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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2010-GS-30-1773 and 1774

State of South Carolina,.....Respondent,

v.

Ashley N. Hepburn,.....Appellant.

RECORD ON APPEAL
Volume I of IV

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State of South Carolina)
) Court of General Session
County of Laurens) 2010-GS-30-1773, 1774

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State of South Carolina)
) vs.) Transcript of Record
)
Ashley Nicole Hepburn and)
Richard Brandon Lewis)
 Defendants) VOLUME I

February 22, 2011
Laurens, South Carolina

B E F O R E:

Honorable Frank R. Addy, Jr., Judge; and a jury.

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Attorney for Richard Brandon Lewis

Joy E. Holston
Official Court Reporter

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1 THE COURT: Ladies and gentlemen of the jury panel,
2 we are about to begin the trial of the State of South
3 Carolina versus Ashley Hepburn and Brandon Lewis. The
4 Solicitor has passed me the indictments in this case.
5 Ladies and gentlemen, the indictments in this case allege
6 indictments 10-GS-30-53, I am sorry, correction.
7 Indictments 10-GS-30-1773 and 1774 charge Ashley Nicole
8 Hepburn with the offenses of homicide by child abuse as
9 well as aiding and abetting homicide by child abuse.
10 Ladies and gentlemen, the indictments allege that on or
11 about October 12th through October the 13th in Laurens
12 County, 2009 in Laurens County that Ms. Hepburn did
13 willfully and unlawfully commit the offense of homicide by
14 child abuse causing the death of a child under the age of
15 eleven while committing abuse and neglect by an act or
16 omission and that the death occurred under circumstances
17 manifesting an extreme indifference to human life. The
18 alleged victim in this case is Audrina Hepburn.
19 Indictment 1774 alleges that Ms. Hepburn did in Laurens
20 County on or about August the 1st of 2009 through October
21 13th of 2009 willfully and unlawfully commit the offense
22 of homicide by child abuse by knowingly aiding and
23 abetting another person to commit child abuse or neglect
24 and the child abuse or neglect resulted in the death of a
25 child under the age of eleven namely Audrina Hepburn, date

1 of birth, June 6th of 2008 who did die on October 17th of
2 2009 due to the injuries attributed to child abuse or
3 neglect in violation of the laws of this State.

4 Ladies and gentlemen, the indictments with regard to
5 Richard Brandon Lewis are indictments 10-GS-30-1929 and
6 1930. These indictments, indictment 1930 alleges that
7 Richard Brandon Lewis did in Laurens County on or about
8 October 12th through October 13th, 2009 willfully and
9 unlawfully commit the offense of homicide by child abuse
10 by causing the death of a child under the age of eleven
11 while committing child abuse and neglect by an act or
12 omission and the death occurred under circumstances
13 manifesting an extreme indifference to human life to wit:
14 that of Audrina Hepburn, date of birth, June 6th of 2008
15 who died on October 17th of 2009 as a result of injuries
16 attributed child abuse and neglect in violation of the
17 laws of this State. Indictment 1929, that is the
18 indictment for aiding and abetting homicide by child
19 abuse. It alleges that Richard Brandon Lewis did in
20 Laurens County on or about August 1st of 2009 through
21 October 13th of 2009 willfully and unlawfully commit the
22 offense of homicide by child abuse by knowingly aiding and
23 abetting another person to commit child abuse or neglect.
24 And the child abuse or neglect resulted in the death of a
25 child under the age of eleven named Audrina Hepburn, date

1 of birth, June 6th of 2008, dieing October 17th of 2009 as
2 a result of the injuries attributed to child abuse or
3 neglect in violation of the laws of this State.

4 Now, ladies and gentlemen, the first that I want to
5 do is explain to you that the indictments in this
6 particular case are not evidence in this case in any form
7 whatsoever. An indictment is nothing more than the legal
8 charge by which a case is brought in this court. It is a
9 piece of paper and that is all, it is an allegation and
10 that is all. It is not evidence of anything contained in
11 the indictments. The defendants in this case have plead
12 not guilty to these charges and that places the burden
13 squarely on the State of South Carolina to prove their
14 guilt to the satisfaction of the jury beyond a reasonable
15 doubt. So, again, the fact that a person is indicted for
16 an offense is in no way evidence in any way shape or form
17 of any kind. It is merely the charging instrument by
18 which a charge is brought into this court. The State of
19 South Carolina in this case will be presented by Ms.
20 Suzanne Mayes with the Prosecution Coordination
21 Commission. Ms. Mayes, if you will stand and introduce
22 yourself to the jury pool as well as anyone that you want
23 to introduce sitting at the counsel table.

24 MS. MAYES: My name is Suzanne Mayes, I am a
25 prosecutor with the South Carolina Commission on

1 Prosecution Coordination. And I am handling this case in
2 conjunction with the Eighth Circuit Solicitors Office.
3 Also seated at the table is Investigator Robert Plaxico of
4 the Laurens County Sheriffs Department and Agent Casey
5 Kirkland of the South Carolina State Law Enforcement
6 Division.

7 THE COURT: Thank you, Ms. Mayes. Ms. Ashley Hepburn
8 in this case is being represented by Mr. Bryan Able of the
9 Laurens Bar. Mr. Able, if you would care to stand and
10 introduce yourself and Ms. Hepburn to the members of the
11 jury panel, please, sir.

12 MR. ABLE: My name is Bryan Able, I am an attorney
13 here in Laurens, I have practiced law here for 24 years.
14 I am representing Ashley Nicole Hepburn sitting at the
15 defense table with me.

16 THE COURT: Thank you, Mr. Able. Mr. Lewis in this
17 case, ladies and gentlemen, is being represented by Rauch
18 Wise of the Greenwood Bar. Mr. Wise, you are recognized
19 to introduce yourself and Mr. Lewis to the jury panel.

20 MR. WISE: I am Rauch Wise from Greenwood, South
21 Carolina and I am representing Brandon Lewis.

22 THE COURT: My first question to you, ladies and
23 gentlemen, is there any member of the jury panel who has
24 previously retained either Mr. Wise or Mr. Able or Ms.
25 Mayes or has been represented by them in the past or is a

1 close, personal or family, has a close, personal business
2 or familiar relationship with any of the lawyers involved
3 in this case. So, again, is there any member of the jury
4 panel who has previously been represented by Mr. Able, Mr.
5 Wise or Ms. Mayes or if any member of the jury panel have
6 a close, personal business or familiar relationship with
7 any of the lawyers, involved in this case, if so please
8 stand. Yes sir, what is your name, please.

9 JUROR: David Corley.

10 THE COURT: Mr. Corley, do you remember your jury
11 number, please?

12 JUROR: I think it is 38.

13 THE COURT: 38, it is 36. Mr. Corley, how does that
14 apply to you, sir.

15 JUROR: Mr. Able has done legal work for me before,
16 just minor things of bills and that kind of thing. My
17 wife currently teaches his son and I taught his older
18 daughter twice and will teach his son next year.

19 THE COURT: The fact that you have had this prior
20 relationship with Mr. Able would that prevent you from
21 being a fair and impartial juror in this case giving both
22 the State and the defense a fair hearing?

23 JUROR: No, sir.

24 THE COURT: Thank you very much, sir, you can have a
25 seat, Mr. Corley. Anyone else.

1 (No response.)

2 THE COURT: No one is standing. The defendants in
3 this case, again are Ms. Ashley Hepburn and Mr. Brandon
4 Lewis. They have been introduced to you. Is there any
5 member of the jury panel who has a close, personal,
6 business or familiar relationship with either Ms. Hepburn
7 or Mr. Lewis. If so, please stand.

8 (No response.)

9 THE COURT: No one is standing. Again, the State
10 alleges that this incident took place back on October the
11 12th of 2009, that is with regard to the charge of
12 homicide by child abuse. The State further alleges that
13 with regard to the charge of aiding and abetting homicide
14 by child abuse that the time period in question is from
15 August the 1st of 2009 through October 13th of 2009. The
16 State has alleged that this abuse happened, I believe, in
17 Laurens County of Cross Hill, is that correct, Ms. Mayes?

18 MS. MAYES: That is correct, Your Honor.

19 THE COURT: Is there any member of the jury panel who
20 has formed or expressed any opinion with regard to the
21 facts of this case. If so, please stand.

22 (No response.)

23 THE COURT: No one is standing. Potential witnesses,
24 Mr. Able and Mr. Wise and Ms. Mayes, if y'all will
25 approach, please.

1 (Whereupon, a bench conference was held in the
2 presence of the jury panel but out of the hearing of
3 the jury panel.)

4 BAILIFF: Your Honor, we have one juror that wants to
5 be excused to go to the restroom.

6 THE COURT: Okay, we will be at ease for just one
7 moment.

8 (Whereupon, jurors were excused for a break.)

9 BAILIFF: All jurors are present, Your Honor.

10 THE COURT: Ladies and gentlemen, potential witnesses
11 in this particular case are the following individuals and
12 I am going to read the list of names and if any of these
13 individuals are present in the courtroom I would ask that
14 you stand up when your name is called. Ladies and
15 gentlemen, this is a rather long list and I anticipate
16 that not all of these individuals will in fact testify in
17 this case but these are simply potential witnesses which
18 may or may not testify. Some of the names are duplicated
19 too, they appear more than once on the list so if you will
20 bear with me if I call the name twice please forgive me.
21 Again, all of these individuals probably will not be
22 testifying but they are potential witnesses in this case.
23 Agent Casey Kirkland from SLED, Agent Sarah Hurt, Agent
24 Ila Simmons from SLED, Agent Janice Bryson from SLED,
25 Agent Nikki Perry from SLED, Agent Matt Fitts from SLED,

1 Dr. Wilbur Smith of Wayne State University School of
2 Medicine, Lieutenant R.E. Franklin of the Laurens County
3 Sheriffs Office, Lieutenant Ben Blackmon of the Laurens
4 County Sheriffs Office, Deputy Joshua Garrison of the
5 Laurens County Sheriffs Office, Lieutenant Robert Plaxico
6 of the Laurens County Sheriffs Department, Lieutenant
7 Marty Crain of the Laurens Sheriffs Department, Robert
8 Wilkie of the Laurens Sheriffs Department, Sergeant Moody
9 of the Laurens Sheriffs Department, Judy Stiles of the
10 Sheriffs Department, J. Dawson of the Sheriffs Department,
11 Jim Burns of the Sheriffs Department, Calvin Duckett which
12 is a paramedic of Laurens EMS, Jonathan Bailey who is EMT
13 with Laurens EMS, Dr. Michelle Curry who is an emergency
14 physician at Self Regional Hospital in Greenwood, Todd
15 Smith who is a registered nurse at Self Regional Hospital
16 in Greenwood, Carmen Ricketts who is a registered nurse at
17 Self Regional in Greenwood, Dr. John W. McAlhany who is a
18 doctor at Self Regional in Greenwood, Angela Caldwell who
19 is an RRT at Self Regional, Alexander Brown who is the
20 Chaplain at Self Regional, Dr. Mary-Fran Croswell who is a
21 pediatrician at Greenville Hospital System, Dr. Robert
22 Seigler who is the Medical Director of the PICU at
23 Greenville Hospital System, Dr. Gail Suzzette Cameron who
24 is a doctor at the PICU in Greenville Hospital, Lisa
25 Soenen, S-O-E-N-E-N who is LBSW at Greenville Hospital

1 System, Dr. Michael Ward who is the Chief Medical Examiner
2 with Pathology Associates in Greenville, Dr. James
3 Fulcher, F-U-L-C-H-E-R who is a Pathology Associate in
4 Greenville, Dr. Christine Philpott who is a physician with
5 Carolina Health Centers in Greenwood, Cheryl Platt who is
6 a pediatric nurse practitioner with Carolina Health
7 Centers in Greenwood, Brenda Wolkekette,
8 W-O-L-K-E-K-E-T-T-E who is a nurse practitioner with
9 Carolina Heath Centers in Greenwood, the Custodian of
10 Records with Carolina Health Centers in Greenwood, Calvin
11 Hill who is with the Laurens County Department of Social
12 Services, Jennifer Fox of Pauline, South Carolina; Doris
13 Davis of Cross Hill, South Carolina; David Crumley of
14 Cross Hill, South Carolina; Daniel Hepburn of Clinton,
15 South Carolina; Rita Hepburn-Ebel of Clinton, South
16 Carolina; Kenny Ebel of Clinton, South Carolina; the
17 Custodian of Records for Laurens County 911, Lynn McMillan
18 of Spartanburg Children's Advocacy Center in Spartanburg,
19 Agent Art Myers of SLED, Nurse Karen Moore of Laurens
20 County Hospital, Custodian of Records for the Veterans
21 Administration Hospital in Columbia; Joseph Beraho,
22 B-E-R-A-H-O, who is a doctor with the Veterans
23 Administration Hospital in Columbia, Crystal P. Drake who
24 is a nurse at the V.A. Hospital in Columbia, Dr. Lucinda
25 Quick who works at the V.A. Hospital in Columbia, Susan

