4:07

ANGIE M. BRYANT

IN THE COURT OF COMMON PLEAS

16th JUDICIAL CIRCUIT

CASE NO.: 2025CP4602258

APPOINTMENT OF COUNSEL OR GAL

(Select one.)

☒ ORDER☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- ☒ Post-Conviction Relief (PCR)/habeas case ☐ Adoption ☐ Juvenile
☐ SVP case ☐ Custody and/or Visitation ☐ Abuse and Neglect
☐ Minor Name Change ☐ Other: Post Convict Rel 500

It appears Quentin Jarvis Evans, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
☐ court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
☐ Other:

Therefore, it is ordered that Chelsey F. Marto hereby is appointed as (Select one.)

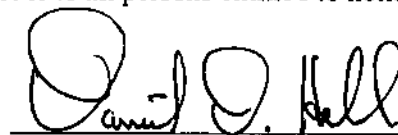
☒ Counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED

July 9, 2025


☒ Circuit Judge☐ Clerk of Court

Plaintiff Attorney:

Chelsey F. Marto	
P.O. Box 8795	
Columbia, SC 29201	

Defendant Attorney:

Zachary William Jones	
PO Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA RECEIVED IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) FOR THE SIXTEENTH JUDICIAL CIRCUIT

2026 FEB 16 PM 2:07

Quentin J. Evans, #363391,) CASE NO. 2025-CP-46-02258

ANGIE M. BRYANT)
C.C.P. & GS)
Applicant,)
YORK COUNTY, SC)

v.)

RETURN
(Counsel Appointed)

State of South Carolina,)

Respondent.)

In response to Quentin J. Evans's ("Applicant") action for post-conviction relief (PCR) filed on June 5, 2025,¹ Respondent makes this Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During its April 2014 term, the York County Grand Jury indicted Applicant for Homicide by Child Abuse (2014-GS-46-01229). David Clayton Cook, Esquire (Trial Counsel), represented Applicant. Solicitor Kevin Scott Brackett and Deputy Solicitor Willy Thompson of the Sixteenth Circuit Solicitors Office prosecuted the case.

¹ Respondent's return was due to be filed within ninety days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCPP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

On March 16–19, 2015, Applicant proceeded to a jury trial before the Honorable Joseph Derham Cole, Sr., circuit court judge. The jury found Applicant guilty as indicted. On March 19, 2015, Judge Cole sentenced Applicant to forty-five (45) years' imprisonment for Homicide by Child Abuse, with credit for time served.

Applicant filed a timely notice of appeal. On January 29, 2016, Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense perfected Applicant's appeal by filing an Anders² brief, raising the following issue:

Whether the trial judge committed plain error by not charging the jury on the defense of accident when such a charge was supported by the evidence, the defendant's testimony, and the defense's theory of the case as stated in its arguments to the jury?

On November 23, 2016, the South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders in an unpublished opinion. State v. Evans, Op. No. 2016-UP-495 (S.C. Ct. App. filed Nov. 23, 2016). The Remittitur was returned to the lower court on January 11, 2017.

First PCR Action: 2017-CP-46-01938

On July 6, 2017, Applicant filed his initial application for post-conviction relief along with an amendment, alleging that he was being held in custody unlawfully because of the following (excerpts verbatim):

1. Ineffective Assistance of Counsel.
 - a. "Counsel was ineffective for failing to investigate this case."
 - i. "Counsel has a duty to investigate."
 - b. "Counsel failed to request for a jury instructions on the defense of accident when such a charge was supported by the evidence, the defendant testimony and the defense's theory of the case."
 - c. "Counsel failed to object and argue the state never established a logical connection between the smoking photo's and the crime charged."
 - d. "Counsel abandon cross-examination of computer specialist."

² Anders v. California, 386 U.S. 738 (1967).

- e. "Counsel failed to obtain an expert witness for the defense."
- f. "Counsel failed to properly acquaint himself with the law and the facts surrounding my case and as a direct result of his intentional negligence, there was a very serious error in his assessment of both the law and the facts."

On October 26, 2017, the State filed its Return. On April 17, 2023, an evidentiary hearing was convened before the Honorable Eugene C. Griffith, Jr. at the Moss Justice Center in York, South Carolina. Applicant was present and represented by Michael D. Brown, Esquire. Assistant Attorney General Zachary W. Jones represented the State. On September 6, 2023, Judge Griffith filed his Order of Dismissal dismissing the application with prejudice.

CURRENT APPLICATION

On June 5, 2025, Applicant filed this application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following (excerpts verbatim):

- 1. Ineffective Assistance of Counsel
 - a. "Belated"
 - b. "Counsel was ineffective for failing to file Notice of Appeal."

Applicant requests relief in the form of "[s]entence reduction, vacate conviction and sentence and remand for a judgment and any other relief this court deems just and proper."

Attached to this return and incorporated by reference are the York County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the SCDC, Applicant's trial transcript, the records of Applicant's appeal, the records of Applicant's previous PCR action, and the records of the current PCR action. Respondent reserves the right to amend this return upon receiving any relevant materials.