1 Farmer who also works at the V.A. Hospital in Columbia,
2 Karen Covington of the V.A. Hospital in Columbia, Vernetta
3 J. Hill who is a doctor with the V.A. Hospital in
4 Columbia, Dr. Joy Reeves who works at the V.A. Hospital in
5 Columbia, Tanya Hawkins who works at the V.A, Lahunta,
6 L-A-H-U-N-T-A Wright who works at the V.A. in Columbia,
7 Natalie Weathers who works at the V.A. in Columbia,
8 Praxedes, P-R-A-X-E-D-E-S S. Sebastian who is a doctor at
9 the V.A. Hospital in Columbia, Dr. Shariva Hutson,
10 H-U-T-S-O-N with Greenville Hospital System, Dr. Heather
11 Moreira, M-O-R-E-I-R-A of the Greenville Hospital System,
12 Dr. Jeffrey Hanna of the Greenville Hospital System, Dr.
13 Christopher Troup of the Greenville Hospital, Dr. Anthony
14 P. Johnson of the Greenville Hospital, Ashley Thompson of
15 Clinton, South Carolina; Debbie Lewis of Laurens County,
16 South Carolina; Carol Starnes of Laurens County, South
17 Carolina; Jan Nabors of the Laurens County Hospital, Kelly
18 Jones of the Laurens County Hospital, and the Custodian of
19 Records for AT&T. Additional potential witnesses are
20 Doris Davis, Faith Tolley, Hazel Davenport, David Cromley,
21 Alexander David Brown, Dr. Mary-Fran Croswell, Calvin
22 Hill; Dee Deal, that is spelled D-E-E and Deal, D-E-A-L;
23 Cheryl Darlene Platt, Brenda Jane Wulfekotte,
24 W-U-L-F-E-K-O-T-T-E; Dr. Michelle M. Curry, Ashley
25 Hepburn, Donna Lawson, Stephanie Womble, Casey Womble,

1 Tonya Sherfield and that is spelled, S-H-E-R-F-I-E-L-D;
2 Deborah Sherfield and M.J. Sherfield. Those are the
3 potential witnesses in this case and again I anticipate
4 that certainly not all of those witnesses will be called.
5 Is there any member of the jury panel who is related by
6 blood or marriage or has a close, business, personal or
7 familiar relationship with any of the potential witnesses
8 in this case. If so, please stand. Yes ma'am, starting
9 with you with the pink and gray. What is your name,
10 please, ma'am.

11 JUROR: I am Brandi Saunders.

12 THE COURT: Ms. Saunders, do you remember your jury
13 number, Ms. Saunders.

14 JUROR: 106.

15 THE COURT: 106. One second, please. And you are
16 related to one of the witnesses I called out?

17 JUROR: Yes, sir.

18 THE COURT: What is your relationship?

19 JUROR: Cousin.

20 THE COURT: First cousin or second or do you know?

21 JUROR: First cousin.

22 THE COURT: First cousin. The fact that this witness
23 is your first cousin would it prevent you from being fair
24 and impartial to the State and the defendants in this case
25 if that witness were to testify?

1 JUROR: No.

2 THE COURT: Thank you, very much. Yes ma'am, what is
3 your name, please?

4 JUROR: Juror number 39, Twila Creech.

5 THE COURT: Ms. Creech, how does that question apply
6 to you?

7 JUROR: A volunteer with the Marching Band at Laurens
8 High and Officer Marty Crain is there.

9 THE COURT: He is the school resource officer.

10 JUROR: No, he just volunteers with the band.

11 THE COURT: The fact that you work from time to time
12 with this officer, would that prevent you from being
13 impartial to both the State and the defendant if he were
14 to be called to testify?

15 JUROR: No, sir.

16 THE COURT: Thank you, Ms. Creech. Has any potential
17 juror where a close family member or relative or friend
18 ever been the victim of a serious crime or has any member
19 of the jury panel been charged or investigated or accused
20 of a particular crime. If so please stand. What I am
21 going to do with this question is I am going to ask the
22 folks to come forward to speak with me privately down
23 here. Again, this question relates to anyone who is, has
24 a close family member or they themselves have been or a
25 relative or a friend ever been a victim of a crime or been

1 accused or have been charged or investigated for a
2 particular crime, any crime at all. If so please come
3 down. What is your name?

4 JUROR: Ms. Shook, number 110.

5 THE COURT: How does that question apply to you?

6 JUROR: My son was murdered.

7 THE COURT: Your son was murdered. And was anyone
8 arrested as the result of that?

9 JUROR: Yes.

10 THE COURT: Were they convicted?

11 JUROR: Yes.

12 THE COURT: Would that affect your ability to be fair
13 and impartial to both the State and the defendant in this
14 case?

15 JUROR: Probably.

16 THE COURT: Thank you for coming, if you will remain
17 here, you are not going to serve on this case but you
18 might have to serve on another case, number 110. Ms.
19 Lancaster, she won't serve. That is juror number 110.
20 Yes sir, what is your name?

21 JUROR: Number 6. Paul Arnold.

22 THE COURT: How does that question pertain to you?

23 JUROR: My brother was convicted of sexual misconduct
24 in the '90's.

25 THE COURT: And that was in the '90's?

1 JUROR: Yes, sir.

2 THE COURT: The fact that your brother was convicted
3 of this crime does that affect your ability to be fair and
4 impartial in this case?

5 JUROR: No.

6 THE COURT: You are quite certain?

7 JUROR: Yes.

8 THE COURT: Thank you very much. Yes, ma'am. And
9 everybody, if you have any question as to whether this
10 applies to you or not feel free to come down and talk to
11 me privately here. If you are not certain if it applies
12 to you I would rather you come down out of an abundance of
13 caution than stay where you are. Yes, ma'am.

14 JUROR: Juror 169, Ana Shell.

15 THE COURT: Yes, Ms. Shell. How does that question
16 apply to you?

17 JUROR: My daughter was, she had been with my
18 granddaughter and the Judge there was, she was found
19 insufficient. She worked a little too hard or something
20 like that, very hard so they were finally taken away from
21 her for 28 days.

22 THE COURT: Was that a DSS case?

23 JUROR: Yes.

24 THE COURT: How long ago.

25 JUROR: Oh, many years ago. The child is now 17.

1 Sometimes I wanted to kill her myself.

2 THE COURT: Did you go to court with your daughter?

3 JUROR: They gave me custody and she got custody
4 back, everything is very happy now. She is 17 now.

5 THE COURT: The fact that, you want me to ask her
6 more about that particular involvement, Mr. Able?

7 MR. ABLE: No, sir.

8 THE COURT: The fact that this incident took place
9 with your daughter would that affect your ability, with
10 those allegations involved with abuse of a child and as
11 you have heard in this particular case, would that affect
12 your ability to be fair to both the State and the
13 defendant in this case?

14 JUROR: I will go by the evidence.

15 THE COURT: You will go by the evidence?

16 JUROR: Yes.

17 THE COURT: The fact that you had this happen in your
18 family won't affect you in any way?

19 JUROR: No.

20 THE COURT: Are you certain?

21 JUROR: I promise.

22 THE COURT: Thank you. Yes, ma'am?

23 JUROR: Nancy Seaver, number 108.

24 THE COURT: The question is whether you have ever
25 been a victim or charged with any kind of crime or had a

1 family member or close personal relative who was a victim
2 or charged with any kind of crime.

3 JUROR: Yes, my son, fifteen years he had an assault
4 and battery.

5 THE COURT: Assault and battery. And that was
6 fifteen years ago?

7 JUROR: Yes.

8 THE COURT: The fact that he was charged with and it
9 was just simple assault and battery in the Magistrate's
10 office?

11 JUROR: No, the second time he got three years of
12 probation.

13 THE COURT: So, this would be something in general
14 sessions.

15 JUROR: Yes.

16 THE COURT: The fact that your son was involved in
17 this fifteen years ago would that affect your ability to
18 be fair and impartial?

19 JUROR: Oh, no.

20 THE COURT: Thank you very much. You can stay with
21 us. Ms. Seaver is going to stick around. Yes, ma'am.
22 Frank Addy, what is your name, please?

23 JUROR: Jane Housel. This pertains to any family
24 member?

25 THE COURT: Let me find your name first.

1 JUROR: 60.

2 THE COURT: 69. All right, Ms. Housel, how does that
3 question apply to you?

4 JUROR: My stepson was brought on charges of domestic
5 violence in Greenville County.

6 THE COURT: And how long ago was that?

7 JUROR: Probably about three to four years ago.

8 THE COURT: And this was your stepson?

9 JUROR: Yes, I raised him. He was ten when I married
10 my husband.

11 THE COURT: How did those charges work out?

12 JUROR: I am not sure exactly. I wasn't there, I am
13 sorry.

14 THE COURT: The fact that he had this incident take
15 place in Greenville, would that affect your ability to be
16 fair and impartial to both the State and the defendant in
17 this case?

18 JUROR: No.

19 THE COURT: Thank you very much, Ms. Housel. Ms.
20 Housel will stay with us. Yes.

21 JUROR: Larry Foster, number 143.

22 THE COURT: Yes, sir. How does that question apply
23 to you?

24 JUROR: I was accused of sexual abuse of my daughter.
25 Nothing was found.

1 THE COURT: But it went no where?

2 JUROR: No, it just went to Family Court.

3 THE COURT: How long ago was that?

4 JUROR: She is, six years ago.

5 THE COURT: The fact that you had this involvement,
6 this accusation was made would that affect your ability to
7 be fair and impartial to both the State and the Defense in
8 this trial?

9 JUROR: No, sir.

10 THE COURT: Thank you, very much. Mr. Foster will
11 stay with us. Number 143. Yes, ma'am.

12 JUROR: Number 3, Diana Anderson.

13 THE COURT: Ms. Anderson, how does that question
14 apply to you?

15 JUROR: My second husband spent twelve years. The
16 envelopes that you send people, he was charged with that.

17 THE COURT: Not anthrax?

18 JUROR: Yes. He was charged with that.

19 THE COURT: The fact that you had these, that your
20 husband had been involved with these kind of things would
21 that affect your ability to be fair to both the State and
22 the defendant in this case?

23 JUROR: No.

24 THE COURT: Are you sure?

25 JUROR: Yes.

1 THE COURT: I appreciate that. Juror number 3, Ms.
2 Anderson will be staying with us. Yes, sir.

3 JUROR: Richard Detroia, 43.

4 THE COURT: 43. Frank Addy. It is so impersonal
5 that we refer to you by number but that is the only way we
6 can keep track. Mr. Detroia, how does that question apply
7 to you?

8 JUROR: You said against us, right?

9 THE COURT: Yes.

10 JUROR: Okay, that has happened. You mentioned a
11 relative.

12 THE COURT: Right, if you or any family member had
13 been accused of a crime or been a victim of a crime.

14 JUROR: I had a family member back in the 70's, there
15 was an accusation.

16 THE COURT: And what was the nature of that
17 accusation?

18 JUROR: Sexual assault.

19 THE COURT: It was an accusation, it was never--

20 JUROR: It went to court.

21 THE COURT: It went to court. How was this person
22 related to you?

23 JUROR: My brother.

24 THE COURT: That was in the 1970's, you say?

25 JUROR: Right.

1 THE COURT: All right. Mr. Detroia, the fact that
2 you had your brother involved in this, back in the 1970's
3 would that affect your ability to be fair?

4 JUROR: No.

5 THE COURT: You could give both the State and the
6 defendants in this case a fair trial?

7 JUROR: Absolutely.

8 THE COURT: Thank you, Mr. Detroia, very much.
9 Number 43 will stay with us. Yes, sir. Frank Addy what
10 is your number?

11 JUROR: 83.

12 THE COURT: 83, Timothy Mersman. How does that
13 question apply to you, sir.

14 JUROR: Back in the late 80's my daughter and her
15 friends were over. And child services called after work
16 and said that I was accused of child abuse. And it went
17 on for a couple of weeks and my wife finally called child
18 services and said either you charge him with it or you let
19 it go.

20 THE COURT: That was in the 80's?

21 JUROR: Yes.

22 THE COURT: Was that handled by DSS?

23 JUROR: That was in Florida.

24 THE COURT: Florida. Okay. The fact that you had
25 this experience down in Florida in the 80's, would that

1 affect your ability to be fair and impartial to both the
2 State and the defendant in this case. Obviously this case
3 involves allegations of child abuse. Would you be able to
4 be fair to everybody involved in this case?

5 JUROR: Yes, sir.

6 THE COURT: Very good. You are quite certain of
7 that, Mr. Mersman?

8 JUROR: Yes, sir.

9 THE COURT: Thank you, sir. Juror number 83, Mr.
10 Mersman, will be staying with us. There is one other
11 additional witness that I neglected to call out. Moreno
12 Foggy with the Laurens County Sheriffs Office. Is there
13 any member of the jury panel who is related by blood or
14 marriage or has a close business, personal or familiar
15 relationship with Moreno Foggy. If so, please stand.

16 (No response.)

17 THE COURT: No one is standing. All right. Is there
18 any member of the jury panel or a member of your immediate
19 family a member of any organization that has one of its
20 primary goals or promotions as to child abuse, domestic
21 violence or victims rights. If so, please stand. Yes
22 ma'am, what is your name, please?

23 JUROR: Laurie Franklin, number 144.

24 THE COURT: Number 144, hold on one second, Ms.
25 Franklin. How does that question apply to you, Ms.

1 Franklin?

2 JUROR: I work with the McCormick Children's Home and
3 take care of children that have been abused.

4 THE COURT: Are you a member of any, outside of your
5 work, I realize that is where you work but outside of your
6 employment do you belong to any organization that deals
7 with child abuse or victims rights?

8 JUROR: Other than through my job?

9 THE COURT: Okay.

10 JUROR: No.

11 THE COURT: The fact that you are employed with the
12 Children's Home over in McCormick, Ms. Franklin, would
13 that prevent, obviously you heard what I said a moment ago
14 about the allegations in this case. Would that prevent
15 you from being a fair and impartial juror in this case?

16 JUROR: No.

17 THE COURT: Are you quite certain of that, Ms.
18 Franklin?

19 JUROR: Yes.

20 THE COURT: Anyone else. No one is standing. Does
21 any potential juror or any member of your immediate family
22 to your knowledge know of anyone who works with the Eighth
23 Circuit Solicitors Office. If so, please stand.

24 (No response.)

25 THE COURT: No one is standing. Is there any

1 potential juror or a member of your family or close friend
2 ever been in a civilian or military law enforcement role.
3 Have you ever been or a close member of your family or
4 close friend ever been an officer in either the military
5 or in civilian. If so, please stand. Yes, ma'am.

6 JUROR: Ana Shell, 169. My husband was in the Air
7 Force.

8 THE COURT: Your husband was in the Air Force, ma'am?

9 JUROR: Yes.

10 THE COURT: And he was an MP, I guess or whatever
11 they call it in the Air Force?

12 JUROR: Yes.

13 THE COURT: The fact that he was an MP or in a law
14 enforcement when he was in the Air Force would that
15 affect, your ability to be fair and impartial to both the
16 State and the defendants in this case?

17 JUROR: I will be fine.

18 THE COURT: You will be fine?

19 JUROR: Yes, I am sure.

20 THE COURT: Thank you, Ms. Shell. Thank you very
21 much. Anyone else? Yes ma'am, what is your name, please.

22 JUROR: Susan Rogers, number 99.

23 THE COURT: And how does that question apply to you,
24 ma'am?

25 JUROR: My husband is retired from law enforcement.

1 THE COURT: And how long has he been retired?

2 JUROR: Three to five years, something like that.

3 THE COURT: Three to five years. The fact that your
4 husband was or the fact that your husband was at one point
5 in time employed in the law enforcement capacity would
6 that affect your ability to be fair and impartial to both
7 the State in this case as well as the defendants?

8 JUROR: No.

9 THE COURT: Are you quite certain of that?

10 JUROR: Yes.

11 THE COURT: Thank you very much, Ms. Rogers. Yes,
12 sir.

13 JUROR: Number 36, David Corley.

14 THE COURT: Yes sir, Mr. Corley, how does that
15 question apply to you, sir?

16 JUROR: My father was a City Policeman and a Laurens
17 County Sheriffs Deputy.

18 THE COURT: And how long ago was that?

19 JUROR: It has been years.

20 THE COURT: Is your father still alive?

21 JUROR: No.

22 THE COURT: The fact that your father worked in the
23 law enforcement capacity would that affect your ability to
24 be fair and impartial to both the State and the defendants
25 in this case?

1 JUROR: No.

2 THE COURT: Thank you very much, Mr. Corley. Yes,
3 ma'am.

4 JUROR: Number 37, Tamara Cox. My husband is retired
5 from the Highway Patrol.

6 THE COURT: Your husband is retired from the Highway
7 Patrol. How long has he been retired?

8 JUROR: Two years.

9 THE COURT: The fact that your husband used to work
10 with the Highway Patrol, Ms. Cox, would that prevent you
11 from being fair to both the State and the defendants in
12 this case giving both sides a fair trial?

13 JUROR: No.

14 THE COURT: Are you quite certain of that, Ms. Cox?

15 JUROR: Yes.

16 THE COURT: Thank you, Ms. Cox. Yes sir, what is
17 your name, please?

18 JUROR: Number 140, Glenn Culbertson.

19 THE COURT: Yes sir, Mr. Culbertson, how does that
20 question apply to you, sir?

21 JUROR: My nephew works with probation.

22 THE COURT: So, your nephew is currently employed
23 with the Probation, Pardon and Parole services?

24 JUROR: Yes, sir.

25 THE COURT: The fact that your nephew works with,

1 what is your nephew's name, if I may, sir?

2 JUROR: Trey Culbertson.

3 THE COURT: Trey Culbertson. The fact that he works
4 with the Probation Department would that affect your
5 ability to be fair and impartial to both the State and the
6 defendants in this case?

7 JUROR: No, sir.

8 THE COURT: Are you quite certain of that, Mr.
9 Culbertson?

10 JUROR: Yes, sir.

11 THE COURT: Thank you, Mr. Culbertson. Anyone else.

12 (No response.)

13 THE COURT: No one is standing. Is there any member
14 of the jury panel who would believe the testimony of a law
15 enforcement officer over that of any other person simply
16 because the person testifying is a law enforcement
17 officer. If so, please stand. Again, that question is,
18 is there any member of the jury panel who would believe
19 the testimony of an officer over that of someone who is
20 not an officer simply by virtue of the fact that the
21 person is an officer. If so, please stand.

22 (No response.)

23 THE COURT: No one is standing. Is there any member
24 of the jury panel now employed or has been employed in the
25 past or any member of your family now employed or has been

1 employed in the past as a counselor or other provider of
2 treatment services to alleged victims of criminal conduct
3 or been employed with a women's shelter, child abuse
4 advocacy center or other similar facility that provides
5 services to alleged victims of criminal conduct. And we
6 have already got you noted over there, ma'am, who works
7 over there in McCormick. We have got you noted. But
8 anyone else who has previously been employed or is
9 currently employed or has a member of your family now
10 employed in any of those capacities. If so, please stand.

11 (No response.)

12 THE COURT: No one is standing. Is there any member
13 of the jury panel who has read about this particular case
14 in any newspaper or seen anything about this case in the
15 news media, be that radio, television or any online media.
16 If so, please stand. I am going to ask that you come
17 forward and you will talk to me. Again, the question,
18 ladies and gentlemen, whether anybody has heard anything
19 about this case in the newspaper, on televisions or radio
20 or any sort of online reports or any online media. If so,
21 come on down. You only introduced to me five times
22 already but give it to me again.

23 JUROR: David Corley.

24 THE COURT: Yes sir, Mr. Corley, how does that apply
25 to you?

1 JUROR: I saw it on the news the night that they were
2 arrested. I saw it in the paper the next morning.

3 THE COURT: That was the local paper, Laurens
4 Advertiser?

5 JUROR: Right and the Greenville news station.
6 Channel 7 I guess out of Greenville.

7 THE COURT: So, you recall seeing those reports and
8 you recall reading about it in the newspaper?

9 JUROR: Yes, sir.

10 THE COURT: Mr. Corley, obviously you will have to
11 judge this case based upon the testimony and the evidence.
12 And I am sure you are an intelligent person and would you
13 be able to put aside what you have seen and what you have
14 recalled and what you saw on television and what you read
15 about it, can you put that aside and be fair in this case?

16 JUROR: Yes, sir.

17 THE COURT: Do you feel like you can't be fair?

18 JUROR: No.

19 THE COURT: Are you quite certain anything you have
20 seen on television or read in the paper is not going to
21 affect you in any way shape or form?

22 JUROR: Correct.

23 THE COURT: Thank you for that information. Yes sir,
24 what is your name?

25 JUROR: Kyle Stewart, number 116.

1 THE COURT: Mr. Stewart, how does that question apply
2 to you?

3 JUROR: When it first came about I saw it on the
4 news, homicide by child abuse. It was about Mr. Lewis.

5 THE COURT: So it was from a story that Mr. Lewis was
6 arrested? You remember reading about it or did you see it
7 on television?

8 JUROR: Just television.

9 THE COURT: Okay. Do you recall, let me ask you this
10 way, Mr. Stewart, obviously you are an intelligent man,
11 you understand a lot of times what is reported is the
12 truth and obviously the jurors are going to have to make a
13 decision solely on the evidence. I have got a simple
14 question for you. Are you able to put aside anything that
15 you saw in that news report and judge this based solely on
16 the evidence?

17 JUROR: Yes, sir.

18 THE COURT: You are able to do that?

19 JUROR: Yes, sir.

20 THE COURT: If there is any doubt in your mind I need
21 you to let me know. If you have any hesitation or you
22 have any doubt.

23 JUROR: I do and I am going to tell you why.

24 THE COURT: Yes, sir.

25 JUROR: I previously went to school with Mr. Lewis.

1 THE COURT: Are you telling me you are uncomfortable?

2 JUROR: I am.

3 THE COURT: Okay. Mr. Stewart, I appreciate your
4 candor with me and you won't serve on this case but I need
5 you to stick around. Mr. Stewart is not going to serve on
6 this case, that is 116. Yes, ma'am.

7 JUROR: Samantha Nobles, number 90.

8 THE COURT: Yes, ma'am.

9 JUROR: One of my friends had an email on Facebook, I
10 don't remember anything about it. I think it is one of my
11 oldest things I wrote. I can't tell you the last time I
12 have been on there.

13 THE COURT: So, you had a friend that emailed you on
14 the Facebook page.

15 JUROR: Yes.

16 THE COURT: How often do you go on Facebook, more
17 than a week, more than two weeks.

18 JUROR: Six months.

19 THE COURT: Did you visit the actual site because
20 there was at one time a site that addressed this
21 particular incident.

22 JUROR: I think maybe, I am not quite sure but I did
23 join the site.

24 THE COURT: So you did join?

25 JUROR: Yes.

1 THE COURT: Did you click like or anything?

2 JUROR: Probably.

3 THE COURT: But you did make it one of your causes?

4 JUROR: Yes.

5 THE COURT: Okay. I need honest information. So,
6 you probably visited the site and was listed as one of
7 your causes?

8 JUROR: Yes.

9 THE COURT: I am going to excuse you from the trial
10 of this case. I need you to stick around.

11 JUROR: Okay.

12 THE COURT: Ms. Nobles is excused. Yes, ma'am.

13 JUROR: Heather Nelson, 87.

14 THE COURT: Yes, how does that question apply to you?

15 JUROR: I think I saw this on Facebook. Well, I
16 don't remember who I have seen, seen it all.

17 THE COURT: And do you remember when this was, Ms.
18 Nelson?

19 JUROR: A month ago or so.

20 THE COURT: Through Facebook?

21 JUROR: Yes.

22 THE COURT: Did you happen to make it a friend or one
23 of your causes. Did you do that, did you find this or did
24 somebody send it to you?

25 JUROR: I don't really know.

1 THE COURT: What do you remember?

2 JUROR: It was a while back.

3 THE COURT: When you say a while back, several
4 months, more than three, four?

5 JUROR: Probably threeish.

6 THE COURT: But you do remember individually a
7 picture in your mind?

8 JUROR: Yes.

9 THE COURT: Do you remember if you clicked like?

10 JUROR: I don't think I ever like anything.

11 THE COURT: All right, that is to your credit. Ms.

12 Nelson, here is the question I have got for you.

13 Obviously this case has to be decided based upon evidence
14 and testimony from that stand and nothing else. Are you
15 able to put aside what you saw online and judge this
16 solely based upon the evidence that we have in this
17 courtroom?

18 JUROR: I would rather not.

19 THE COURT: Very good, I appreciate you being honest.
20 I need you to stick around. You are not going to serve on
21 this case. Anyone else, no one else. Has any member of
22 the jury panel had any conversations of any nature with
23 anyone about this particular case. If you previously
24 responded you don't need to come back down here again but
25 if I have excused you and if you previously responded you

1 don't need to come back down here. Again, the question is
2 has any member of the jury panel had any conversations
3 with anyone about this case and if so please stand.