RESPONSE TO ALLEGATION OF FAILURE TO FILE PCR APPEAL

Successive applications such as the one before this court are disfavored. S.C. Code Ann. § 17-27-90. However, here Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application because PCR Counsel failed to file an appeal following the issuance of the Order of Dismissal, filed October 10, 2017. Inherent in this claim is the allegation of ineffective assistance of PCR counsel.

The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.] § 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State. Austin provides for a belated appellate review of an initial post-conviction relief action where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal the final judgment by post-conviction relief court).

But Austin "is limited to its particular factual situation." Aice, 305 S.C. at 452, 409 S.E.2d at 394.³ Pursuant to Austin, an evidentiary hearing may be conducted in regard to a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." Austin, 305 S.C. at 454, 409 S.E.2d at 396. "If the circuit court finds that the petitioner never, in fact, sought discretionary review, the petitioner

³ Aice was issued in conjunction with Austin, limiting the reach of Austin and holding "that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel." 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

may appeal that finding." *Id.* at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial post-conviction relief application and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, Applicant asserts prior PCR Counsel failed to file an appeal on his behalf. At the present time, Respondent lacks sufficient information to determine whether Applicant made a knowing, voluntary, and intelligent waiver of his right to seek appellate review from the denial of his first post-conviction relief action. Accordingly, Respondent requests an evidentiary hearing to determine if he is entitled to Austin review of his initial post-conviction relief action.

REQUESTED RELIEF UNAVAILABLE IN PCR ACTIONS

In his prayer for relief, Applicant request is unavailable in a post-conviction relief action. The only relief available to Applicant in the current application is a belated appellate review of his initial post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968). For these reasons, if the application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a thorough colloquy with Applicant to apprise him of the relief available in a PCR. If at the evidentiary hearing, Applicant indicates no desire for appropriate relief but a desire to proceed, Respondent will at that time move to dismiss the application.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All

claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id., 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute, resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

WHEREFORE, Respondent respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of Trial Counsel.

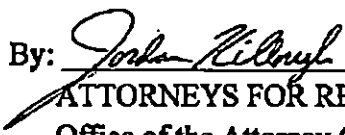
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

JORDAN BRETT KILLOUGH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 3, 2026

FILED-RECEIVED
2026 FEB 16 PM 2:07

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Quentin J. Evans)
SCDC No. 363391)
Applicant,)
v.)
State of South Carolina)
Respondent.)

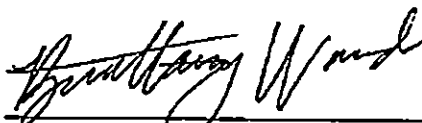
ANGIE M. BRYANT
C.C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON
PLEAS
FOR THE SIXTEENTH JUDICIAL
CIRCUIT
Case No.: 2025-CP-46-02258
Certificate of Service by Mail

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Chelsey F. Marto, Esquire
PO Box 8795
Columbia, SC 29201

DATED this 3rd day of February 2026.



Brittany Ward, Legal Assistant
For Respondent

789
Mar 10 2026

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Quentin J. Evans, #363391,
Applicant,

ANGIE M. BRYANT
C.C.O.P. & GS
YORK COUNTY, SC

CASE NO. 2025-CP-46-02258

v.

State of South Carolina,
Respondent.

CONSENT ORDER GRANTING
APPEAL PURSUANT TO
AUSTIN V. STATE

This matter comes before the Court by way of Quentin J. Evans's (Applicant) application for post-conviction relief (PCR) filed on June 5, 2025. Respondent, the State of South Carolina, made its Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During its April 2014 term, the York County Grand Jury indicted Applicant for Homicide by Child Abuse (2014-GS-46-01229). David Clayton Cook, Esquire (Trial Counsel), represented Applicant. Solicitor Kevin Scott Brackett and Deputy Solicitor Willy Thompson of the Sixteenth Circuit Solicitors Office prosecuted the case.

On March 16–19, 2015, Applicant proceeded to a jury trial before the Honorable Joseph Derham Cole, Sr., circuit court judge. The jury found Applicant guilty as indicted. On March 19, 2015, Judge Cole sentenced Applicant to forty-five (45) years' imprisonment for Homicide by Child Abuse, with credit for time served.

Applicant filed a timely notice of appeal. On January 29, 2016, Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense perfected Applicant's appeal by filing an Anders¹ brief, raising the following issue:

Whether the trial judge committed plain error by not charging the jury on the defense of accident when such a charge was supported by the evidence, the defendant's testimony, and the defense's theory of the case as stated in its arguments to the jury?

On November 23, 2016, the South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders in an unpublished opinion. State v. Evans, Op. No. 2016-UP-495 (S.C. Ct. App. filed Nov. 23, 2016). The Remittitur was returned to the lower court on January 11, 2017.

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 - b. "Counsel failed to request for a jury instructions on the defense of accident when such a charge was supported by the evidence, the defendant testimony and the defense's theory of the case."
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¹ Anders v. California, 386 U.S. 738 (1967).