4 (No response.)

5 THE COURT: No one is standing. Has any member of
6 the jury panel viewed or visited any online social
7 networking site such as Facebook or My Space or any link
8 concerning any person or event or facts involved in this
9 case and you haven't previously told me about it. If so,
10 please stand.

11 (No response.)

12 THE COURT: No one is standing. Has any member of
13 the jury panel viewed or visited any computer web pages
14 such as Virtual Memories, Life of Angels or petitioned
15 sites or any other sites that concern any person or events
16 or facts involving this case and you haven't previously
17 told us about it. If so, please stand.

18 (No response.)

19 THE COURT: No one is standing. Has any member of
20 the jury panel or a member of your immediate family or
21 close friend ever worked with the South Carolina
22 Department of Social Services. If so, please stand.

23 (No response.)

24 THE COURT: No one is standing. We are almost done,
25 I promise. Is there any member of the jury panel who has

1 attended Clinton High School within the last seven years.
2 If so, please stand. I am going to ask you guys to come
3 forward and just right about here and we are going to come
4 forward one at a time. Yes, sir.

5 JUROR: Number 45, Rico Dillard.

6 THE COURT: Mr. Dillard, you attended high school in
7 the last seven years?

8 JUROR: Yes, sir.

9 THE COURT: Okay. And you went to Clinton High?

10 JUROR: Yes.

11 THE COURT: Were you involved with any clubs or
12 organizations or involved socially with either Brandon
13 Lewis or Ashley Hepburn?

14 JUROR: No, sir.

15 THE COURT: You are quite certain you weren't
16 involved with them?

17 JUROR: No, sir.

18 THE COURT: Thank you very much. Yes, sir. What is
19 your name?

20 JUROR: Michael Whitlock.

21 THE COURT: Mr. Whitlock, number 179. You went to
22 Clinton High in the last seven years?

23 JUROR: Yes, sir.

24 THE COURT: Did you get involved with any clubs or
25 social activities with either Brandon Lewis or Ashley

1 Hepburn in this case?

2 JUROR: No, sir.

3 THE COURT: You are 18, is that right?

4 JUROR: Yes, sir.

5 THE COURT: So you were probably a few years behind
6 them?

7 JUROR: Yes, sir.

8 THE COURT: Very good, sir. Do you remember them at
9 all at school?

10 JUROR: No, sir.

11 THE COURT: Thank you, Mr. Whitlock. That is juror
12 number 179. Has any member of the jury panel attended
13 Piedmont Tech in Laurens within the last five years and if
14 so did you have any direct involvement, in any clubs or
15 organizations or socially with either Mr. Brandon Lewis or
16 Ms. Ashley Hepburn. If so, please stand.

17 (No response.)

18 THE COURT: No one is standing. Is there any member
19 of the jury panel who is a member of any social networking
20 site such as Facebook or My Space or something like that
21 or any other social media and you haven't previously
22 alerted us to the fact that you have liked a Facebook page
23 or a social media page. If so, please stand. If you have
24 a Facebook page or like a My Space page or anything like
25 that. If you will, those of you who are standing, okay, I

1 have got another question for you, okay. Stay standing.
2 I need you to stand. If you have got a Facebook page, My
3 Space page or any sort of social media page. -Is there any
4 member of and I am addressing those who are standing now,
5 anyone who is standing who has previously seen or heard
6 anything about this particular case through any social
7 media. If you heard something remain standing. If you
8 have not heard anything sit down. Mr. Wise and Mr. Able,
9 Ms. Mayes, I can ask them to re-stand and give us their
10 particular names if you want for the record. Do you all
11 have a preference, gentlemen or Ms. Mayes?

12 MS. MAYES: No preference, Your Honor.

13 THE COURT: Mr. Able, do you have any, we have about,
14 the record should reflect we had probably about, out of an
15 abundance of caution I am going to at least get their
16 names, the ones who did stand so the record will reflect.
17 Again, those of you have a Facebook page or My Space page
18 or any sort of social media page stand back up. I just
19 need to get your names real quick. Your name, sir.

20 JUROR: Eugene Spivak. I have a Facebook and did not
21 see anything.

22 THE COURT: 39.

23 JUROR: Juror number 2, David Allman.

24 THE COURT: And you have got a Facebook or My Space.

25 JUROR: Facebook. And I didn't see nothing.

1 THE COURT: Thank you, sir. Yes, ma'am.
2 JUROR: Sherry Wham, 178.
3 THE COURT: And you have a Facebook page?
4 JUROR: Yes, sir.
5 THE COURT: You haven't seen anything?
6 JUROR: No, sir.
7 THE COURT: You can have a seat. Yes, ma'am.
8 JUROR: 106, Brandi Saunders.
9 THE COURT: Ms. Saunders, you have got a Facebook
10 page, have you seen anything?
11 JUROR: No, sir.
12 THE COURT: Thank you, have a seat. In the blue with
13 the glasses. Yes, ma'am.
14 JUROR: 39, Twila Creech. I have got Facebook but
15 haven't seen anything.
16 THE COURT: You can have a seat. Yes, sir.
17 JUROR: 89, Doug Neveu. Facebook, haven't seen
18 anything.
19 THE COURT: Thank you, sir. Yes, ma'am.
20 JUROR: 154, Sharon Keith and no, I haven't seen
21 anything.
22 THE COURT: And you have a Facebook?
23 JUROR: Yes, Facebook.
24 THE COURT: Yes, ma'am.
25 JUROR: Nancy Seaver, 108. Facebook and I haven't

1 seen anything.

2 THE COURT: Yes, sir.

3 JUROR: Dylan Chappell. I have a Facebook page.

4 THE COURT: Okay, yes, ma'am.

5 JUROR: Tabitha Mathis. Juror number 80. I have
6 Facebook and I have not seen anything.

7 THE COURT: Thank you, Ms. Mathis. Yes, ma'am.

8 JUROR: Mary Parsons, number 165. I have Facebook
9 and I haven't seen anything.

10 THE COURT: Yes, sir.

11 JUROR: Juror number 138, I have Facebook and have
12 not seen anything.

13 THE COURT: Yes, sir.

14 JUROR: Juror number 83, Timothy Mersman. I have
15 Facebook and I haven't seen anything.

16 THE COURT: Thank you, sir.

17 JUROR: Number 74, Brian Langford, Facebook and I
18 haven't seen anything.

19 THE COURT: Thank you, Mr. Langford.

20 JUROR: Number 61, Austin Haupfear. 58cebook and I
21 haven't seen anything.

22 THE COURT: Thank you, Mr. Haupfear.

23 JUROR: Number 179, Michael Whitlock. I have
24 Facebook and I have not seen anything.

25 THE COURT: Okay. Thank you.

1 JUROR: Number 75, Charnessa Latimore and I have not
2 seen anything.

3 THE COURT: The last question, ladies and gentlemen,
4 is there any member of the jury panel who is aware of any
5 reason whatsoever, any reason at all, any concern that you
6 have, any reason that would prevent you from being fair to
7 both the State of South Carolina and the defendants in
8 this case in judging this case based solely upon the
9 evidence and the facts as presented in this court.

10 (No response.)

11 THE COURT: No one is standing. Any further voir
12 dire from the State?

13 MS. MAYES: Nothing further from the State, Your
14 Honor.

15 THE COURT: From the defense, Mr. Able?

16 MR. ABLE: Can we approach?

17 THE COURT: Y'all come on up.

18 (Whereupon, a bench conference was held in the
19 presence of the jury panel but out of the hearing of
20 the jury panel.)

21 THE COURT: Ladies and gentlemen of the jury panel,
22 it is currently 1:20, nobody has eaten, people are
23 probably hungry. So, I am going to, obviously jury
24 selection may take a little bit more time and I don't want
25 anyone's blood sugar to plummet on us so I am going to go

1 ahead and excuse most of you for lunch at this moment and
2 time. I am going to ask you be back here at 3:00 o'clock.
3 I am going, do we have a separate jury room where we can
4 have them go to in case we are still dealing with issues
5 involved in this case?

6 CLERK OF COURT: Yes, sir. We can put them in the
7 little courtroom.

8 THE COURT: Okay. I am going to ask you all to
9 report back in the small courtroom that is next door by
10 3:00 o'clock. I anticipate bringing you in shortly after
11 3:00 o'clock. The bailiffs will show you where that is.
12 All the jurors except for the two rows on this side, all
13 the other jurors are excused. The first two rows on this
14 side I need you to stick around just for a brief period of
15 time, I have a couple of questions I need to ask y'all.
16 But right now all the other jurors with the exception of
17 these first two rows are excused and come back in the
18 small courtroom by 3:00 o'clock today. Thank you very
19 much.

20 (Whereupon, the jury panel with the exception of the
21 first two rows were excused for a lunch break.)

22 THE COURT: I need y'all to come up one at a time and
23 I have got a couple of questions that I need to ask y'all.
24 So, if you would just start right here. What is your
25 name, sir.

1 JUROR: Eugene Spivak.

2 THE COURT: The reason I ask you to come up here, it
3 was reported that there was some indication during the
4 break among the jurors, did you hear anything about this
5 case?

6 JUROR: No, we were just talking about work and stuff
7 like that.

8 THE COURT: Were you talking to anybody about this
9 case or did you hear anybody talking about this case?

10 JUROR: No.

11 THE COURT: You are quite certain? I am talking
12 about today in this courtroom.

13 JUROR: We were talking about work and not getting
14 paid.

15 THE COURT: That is fine. Thank you. You are good
16 to go. Yes, ma'am.

17 JUROR: Nancy Morgan.

18 THE COURT: You are juror number 86. The reason why
19 I am asking you to come up, Ms. Morgan. It was reported
20 to me that during the break that we took that some of the
21 jurors were talking about this case and somebody had made
22 some comments about this particular case. Ms. Morgan, did
23 you hear anything and it is okay if you did.

24 JUROR: No, sir.

25 THE COURT: So, nobody spoke to you about this or

1 anything like that during the break?

2 JUROR: No, sir.

3 THE COURT: Thank you very much and I appreciate it.
4 Yes, sir.

5 JUROR: Juror number 2, David Allman.

6 THE COURT: The reason I asked you to come here. It
7 was reported to me that some of the jurors, they had been
8 talking about this case or may of said something during
9 one of the breaks. Did you hear anything said to you
10 about any of the facts in this case, Mr. Allman?

11 JUROR: During the breaks, no sir.

12 THE COURT: All right. Thank you, at any time?

13 JUROR: No sir, nothing about the case. No, sir.

14 THE COURT: Yes, sir.

15 JUROR: Paul Arnold, number 6.

16 THE COURT: The reason I asked you up here, it was
17 reported to me that during one of the breaks some of the
18 jurors were talking about this particular case. Did you
19 hear anything during the break about the facts of this
20 case?

21 JUROR: No, sir.

22 THE COURT: Nobody said anything to you?

23 JUROR: No, sir.

24 THE COURT: What is your name?

25 JUROR: Number 178, Sherry Wham.

1 THE COURT: The reason why I asked you up here, Ms.
2 Wham, during the break that we took it was reported to me
3 that some of the jurors may have been talking about this
4 case, the facts of this case. Did you hear anything about
5 this?

6 JUROR: No, sir.

7 THE COURT: It is okay if you did, are you quite
8 certain?

9 JUROR: I am quite certain.

10 THE COURT: So you didn't overhear anything at all?

11 JUROR: No, sir.

12 THE COURT: Thank you very much, Ms. Wham. Yes, sir.

13 JUROR: Number 8, Danny Attaway.

14 THE COURT: The reason why I asked you up here it was
15 reported to me that during one of the breaks that some of
16 the jurors may have been talking about this particular
17 case. Did you hear, it is okay if you did, did you hear
18 any of the jurors say anything about any issue involved in
19 this case?

20 JUROR: No, sir.

21 THE COURT: Nothing, you are quite certain of that?

22 JUROR: I am certain.

23 THE COURT: Yes, sir.

24 JUROR: Henry Blalock, number 15.

25 THE COURT: Mr. Blalock, the reason I asked you up

1 here it was alleged that somebody was talking or somebody
2 told me they overheard perhaps you and the other jurors on
3 the front row, the first two rows talking about this
4 particular case during one of the breaks. Do you recall
5 some conversation about the case?

6 JUROR: About the case?

7 THE COURT: About this case.

8 JUROR: No, sir.

9 THE COURT: It is okay if you did.

10 JUROR: No, I didn't, no sir. Not about the case.

11 THE COURT: Do you recall what, did you have any kind
12 of discussion about this case?

13 JUROR: I don't know whether, during the break?

14 THE COURT: Yes.

15 JUROR: I didn't really talk during the break. I
16 went outside and spoke to Mindy, (phonetic), about it.

17 THE COURT: Thank you, Mr. Blalock. Yes, sir.

18 JUROR: Richard Detroia, number 43.

19 THE COURT: It was reported that maybe some of the
20 jurors on the first two rows may have been discussing this
21 case during the break. Did you hear anything?

22 JUROR: No, sir.

23 THE COURT: Thank you very much. 176, Sandra
24 Tumblin. The reason I asked you down here, it was
25 reported to me that during a break some of the jurors may

1 have been talking about the case or something was said
2 about this case. While you were on a break did you hear
3 anything about this case, comments about this case?

4 JUROR: No, I didn't. None of the women said
5 anything.

6 THE COURT: Did you hear anyone say anything?

7 JUROR: No, sir.

8 THE COURT: Yes, sir.

9 JUROR: Number 27, Michael Campbell.

10 THE COURT: The reason I asked you up here during one
11 of the breaks that perhaps a couple of the jurors on the
12 first two rows, somebody had said something about this
13 case or a comment was made about this case. Did you hear
14 anything, any comments about this case?

15 JUROR: No, I don't recall hearing anything.

16 THE COURT: Thank you. Yes, sir.

17 JUROR: Christopher Hall, number 147.

18 THE COURT: The reason I asked you to stay, it was
19 reported to me that during one of the breaks, Mr. Hall,
20 some of the jurors perhaps in the first two rows, one or
21 two of the jurors commented about this case or made some
22 kind of comment about this case. Did you hear anything or
23 was any comment made?

24 JUROR: I did not.

25 THE COURT: You are quite certain of that?

1 JUROR: Yes, sir. One other thing I wanted to say.

2 THE COURT: Yes, sir.

3 JUROR: I grew up in a household where there was
4 domestic violence. There was verbally and physically
5 abuse from my father to my mother but not to me. I am not
6 sure I can be objective.

7 THE COURT: So, you have a concern, Mr. Hall, that
8 you might not be able to be objective because of the
9 allegations and abuse in this case?

10 JUROR: Yes, sir.

11 THE COURT: Give me your juror number again.

12 JUROR: 147.

13 THE COURT: All right. I am going to excuse you from
14 the trial of this case. If you can come back at 3:00
15 because I am not quite sure, we will probably select this
16 jury and once we have picked this jury and I will be able
17 to release you to call back in at a later point and time.
18 Just come back at 3:00 o'clock. Thank you for coming
19 forward and telling us. Okay, I am excusing 147. And you
20 understood the other two.

21 CLERK OF COURT: Yes, sir.

22 THE COURT: Okay. Blalock and Morgan and 147. 15,
23 86 and 147 are gone.

24 (Whereupon, the remaining jurors were excused for a
25 lunch break.)

1 THE COURT: Please secure those doors just in case a
2 remaining juror is present. Is there any person who is
3 currently in the courtroom who is a potential juror in
4 this case. If so, please stand. I don't recognize any
5 potential jurors. I think I have met them all and I think
6 we are okay. No one is standing. The record should
7 reflect, at sidebar before I allowed most of the jury
8 panel to exit the courtroom it was reported to me by Mr.
9 Able that two jurors, juror number 15 and juror number 86,
10 it was reported to Mr. Able that those two jurors had
11 engaged in a conversation about this case beforehand, I am
12 sorry, while we were on break. That is the reason I kept
13 the first two rows of jurors. And the record will reflect
14 the number of individuals I spoke to. I dismissed the, at
15 the time the only way that those individuals could be
16 identified was by their clothing. The gentleman was
17 wearing an orange bright Clemson colored shirt with a
18 collar and the lady was wearing primarily pink, a pink
19 blouse or pink top of some kind. I indicated that I would
20 question them, I am satisfied that we had removed, by
21 removing those two jurors, the one wearing the orange and
22 the one wearing pink. That is juror number 15 and juror
23 number 86, 86 is pink and 15 was orange. I have
24 instructed the clerk to remove those two individuals from
25 the pool that we are going to pick from and I also

1 dismissed the last potential juror who came up here who
2 explained that he had a history of domestic violence in
3 his family whereas apparently his father beat his mother.
4 That was number 147. Anything that we need to take up
5 before the lunch break. I would like to take an hour and
6 then we can address Mr. Wise's motions before we proceed
7 to selection.

8 MS. MAYES: Your Honor, just to get straight on the
9 motions that we are taking up at approximately 2:40. Is
10 that the motion on--

11 MR. WISE: The motion involving the number of jury
12 strikes by which I contend to just give us five strikes
13 each where if the State elected under the same facts to
14 charge either defendant with murder or manslaughter we
15 would be entitled to ten strikes each.

16 THE COURT: We will deal with that because I am
17 hungry. Anything else before we take a break for lunch?

18 MS. MAYES: Nothing from the State, Your Honor.

19 MR. ABLE: No, Your Honor.

20 THE COURT: If you want to make any additional
21 motions, if we can do that before the jury is picked.

22 MR. ABLE: I want to make a motion to change venue.

23 THE COURT: Right, I think you have to do that before
24 we pick the jury. We will do that after Mr. Wise's. See
25 you in about an hour.

1 (Whereupon, a lunch break was taken.)

2 MS. MAYES: May we approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 (Whereupon, a bench conference was held.)

5 THE COURT: We are back on the record, is the State
6 ready to proceed, Ms. Mayes?

7 MS. MAYES: Nothing from the State at this time, Your
8 Honor.

9 THE COURT: Is the defense ready to proceed, Mr.
10 Wise, Mr. Able?

11 MR. ABLE: Yes, sir.

12 MR. WISE: The defense is ready.

13 THE COURT: Before we take up motions I realize that
14 the jury should be here in a few minutes assembled in the
15 other room. But I want to first ask this question, is
16 there anyone present who is a member of the jury venire.
17 If so, please stand.

18 (No response.)

19 THE COURT: No one is standing. It was brought to my
20 attention before we came back here that, I believe that
21 the great-grandfather of the alleged victim in this case,
22 apparently I am not singling you out, I don't know if you
23 were here on Wednesday of last week when I had a
24 conversation with counsel and anyone in ear shot, but
25 there is a concern in this case because of the amount of

1 news coverage which took place, I believe, in the fall of
2 last year in October as well as the social network of
3 sites. There was concern that there may be undue pretrial
4 publicity and I would like to say that obviously this
5 Court is not going to be in the position of a dictating
6 fashion. And I am not going to try to bridge anyone's
7 first amendment rights of free speech. And obviously the
8 fact that you have the bolo piece, the fact that you had
9 that made obviously shows that you are suffering a great
10 deal and are in mourning. It is an open question as to
11 whether or not displays or bumper stickers or signs if
12 seen by a jury or a juror, it is an open question in the
13 law as to whether that warrants a mistrial or a reversal
14 on appeal. Basically there is not much law out there on
15 it. And it could very well be that the South Carolina
16 Supreme Court or perhaps the Federal Courts would
17 determine that because a juror sees something or had an
18 opportunity to see something that prejudice the defendant
19 and a reversal of the conviction would be warranted. For
20 that reason, sir, I would ask that tomorrow when you
21 return or at any time when you return if you would reframe
22 from wearing it. Quite honestly I feel very comfortable
23 right now if you would put it in your pocket so that the
24 jury could not see it. I am not ordering you to do it, I
25 am asking you to do it just as a courtesy and I would

1 appreciate that. And I thank you for that. I realize
2 there are some bumper stickers also on cars, we need to be
3 very conscientious about what kind of message is getting
4 out there. This case has to be tried according to the law
5 and I don't want, we spend two weeks trying this case and
6 I don't want this thing to get reversed because some juror
7 saw something that they shouldn't have seen or that there
8 was something that was put out there. I appreciate you
9 removing your bolo, am I pronouncing that correctly, is
10 that what that is.

11 GREAT-GRANDFATHER: It is a picture of my
12 great-granddaughter.

13 THE COURT: Thank you, I appreciate your removing
14 that and your willingness to do that. Again, I am not in
15 the position of ordering anybody to do anything like that.
16 The fact that you were willing to do that I thank you. We
17 now have motions.

18 MR. ABLE: I just want to alert Your Honor, while I
19 was standing in line to get something to eat one of the
20 jurors came to talk to me. And I told her I couldn't talk
21 to her. I think it was number 86.

22 THE COURT: Number 86, we have already struck her.

23 MR. ABLE: She spoke to me and I told her I couldn't
24 talk to her. I just wanted to make sure the Court knew
25 that.

1 THE COURT: I appreciate that. And I just want the
2 record to reflect that early in the jury qualification
3 process there was a juror, number 153 who stood up and
4 explained about her, complaint about the tumor in his head
5 and said he was sleeping most of the time. I just want to
6 the record to reflect that my records indicate that he
7 also had a CSC second conviction in 1986 as well as an
8 ABHAN conviction from 1985. So, he was not eligible to
9 serve as a juror anyway and that is one of the reasons
10 that I went ahead and dismissed him where otherwise I
11 would have questioned him more about his handicap shall we
12 say. All right, motions, Mr. Wise. You want to go first,
13 sir.

14 MR. WISE: Your Honor, the first motion that I have
15 is for the clarification of Title 14-7-1110 of the South
16 Carolina Code and that is the section involving the number
17 of peremptory strikes granted to the defense in this
18 particular case. I would point out in that case that ten
19 peremptory strikes are granted for murder, manslaughter,
20 burglary, arson, criminal sexual conduct, armed robbery,
21 grand larceny, breach of trust, perjury and forgery. The
22 last few listed carry substantial less potential time than
23 this particular crime. Had the State elected they easily
24 could have indicted both defendants for the crime of
25 manslaughter and arguably could have also indicted them

1 for murder. But simply because they elected to indict for
2 homicide by child abuse they have taken away our right for
3 ten peremptory strikes each which we would of had had they
4 been indicted for murder or manslaughter. I think the
5 method of the legislature of allocating strikes in this
6 case is arbitrary and capricious. It certainly, I think,
7 denies equal protection of the laws for someone who is
8 charged with a very, very serious crime by affording
9 greater protection to someone who is charged with a mere
10 forgery or perjury or grand larceny. And I think as a
11 result the classification is arbitrary and capricious,
12 there is no real reasons for the legislature to give those
13 later crimes more protection in this courtroom than
14 someone who is charged with homicide by child abuse which
15 carries substantially more time. And also I don't think
16 the State should be given the luxury of circumventing us
17 getting ten strikes by simply charging the defendant with
18 a different crime by a different name that the legislature
19 has not put in.

20 THE COURT: Mr. Able, I assume you would join Mr.
21 Wise's motion?

22 MR. ABLE: Judge, I would join in that motion. I
23 believe as Mr. Wise noted that the scheme of how the
24 legislature laid this out it makes absolutely no sense and
25 allotting ten strikes such as perjury as he said I think

1 would be arbitrary and capricious compared to the crimes
2 that the people are charged with. So, we would join in
3 that motion.

4 MR. WISE: I would also put on the record that my
5 objection is based upon equal protection clause of the
6 State Constitution and also by the Fourteenth Amendment of
7 the United States Constitution.

8 MR. ABLE: We would agree with that, Your Honor.

9 THE COURT: Ms. Mayes, what is the State's response
10 to that, ma'am?

11 MS. MAYES: Yes, Your Honor, the State is opposed to
12 the use of any additional strikes. We ask for compliance
13 with South Carolina Code Section 14-7-1110. There have
14 been numerous opportunities throughout the years for the
15 legislature to amend or make changes to this particular
16 statute. They have not done so. There are a number of
17 other crimes who are also not on this particular list.
18 Kidnapping carries out to life, assault and battery with
19 intent to kill has never been added to this particular
20 list. And it is not a situation where he just was simply
21 charged with homicide by child abuse and could have been
22 charged with murder. He is charged with homicide by child
23 abuse as is Ms. Hepburn because that is a completely
24 different set of elements. And it is the charge that is
25 most in accordance with the facts of this particular case.

1 THE COURT: I do know that the record, that it would
2 appear the last time this section had been amended was in
3 1987 when, I presume that the common law crime of rape was
4 eliminated and CSC as well as armed robbery were added to
5 the first sentence. And any defendant charged with those
6 crimes for, to ten strikes. Mr. Wise, I sincerely
7 appreciate your motion and while I may agree with you that
8 it is peculiar that some of the crimes here are listed
9 such as forgery, perjury and larceny whereas others are
10 not. Whereas you and I may question that I am not sure
11 that that is the proper role of the Court to second guess
12 the wisdom of the legislature and the way they allocate
13 peremptory challenges. If there is a due process problem
14 under the South Carolina Constitution or the Federal
15 Constitution I believe it is proper for a higher court to
16 address that in due course. So I will deny your motion
17 and apply the statute as written.

18 MR. WISE: And I want to put on the record to keeping
19 with our conversation in-chambers earlier and supplement
20 the record from our hearing last Wednesday that my
21 objection to the redaction of the statement is based upon
22 Rule 106 of the South Carolina Rules of Evidence which is
23 commonly called the Rule of Completeness.

24 THE COURT: I believe the Rule of Completeness was
25 mentioned. And my understanding or my recollection was

1 that perhaps a specific rule was not. I indicated
2 in-chambers before we began this morning that my original
3 decision stood and I explained to Ms. Mayes and to
4 everyone here that upon a further review of the statements
5 over the weekend I did have an issue with the way, if the
6 statement were to be read verbatim, that the temporal
7 problem, the temporal problem with that particular
8 statement in that at least one of the statements did not
9 give a timeline. And I want to be sure when that
10 testimony is elicited, if it is elicited after the Jackson
11 v. Denno that we have to deal with tomorrow, that there is
12 no prejudice to either defendant in the way that that
13 testimony comes out. I want to make sure because my
14 understanding from the State was the primary purpose in
15 seeking admission of those statements. And one of the
16 primary purposes was to put both defendants at the scene
17 where the baby is discovered nonresponsive. What is the
18 State's position or is there anything additional that
19 needs to be placed on the record, Ms. Mayes, with regard
20 to those statements, how you would intend to use them or
21 how you would intend to present them.

22 MS. MAYES: Not at this time, Your Honor, we will
23 make any changes that the Court deems necessary and the
24 Court is correct in that the admission of the statement is
25 the probative value in each defendant acknowledging that

1 they were there. And also acknowledging the presence of
2 the defendant. Now, in terms of any statements which
3 would tend toward the incrimination, those certainly can
4 be redacted. We can do that at the Jackson v. Denno
5 hearing or immediately after everything has come in and
6 then make the final changes.

7 THE COURT: I just want to make sure that I am clear,
8 Ms. Mayes, that any testimony concerning those statements,
9 it is important that by implication or by omission
10 implicate the person not, the other defendant, the other
11 codefendant. Do you understand where I am coming from,
12 Ms. Mayes?

13 MS. MAYES: Yes sir, Your Honor.

14 THE COURT: We will take a look at that after the
15 Jackson v. Denno hearing. In-chambers this morning I also
16 touched base with Mr. Wise, I have had an opportunity to
17 get the cursory review to the mental health records which
18 were made a part of this case or was ordered to produce in
19 a prior proceeding. Mr. Wise, there is no Blair issue,
20 there is no competency issue, is that correct?

21 MR. WISE: No, Your Honor.

22 THE COURT: There is no concern that I need to go
23 over with your client, is there?

24 MR. WISE: No, sir.

25 THE COURT: Very good. Mr. Able, your motion.

1 MR. ABLE: Yes sir, Your Honor. Judge, we have
2 supplied to the Court and to the State and to Mr. Wise a
3 copy of our motion for a change of venue in this case. We
4 spoke briefly about it last week at the Wednesday hearing.
5 And we would move, I would move on behalf of Ms. Hepburn
6 that there be a change of venue, a county other than
7 Laurens County. I am making this motion pursuant to the
8 sixth and fourteenth amendment to the United States
9 Constitution, the South Carolina Constitution and the code
10 sections 17-21-80. Judge, as I think as we have already
11 discussed just in the last few moments back from lunch,
12 the presence of certain, with the bumper stickers that
13 were in the parking lot this morning and this afternoon,
14 different things that have been worn, different
15 discussions about the Facebook pages and the You Tube
16 videos. All of that, there has been a deliberate and
17 concentrated effort on the part of certain persons
18 producing these items, the car magnets, the car signs, all
19 of these different things that are listed in the motion,
20 to deliberately try to effect and sway is our position, a
21 jury panel to such a position that it would not be fair to
22 Ms. Hepburn in the trial of this case in Laurens County.
23 I would also note and have attached to the motion itself
24 that was forwarded to everyone, copies of different
25 newspaper articles from the Laurens County Advertiser, the

1 Clinton Chronicle, the Greenville News, the Index Journal,
2 all local and widely circulated newspapers, articles about
3 the case itself, the defendants, the facts of the case.
4 Also included those materials are materials from the
5 Advertiser and the Chronicle newspapers concerning, not a
6 news article but a printed ad for birthday wishes for the
7 minor child, Audrina Hepburn. Within that ad, Judge, I
8 think there is three of them total that were printed both
9 in the Chronicle and the Advertiser inviting persons after
10 reading the poem that was published in the paper, inviting
11 persons to visit the Facebook page, justice for Audrina
12 Claire Hepburn and the You Tube slide shows. As been
13 discussed in-chambers, the Facebook page is very popular,
14 almost 5,000 likes I understand and the page has been
15 taken down as of late last week, 5,000 likes, people like
16 the Facebook page. And quite possibly tens of thousands
17 of people have gone to it and maybe more than that who
18 just looked at it and didn't like it. The You Tube slide
19 show has been viewed over 500 times and viewing the You
20 Tube video that was mentioned it leads you to six
21 additional videos totaling reviews over 13,000 different
22 views. There has been local television coverage, online
23 stories posted on the GoLaurens.com and GoClinton.com. As
24 I mentioned earlier, there has been a campaign of bumper
25 stickers that were dispersed through the Justice for

1 Audrina's Facebook page, they were ordered and dispersed
2 during that page, magnetic car signs. I have enclosed
3 copies of pictures of those for the Court to review.
4 Anyway, Judge, as I said, even the, if you separate the
5 formal media newspaper, television, those type of things
6 there it is very clear that there has been a deliberate
7 and concentrated effort to try and sway the opinion of the
8 public and of course that sways the opinion of the jury
9 that could be impaneled negatively towards Ms. Hepburn.
10 Within the motion for change of venue I have included
11 several citations and I am sure the position of the State
12 is going to be that of course we questioned all the
13 potential jurors, there was no, some of them no indication
14 that there would be, even though they haven't seen this
15 publicity, pretrial publicity would be no problem for them
16 to serve impartial. But our Supreme Court has recognized
17 or the U.S. Supreme Court has recognized that under some
18 circumstances, adverse, pretrial publicity can create such
19 a presumption of prejudice in a community that jurors
20 claim that he can be impartial can not be believed. In
21 some cases there can be a presumption of prejudice and I
22 think this is a case of that nature where that given the
23 fact that there has been this deliberate to try to create
24 an error of prejudice, I think the Court has to presume
25 that there is prejudice out there. It goes on within the

1 motion the case of Irvin v. Dowd, 366 U.S. 717. The Court
2 must bear in mind however that the influence that lurks in
3 one's opinion once formed is so persistent that it
4 consciously fights the attachment from the mental process
5 of the average man. And, again, I think that given the
6 fact that there has been this campaign, this concentrated
7 effort of trying to create an error of prejudice, create
8 who is in the community of Laurens and the County of
9 Laurens. I think that the Court has to presume that the
10 prejudice is there and should grant a motion for a change
11 of venue. In the alternative, Your Honor, we would ask
12 pursuant to section 17-9-2185 that the Court ordered that
13 the jury selection be conducted outside of the County of
14 Laurens and the jury be transported to Laurens County for
15 the trial. And I think I have provided previously to the
16 Court a copy, I have got an original that I will hand up.

17 THE COURT: Why don't you file that with the Clerk if
18 you haven't already done so because I think I have
19 exactly, this is the same material that you mailed me.

20 MR. ABLE: I provided it to everyone, I just had the
21 original in my file. I will go ahead and give it to the
22 Clerk now, Your Honor.

23 THE COURT: Thank you. Mr. Wise, you join in with
24 Mr. Able's motion?

25 MR. WISE: Actually, Your Honor, we do not. We think

1 while there has been a lot of publicity we, my client
2 actually wants to move forward with the case.

3 THE COURT: Thank you, Mr. Wise. Ms. Mayes, what is
4 the State's position with regard to Mr. Able's request?

5 MS. MAYES: Yes sir, Your Honor. As to the matter of
6 venue. Several jurors have already come forward and
7 acknowledged hearing or seeing something related to this
8 case. These issues have been resolved by the Court during
9 voir dire. Other than that there has been no indication
10 that any remaining potential jurors have formed any fixed
11 opinion and that is the test pursuant to State versus
12 Evans, 2007 case which I will submit to the Court at this
13 time. Evans held that mere exposure to pretrial publicity
14 or in this case including social networking would also
15 fall into that category, but mere exposure does not
16 automatically disqualify potential jurors. The question
17 is not whether the community remembered the case but
18 whether the jurors had such fixed opinion that they could
19 not judge the defendant's guilt impartially. And Your
20 Honor has already dealt with anyone who would fall under
21 that classification.

22 THE COURT: All right. Any response, Mr. Able?

23 MR. ABLE: No sir, not to that.

24 THE COURT: Very good. I have had an opportunity to
25 review previously the cases which are cited by the State

1 and by Mr. Able. We of course had advance notice of this
2 motion so I have had a chance to review those cases as
3 well as conducting independent research. From the
4 examination that was conducted of the jurors today and I
5 felt that the manner in which it was conducted was proper
6 and that from time to time I know Mr. Able or Mr. Wise
7 would interject, that there was additional concerns that I
8 wasn't covering, what needed to be covered. I do recall
9 specifically at least one juror that I did dismiss because
10 she had viewed the You Tube videos and I could tell that
11 there was some hesitancy on her part when I asked the
12 juror the key question and that is, whether or not she
13 would be able to put aside what she had seen and judge the
14 case based upon the actual merits of the case. And I feel
15 that we have done an extraordinary job eliminating anyone
16 who has Facebook contact or My Space contact who have
17 viewed or otherwise seen any video via on the internet,
18 via it electronic. I feel like we have done a good job of
19 insuring that anyone who was exposed to such issues and
20 who has been prejudice where they can't put aside what
21 they recall about those exposures we have eliminated those
22 individuals, I believe, from the potential jurors in this
23 case. I do feel that the jury that we have sat is capable
24 of being fair and impartial in this particular case. So
25 the change of venue is not warranted. I note that there

1 is the case of State v. Parker that states the presumption
2 of prejudice from pretrial publicity is rarely applicable.
3 So we are not dealing with a situation where prejudice is
4 presumed. Certainly if we had been in the position where
5 we were unable to seat the jury or unable to select enough
6 jurors to proceed with this case, Mr. Able, I would be
7 much more inclined to grant your motion. I do want the
8 record to also reflect that I have reviewed the
9 attachments that Mr. Able submitted for his motion for
10 change of venue and the placard which is on the side of
11 the car and of course this has been made a part of the
12 record with your original motion, right, Mr. Able?

13 MR. ABLE: Yes, sir.

14 THE COURT: It does name the alleged victim in the
15 case, Audrina Claire Hepburn and has her date of birth.
16 It says prevent child abuse, stop child abuse. Could you
17 tell if either of the defendants are named on that
18 placard, Mr. Able?

19 MR. ABLE: Which one are you referring to, Your
20 Honor?

21 THE COURT: I am talking about the one that is on the
22 side of the car, it starts, Audrina Claire Hepburn on the
23 top.

24 MR. WISE: It lists both defendants.

25 MR. ABLE: Pictures and names, yes sir.

1 THE COURT: Yes, it does have the pictures and I
2 thought I could make out one of the names, at least one of
3 the names. Now, they are, obviously we have dealt with
4 any jurors who have seen this, any jurors who were exposed
5 to this. I feel that the jury, based upon the questions
6 and the number of individuals I have excused, the length
7 that we went through to try and ferret out any sort of
8 exposure to pretrial publicity. I am very confident that
9 we have an impartial jury so for that reason, Mr. Able, in
10 my discretion I will be denying your motion. Anything
11 else from the State?

12 MS. MAYES: Nothing from the State, Your Honor.

13 MR. ABLE: No, sir.

14 MR. WISE: Nothing, Your Honor.

15 THE COURT: I am going to take a break and we will
16 resume, is there any objection of going ahead and bring
17 the jury in while I step out and then we can have them
18 here when I get back.

19 MS. MAYES: No, sir.

20 THE COURT: Based upon my rulings and I do intend,
21 again, advise the jury that we are looking at going into
22 next week on this case. The way I am going to do that is
23 ask them if there are any logistical concerns that they
24 have, just like the gentleman this morning who had
25 informed us of his endoscopy as well as his appointment

1 sometime on Monday of next week. I am just again going to
2 see if there are any logistical problems so we can
3 identify those jurors ahead of time. We will be selecting
4 three alternates and I understand, Madam Clerk, that we
5 should have enough jurors to select three alternates.
6 Strikes will be ten for Ms. Mayes, five and five for Mr.
7 Able and Mr. Wise. On the alternate, each alternate, each
8 defendant will have two strikes and Ms. Mayes will have
9 one. So, by my count we will need 49. Check my math
10 while we are on break. We will be at ease for a few
11 minutes. If you will go ahead and ask the jury to come
12 in.

13 (Whereupon, Court's Exhibit 1 was marked for
14 identification only.)

15 (Whereupon, the jury panel came into open court at
16 approximately 3:20 p.m.)

17 (Whereupon, a break was taken while the jury panel
18 enters the courtroom.)

19 THE COURT: Is the State ready?

20 MS. MAYES: Yes, Your Honor.

21 THE COURT: Mr. Able?

22 MR. ABLE: Yes, sir.

23 THE COURT: Mr. Wise?

24 MR. WISE: We are ready, Your Honor.

25 THE COURT: Have y'all had a chance to check my math

1 on the number at issue. Do y'all agree?

2 MS. MAYES: Yes sir, Your Honor.

3 MR. ABLE: Yes, sir.

4 MR. WISE: Yes, sir.

5 THE COURT: Ladies and gentlemen, before we proceed
6 with jury selection let me advise you that I am told by
7 counsel for the State and for the defense that there is
8 the potential, there is a good potential that this case
9 will continue into next week. Obviously this is a short
10 week, normally we convene on Monday. Yesterday being a
11 holiday we were not able to do that. Before we begin in
12 selecting a jury is there any member of the jury panel who
13 has logistical problems next week, has something that they
14 absolutely must attend or cannot reschedule that I need to
15 be made aware of at the outset. I don't want to select a
16 jury and then if we do go into next week have some problem
17 arise. So, if there are any concerns about that I would
18 invite any member of the jury panel to stand at this point
19 and inform me of that.

20 (No response.)

21 THE COURT: No one is standing. All right, ladies
22 and gentlemen, we are about to select a jury in the trial
23 of the case of the State of South Carolina versus Ashley
24 Hepburn and Richard Brandon Lewis. If you have served on
25 a jury in civil court the way that we pick juries in

1 criminal court is a little bit different. The Clerk will
2 randomly select several jurors, the names of several
3 jurors and she will call them out one by one. If your
4 name is called what I would ask is that you come forward
5 and just stand right out here kind of where the corner of
6 this table in front of me, turn and face towards the back
7 of the courtroom where the exit sign is and the doors are.
8 At that point and time the State will have an opportunity
9 to exercise what are known as peremptory challenges. Then
10 the defense will have an opportunity to exercise their
11 challenges. If you happen to be struck, ladies and
12 gentlemen, please don't take offense at it, everyone is
13 different, every attorney has a different philosophy about
14 such things. You do not need to feel offended if for
15 whatever reason one of the lawyers does not want you to
16 serve on this particular jury. With that anything before
17 we proceed to the jury selection, Ms. Mayes?

18 MS. MAYES: Nothing from the State, Your Honor.

19 THE COURT: Mr Able?

20 MR. ABLE: No, sir.

21 THE COURT: Mr. Wise?

22 MR. WISE: No, sir.

23 THE COURT: Madam Clerk, if you will give us a jury,
24 please. The strikes are ten, five and five.

25 CLERK OF COURT: Juror number 35, Russell M. Connor.

1 What says the State?

2 MS. MAYES: Please present the juror.

3 CLERK OF COURT: What says the defense, Mr. Able?

4 MR. ABLE: Please swear the juror.

5 CLERK OF COURT: What says the defense, Mr. Wise?

6 MR. WISE: Please swear the juror.

7 CLERK OF COURT: Number 2, Elizabeth B. Copeland.

8 What says the State?

9 MS. MAYES: Please present the juror.

10 CLERK OF COURT: What says the defense, Mr. Able?

11 MR. ABLE: Excuse this Ms. Copeland.

12 CLERK OF COURT: Juror number 165, Mary Parsons.

13 What says the State?

14 MS. MAYES: Please present the juror.

15 CLERK OF COURT: What says the defense, Mr. Able?

16 MR. ABLE: Please swear Ms. Parsons.

17 CLERK OF COURT: What says the defense, Mr. Wise?

18 MR. WISE: Please swear the juror.

19 CLERK OF COURT: Number 176, Sandra P. Tumblin. What

20 says the State?

21 MS. MAYES: Please present the juror.

22 CLERK OF COURT: What says the defense, Mr. Able?

23 MR. ABLE: Please swear Ms. Tumblin.

24 CLERK OF COURT: What says the defense, Mr. Wise?

25 MR. WISE: Excuse Ms. Tumblin from this trial.

1 CLERK OF COURT: Number 74, Brian S. Langford. What
2 says the State?

3 MS. MAYES: Please present the juror.

4 CLERK OF COURT: What says the defense, Mr. Able?

5 MR. ABLE: Swear Mr. Langford.

6 CLERK OF COURT: What says the defense, Mr. Wise?

7 MR. WISE: Please swear the juror.

8 CLERK OF COURT: Number 89, Douglas J. Neveu. What
9 says the State?

10 MS. MAYES: Please present the juror.

11 CLERK OF COURT: What says the defense, Mr. Able?

12 MR. ABLE: Please excuse the juror.

13 CLERK OF COURT: Juror number 31, Dylan C. Chappell.
14 What says the State?

15 MS. MAYES: Please excuse this juror from the trial
16 of this case.

17 CLERK OF COURT: Juror number 20, Margaret Boyd
18 Miller. What says the State?

19 MS. MAYES: Please present the juror.

20 CLERK OF COURT: What says the defense, Mr. Able?

21 MR. ABLE: Swear the juror.

22 CLERK OF COURT: What says the defense, Mr. Wise?

23 MR. WISE: Excuse this juror.

24 CLERK OF COURT: Juror number 177, Gloria E. Wagner.
25 What says the State?

1 MS. MAYES: Please present the juror.
2 CLERK OF COURT: What says the defense, Mr. Able?
3 MR. ABLE: Please swear Ms. Wagner.
4 CLERK OF COURT: What says the defense, Mr. Wise?
5 MR. WISE: Excuse Ms. Wagner from this trial.
6 THE COURT: Juror number 179, Michael M. Whitlock.
7 What says the State?
8 MS. MAYES: Excuse this juror from the trial of this
9 case.
10 CLERK OF COURT: Juror number 24, Patti S. Brown.
11 What says the State?
12 MS. MAYES: Please present the juror.
13 CLERK OF COURT: What says the defense, Mr. Able?
14 MR. ABLE: Please swear Ms. Brown.
15 CLERK OF COURT: What says the defense, Mr. Wise?
16 MR. WISE: Swear Ms. Brown.
17 CLERK OF COURT: Have a seat in the jury box. Juror
18 number 10, Sarah D. Barksdale. What says the State?
19 MS. MAYES: Please present the juror.
20 CLERK OF COURT: What says the defense, Mr. Able?
21 MR. ABLE: Please present Ms. Barksdale.
22 CLERK OF COURT: What says the defense, Mr. Wise?
23 MR. WISE: Swear Ms. Barksdale.
24 CLERK OF COURT: Juror number 117, Cynthia W. Stone.
25 What says the State?

1 MS. MAYES: Please present the juror.

2 CLERK OF COURT: What says the defense, Mr. Able?

3 MR. ABLE: Please present Ms. Stone.

4 CLERK OF COURT: What says the defense, Mr. Wise?

5 MR. WISE: Please present Ms. Stone.

6 CLERK OF COURT: Juror number 106, Brandi J.

7 Saunders. What says the State?

8 MS. MAYES: Please excuse the juror from the trial of
9 this case.

10 CLERK OF COURT: Juror number 144, Laurie A.

11 Franklin. What says the State?

12 MS. MAYES: Please present the juror.

13 CLERK OF COURT: What says the defense, Mr. Able?

14 MR. ABLE: Excuse Ms. Franklin from the trial of this
15 case.

16 CLERK OF COURT: Number 36, David J. Corley. What
17 says the State?

18 MS. MAYES: Please present the juror.

19 CLERK OF COURT: What says the defense, Mr. Able?

20 MR. ABLE: Please swear Mr. Corley.

21 CLERK OF COURT: What says the defense, Mr. Wise?

22 MR. WISE: Please swear Mr. Corley.

23 CLERK OF COURT: Juror number 23 Dorether M. Brown.

24 What says the State?

25 MS. MAYES: Please excuse this juror from the trial

1 of this case.

2 CLERK OF COURT: Juror number 158, Shirley K. Medlin.

3 What says the State?

4 MS. MAYES: Please present the juror.

5 CLERK OF COURT: What says the defense, Mr. Able?

6 MR. ABLE: Please swear Ms. Medlin.

7 CLERK OF COURT: What says the defense, Mr. Wise?

8 MR. WISE: Swear Ms. Medlin.

9 CLERK OF COURT: Juror number 37, Tamara W. Cox.

10 What says the State?

11 MS. MAYES: Please present the juror.

12 CLERK OF COURT: What says the defense, Mr. Able?

13 MR. ABLE: Please excuse Ms. Cox.

14 CLERK OF COURT: Juror number 52, Curtis J. Floyd.

15 What says the State?

16 MS. MAYES: Please excuse this juror from the trial
17 of this case.

18 CLERK OF COURT: Juror number 70, Janet C. Hurley.

19 What says the State?

20 MS. MAYES: Please present the juror.

21 CLERK OF COURT: What says the defense, Mr. Able?

22 MR. ABLE: Please swear Ms. Hurley.

23 CLERK OF COURT: What says the defense, Mr. Wise?

24 MR. WISE: Excuse Ms. Hurley from this trial.

25 CLERK OF COURT: Juror number 43 Richard D. Detroia.

1 What says the State?

2 MS. MAYES: Please present the juror.

3 CLERK OF COURT: What says the defense, Mr. Able?

4 MR. ABLE: Please swear the juror.

5 CLERK OF COURT: What says the defense, Mr. Wise?

6 MR. WISE: Please swear Mr. Detroia.

7 CLERK OF COURT: Juror number 79, Joyce Lantz Lowry.

8 What says the State?

9 MS. MAYES: Please present the juror.

10 CLERK OF COURT: What says the defense, Mr. Able?

11 MR. ABLE: Please swear Ms. Lowry for the trial of
12 this case.

13 CLERK OF COURT: What says the defense, Mr. Wise?

14 MR. WISE: Swear Ms. Lowry.

15 CLERK OF COURT: Juror number 99, Susan L. Rogers.

16 What says the State?

17 MS. MAYES: Please present the juror.

18 CLERK OF COURT: What says the defense, Mr. Able?

19 MR. ABLE: Please excuse Ms. Rogers.

20 CLERK OF COURT: Juror number 166, Freddie W. Payne.

21 What says the State?

22 MS. MAYES: Please present the juror.

23 CLERK OF COURT: Would the defense challenge for
24 cause, Mr. Able?

25 MR. ABLE: Swear Mr. Payne.

1 CLERK OF COURT: What says the defense, Mr. Wise?

2 MR. WISE: Swear Mr. Payne.

3 CLERK OF COURT: Juror number 39, Twila I. Creech.

4 What says the State?

5 MS. MAYES: Please present the juror.

6 CLERK OF COURT: Would the defense challenge for
7 cause, Mr. Able?

8 MR. ABLE: Present Ms. Creech.

9 CLERK OF COURT: What says the defense, Mr. Wise?

10 MR. WISE: Excuse Ms. Creech from this trial.

11 CLERK OF COURT: Juror number 3, Diana H. Anderson.
12 What says the State?

13 MS. MAYES: Excuse this juror from the trial of this
14 case.

15 CLERK OF COURT: Juror number 75, Charnessa D.
16 Latimore. What says the State?

17 MS. MAYES: Please present the juror.

18 CLERK OF COURT: Would the defense challenge for
19 cause, Mr. Able?

20 MR. ABLE: Swear Ms. Latimore.

21 CLERK OF COURT: Would the defense challenge for
22 cause, Mr. Wise?

23 MR. WISE: No, ma'am.

24 CLERK OF COURT: You may be seated in the jury box,
25 please.

1 THE COURT: Three alternates, two, two and one on
2 each alternate.

3 CLERK OF COURT: Juror number 6, Paul A. Arnold, Jr.
4 What says the State?

5 MS. MAYES: Please present the juror.

6 CLERK OF COURT: What says the defense, Mr. Able?

7 MR. ABLE: Please swear Mr. Arnold.

8 CLERK OF COURT: What says the defense, Mr. Wise?

9 MR. WISE: Excuse Mr. Arnold from this trial.

10 CLERK OF COURT: Juror number 92, Stephen C. Patton.
11 What says the State?

12 MS. MAYES: Please present the juror.

13 CLERK OF COURT: What says the defense, Mr. Able?

14 MR. ABLE: Please swear Mr. Patton.

15 CLERK OF COURT: What says the defense, Mr. Wise?

16 MR. WISE: Swear Mr. Patton.

17 CLERK OF COURT: Juror number 169, Ana M. Shell.

18 What says the State?

19 MS. MAYES: Please excuse this juror from the trial
20 of this case.

21 CLERK OF COURT: Juror number 8, Danny C. Attaway.
22 What says the State?

23 MS. MAYES: Please present the juror.

24 CLERK OF COURT: What says the defense, Mr. Able?

25 MR. ABLE: Please excuse this juror.

1 CLERK OF COURT: Juror number 95, Jeffrey P.

2 Poltorak. Would the State challenge for cause?

3 MS. MAYES: Please present the juror.

4 CLERK OF COURT: What says the defense, Mr. Able?

5 MR. ABLE: Please swear the juror.

6 CLERK OF COURT: What says the defense, Mr. Wise?

7 MR. WISE: Swear the juror.

8 CLERK OF COURT: Juror number 27, Michael W.

9 Campbell. What says the State?

10 MS. MAYES: Please present the juror.

11 CLERK OF COURT: What says the defense, Mr. Able?

12 MR. ABLE: Please strike Mr. Campbell.

13 CLERK OF COURT: Juror number 178, Sherry A. Wham.

14 What says the State?

15 MS. MAYES: Please present the juror.

16 CLERK OF COURT: What says the defense, Mr. Able?

17 MR. ABLE: Please swear Ms. Wham.

18 CLERK OF COURT: What says the defense, Mr. Wise?

19 MR. WISE: Swear Ms. Wham.

20 THE COURT: Any issues with the selection or the

21 composition of the jury from the State?

22 MS. MAYES: Nothing from the State, Your Honor.

23 THE COURT: Mr. Able?

24 MR. ABLE: One moment, Your Honor.

25 THE COURT: Yes, sir.

1 MR. ABLE: No sir, we have nothing.

2 THE COURT: Mr. Wise?

3 MR. WISE: Nothing, Your Honor.

4 THE COURT: All right, ladies and gentlemen who have
5 been selected. There are some issues that I need to take
6 up briefly with the attorneys and the rest of the jury
7 pool who did not get picked on this particular case. Mr.
8 Bailiff, if you would show them kindly to the jury room
9 and I just ask that you not discuss this case. This
10 should be very simple for you because you know absolutely
11 nothing about this case at this point and time. No
12 witnesses have been called, you haven't heard the argument
13 of counsel and so it is very important that you not
14 discuss this case until I tell you it is okay to do so.
15 With that if you will adjourn to the back and hopefully
16 they will have some sodas or something back there and we
17 will have you back in just a few moments.

18 (Whereupon, the jury was excused from open court.)

19 THE COURT: Ladies and gentlemen of the jury panel,
20 those of you who have remained. I have some good news,
21 after conferring with the Solicitor and the Clerk of Court
22 I am now at liberty to let you go for the week. I want to
23 thank you for coming in here today. If you were not
24 selected on this jury please don't take offense to that, I
25 assure you that it is absolutely necessary to have people

1 who are willing to come in here and serve as jurors so
2 that the business of the Court can be conducted.
3 Sometimes when the parties aren't able to reach an
4 agreement be it a civil case or a criminal case it is
5 necessary to have jurors come in. Our jury system has
6 existed in one form or another, since the time of Ancient
7 Greece, well over 3,000 years ago. So, you have performed
8 an important roll that has existed for most of the history
9 of western civilization. And for that you have my
10 appreciation. The additional good news in addition to you
11 not having to come back or worry about jury service for
12 the rest of the week, the other good news you get out of
13 jury service free card for the next three calendar years.
14 So, if you were summoned for jury duty in this court or in
15 circuit court, any circuit, it can be common pleas or
16 general sessions court. If in 2011, 2012 or 2013 you are
17 summoned for jury service call the Clerk's office, ask
18 them to pull your name and they will be able to pull it up
19 showing that you showed up here and you have successfully
20 avoided jury service for that term of court. So, you are
21 excused and thank you very much.

22 (Whereupon, the remaining jury panel was excused from
23 open court.)

24 THE COURT: The jury panel is out. Ms. Mayes, Mr.
25 Able, Mr. Wise, I anticipate cutting them loose until 2:30

1 tomorrow. I think that should give us enough time
2 hopefully to address our motions. For purposes of the
3 Jackson v. Denno, potentially Mr. Able's other motion, the
4 search warrant issue, I know your mental health issue is
5 going to take about thirty minutes. I will plan on about
6 that.

7 MR. WISE: I think it is pretty clear on the
8 statutory law. Would you like to overlook that tonight.

9 THE COURT: I would love to do that, Mr. Wise. I am
10 inclined to have the jury come back tomorrow at 2:30. Is
11 that acceptable with everybody, would 2:00 o'clock be
12 better. Do you think we will have it done by 2:00?

13 MS. MAYES: Yes sir, Your Honor, I do. From what we
14 have discussed perviously I think the Jackson V. Denno is
15 going to be shorter which was previously anticipated as
16 well as the search warrant matter. So, I do believe we
17 can be ready though at 2:00 o'clock.

18 THE COURT: Now, are you the one, are you staying
19 here in Laurens or are you commuting back and forth?

20 MS. MAYES: We are staying here, Your Honor.

21 THE COURT: If we start at 9:30 that will give us
22 enough time. We will be at ease for five minutes.

23 (Whereupon, a break was taken.)

24 THE COURT: All right, I have reflected upon what I
25 intended to advise the jury on and it is pretty much in

1 line with what I discussed with counsel earlier. It is my
2 intention to relate that a situation, something I read
3 about, about three weeks in Columbia, who apparently
4 received, instigated and received messages during the
5 course of the trial. In fact the Judge had to terminate
6 that trial and miss-try the case. And that juror was held
7 in contempt by that Judge. I will explain that that is
8 pretty much the only tool that I have in my tool box to
9 deal with that kind of misconduct by a juror. And of
10 course give them the standard admonition that they are not
11 to discuss the case with anyone, friends, family members,
12 anyone while the case is going on.

13 MR. WISE: Your Honor, I think this is correct too.
14 Each individual juror, is my understanding, would be under
15 an obligation to report another juror if they found out
16 that they did go and do some research outside.

17 THE COURT: I believe that was incorrect. No, we are
18 not going to, I am not going to appoint a foreman this
19 evening or a foreperson this evening. And we will swear
20 them tomorrow afternoon when we resume at 2:00 o'clock.
21 Is that what I told everyone. I want them back at 2:00.
22 The gentleman who had the doctor's appointment on Monday
23 was struck by somebody, right. I don't think that I saw
24 him over there. Let's have the jury back out.

25 (Whereupon, the jury came into open court at

1 approximately 4:26 p.m.)

2 THE COURT: Let the record reflect that all jurors
3 and our three alternates are present. Ladies and
4 gentlemen of the jury, you have been selected in this case
5 and at this point and time you have not been sworn yet.
6 We have picked twelve jurors and the alternates. Tomorrow
7 I will appoint a foreperson of the jury and we will
8 administer an oath to you. I will need you back tomorrow
9 afternoon at 2:00 o'clock because there are some matters
10 that I have to take up, some matters of law that I have to
11 take up with the attorneys involved in this case. I will
12 give you more instructions tomorrow when we reconvene.
13 There are a couple of important rules that absolutely have
14 to be followed this evening. First of all you are wearing
15 juror badges and you have been given these badges. I need
16 you to wear those back tomorrow and wear them at all times
17 when you are coming and going from the court house. The
18 reason for the badges is obvious. It helps identify you,
19 the jurors, and that helps anyone from inadvertently
20 saying hello to you or inadvertently contacting you while
21 you are coming or going from the court house. Second of
22 all, one other thing that I do want to bring to your
23 attention. I am aware that your husband, your wife, your
24 significant other, your boyfriend, your girlfriend, family
25 members, they are familiar that you have jury service this

1 week. It is absolutely essential that you judge this case
2 based solely from the testimony that is produced from this
3 witness stand. And along those lines it would be improper
4 for you to have any kind of conversation with anyone about
5 anything involved in this case. That includes your
6 spouses, that includes family members, that includes
7 friends, that includes coworkers, employees, anyone. You
8 are going to be the ones that has to make the decisions,
9 each of you individually will have to make a decision
10 about the evidence that is presented in this case and it
11 will be a violation of the oath that you are going to take
12 as jurors tomorrow if you were to allow your opinion or
13 your decision to be influenced in any way by anything that
14 anyone else says to you. If your spouse presses you on it
15 or anyone presses you on it just say, look, the Judge
16 ordered me not to talk about it and I am not going to
17 violate a court order. The second part of what I tell you
18 that is also equally important, it is a violation of the
19 oath that you have taken, my instructions to you and it
20 would be punishable by contempt of court if you were to
21 perform any independent research or any investigation of
22 any of the facts of this case. Ladies and gentlemen, the
23 court processes, the procedures that will be used in this
24 court is such that we filter information, we try to make
25 sure it is good and accurate information that you receive.

1 The information which was available through the news
2 media, online and the newspaper, it hasn't been through
3 that filter. Very often it is simply an allegation, a
4 mere allegation and nothing more. And very often it is
5 just a revocation of something that somebody else has
6 said. That is not evidence, ladies and gentlemen, that is
7 why it is a violation of your oath as jurors if you were
8 to perform any type of independent internet search, any
9 sort of independent examination of the facts of this case,
10 any sort of independent investigation of what happened on
11 this particular occasion. As jurors each of you are also
12 under an individual responsibility to report to me any
13 misconduct of your fellow jurors. So if it comes to your
14 attention, one of the other jurors has in fact conducted
15 that kind of investigation or has basically violated my
16 instructions to you it is your duty to report to me. I
17 don't want to get to the position as a Judge out in
18 California about three weeks ago, I don't know if you
19 heard about this situation but unfortunately after a very,
20 very lengthy trial it came to the attention of a Judge
21 that one of the jurors had been communicating with
22 somebody on Facebook. And as a result of that juror
23 misconduct it was necessary for the Judge to declare a
24 mistrial in that particular case. Obviously that Judge
25 was not too happy with that particular juror. The State

1 law provides that I can put somebody in jail for up to six
2 months for contempt of a court order. I don't want to
3 have to do that, I promise you I don't want to have to do
4 that but if that is the only tool that I have at my
5 disposal then it is the only tool I have. So, please,
6 please, please reframe from conducting any sort of
7 independent investigation, follow my instructions as far
8 as not talking to other people and this will be very, very
9 easy hopefully as far as your service as jurors. Don't
10 discuss the case with anyone, that is so easy to do. You
11 know nothing about this case, you are going to learn about
12 this case with the testimony of sworn witnesses who
13 testify under oath and you are going to learn about this
14 case through exhibits and other evidence that is
15 introduced into the record in this case. There is no need
16 for you to undertake any sort of investigation yourself.
17 You are excused and be back tomorrow at 2:00. Thank you.

18 (Whereupon, the jurors were excused from open court
19 to return the next day at 2:00 p.m.)

20 THE COURT: All right, I don't see any more way to
21 get that across, I don't think we are going to have any
22 issues with that this week, at least I hope we don't. I
23 will see you all around 9:30 tomorrow morning. Anything
24 we need to take up before we break for the evening.

25 MS. MAYES: Yes sir, Your Honor, may I approach?

1 THE COURT: Yes.

2 (Whereupon, a bench conference was held.)

3 (Whereupon, the trial will resume the next morning at
4 9:30 a.m.)

5 THE COURT: We are back on the record, we are
6 resuming the trial, we have counsel for the defendants
7 present, we have Ms. Mayes present representing the State.
8 We have motions this morning that we are going to address.
9 I believe one of the first ones, one of the first issues
10 that we are going to address concerning the mental health
11 records that were previously ordered disclosed through the
12 various parties. We have the records of Mr. Lewis, I did
13 have the opportunity to review them last night in greater
14 detail and I believe the primary records that the State
15 would seek to introduce, if I am incorrect, Ms. Mayes,
16 please correct me. But the State would intend to
17 introduce excerpts from those medical records which were
18 obtained at the V.A. center subsequent to a suicide
19 attempt by Mr. Lewis shortly after the death of the child.
20 Is that correct, Ms. Mayes?

21 MS. MAYES: That is correct, Your Honor.

22 THE COURT: And it would be the State's intention to
23 introduce those only if the defendant were to take the
24 stand, if it is your intention to use them in your
25 