On October 26, 2017, the State filed its Return. On April 17, 2023, an evidentiary hearing was convened before the Honorable Eugene C. Griffith, Jr. at the Moss Justice Center in York, South Carolina. Applicant was present and represented by Michael D. Brown, Esquire. Assistant Attorney General Zachary W. Jones represented the State. On September 6, 2023, Judge Griffith filed his Order of Dismissal dismissing the application with prejudice.

CURRENT APPLICATION

On June 5, 2025, Applicant filed this application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following (excerpts verbatim):

1. Ineffective Assistance of Counsel
 - a. "Belated"
 - b. "Counsel was ineffective for failing to file Notice of Appeal."

Applicant requests relief in the form of "[s]entence reduction, vacate conviction and sentence and remand for a judgment and any other relief this court deems just and proper."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By way of his current application, Applicant has provided the following ground: Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant is requesting a belated appeal of the Order of Dismissal dated September 6, 2023, and issued on Case No. 2017-CP-46-01938. In support of this ground, the following factual support was provided: Applicant's counsel failed to file Notice of Appeal.

In Austin, the South Carolina Supreme Court provided for a belated appellate review of an initial post-conviction relief action where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see also S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). Pursuant to Austin, an evidentiary

hearing may be conducted in regard to a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." Id. at 454, 409 S.E.2d at 396. "If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." Id. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the South Carolina Supreme Court for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside the ordinary time limits for bringing such an appeal.

Here, both Applicant and Respondent agree that Applicant requested and was denied an opportunity to seek appellate review of his initial post-conviction relief application. Based upon the consent of counsel for both parties, this Court finds that Applicant is entitled to a belated appellate review of his initial post-conviction relief application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

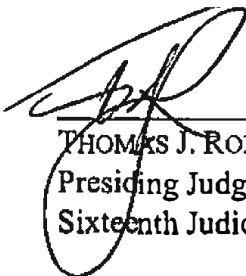
This Court notes that Applicant, through counsel, must serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of the judgment to secure the appropriate appellate review, and file such notice in the South Carolina Supreme Court within ten (10) days of service. Rule 203 & 243, SCACR. Furthermore, Applicant and counsel are directed to Rule 203, 207, and 243, SCACR regarding to ensure the proper filing and perfecting of an appeal.

[CONCLUSION PAGE FOLLOWS]

IT IS THEREFORE ORDERED:

1. That Applicant is granted a belated appeal of his initial post-conviction relief application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

AND IT IS SO ORDERED this 10th day of February, 2026.

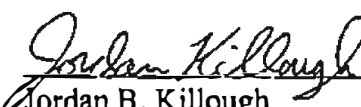

 THOMAS J. RODE
 Presiding Judge
 Sixteenth Judicial Circuit

2792

I consent,

/s Chelsey F. Marto
 Chelsey F. Marto
 Attorney for Applicant

I consent,


 Jordan B. Killough
 Attorney for Respondent

York, South Carolina

WITNESSES

RHPD / Welch

ARREST WARRANT NUMBER

2014A4620304135

ACTION OF GRAND JURY

TRUE BILL

VERDICT

DOCKET NO. 2014-GS46- 01229

THE STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF GENERAL SESSIONS

APRIL 17, TERM 2014

THE STATE

VS.

QUENTIN JARVIS EVANS

Indictment for

HOMICIDE BY CHILD ABUSE

SC Code: 16-03-0085(A)(1)(B)(1)

CDR Code: 2356

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

794

Foreperson of Grand Jury

4-17-2014

Foreperson of Petit Jury

Date:

March 19, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on April 17, 2014, the Grand Jurors of York County present upon their oath:

HOMICIDE BY CHILD ABUSE

Quentin Jarvis Evans did in York County on or about January 23, 2014, commit the crime of Homicide by Child Abuse in that he caused the death of [REDACTED] Minor, a child who was under the age of eleven (11) at the time of her death, while committing child abuse or neglect, and the death occurred under circumstances manifesting an extreme indifference to human life. The crime occurred at 19 Wright Street in the City of Rock Hill, South Carolina all in violation of Section 16-3-85, *Code of Laws of South Carolina* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

YORK COUNTY, SC
CLERK OF COURT
ANGIE M. BRYANT
2025 JUN 10 AM 9:15
CERTIFIED TRUE COPY

Willy Thompson
DEPUTY SOLICITOR

QUENTIN JARVIS EVANS

AKA:

Race: Black Sex: M Age: 26

DOB: 1988 SS#: [REDACTED]

Address: Wright Street

City, State, Zip: Rock Hill, SC 29730

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Homicide By Child Abuse

In violation of § 16-03-0085(A)(1)(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2356

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Willy Thompson 65118
Willy Thompson, Deputy Solicitor SC Bar #[Signature] 75081
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ TOTAL \$ 130

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Maria Nelson

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2014GS4601229

A/W: 2014A4620304135

Date of Offense: 01/23/2014

S.C. Code §: 16-03-0085(A)(1)(B)(1)

CDR Code #: 2356

SENTENCE SHEET

ORIGINAL

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge: [Signature]

Judge Bar ID: Sentence Date: 3-19-14Judge Code: 2063

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: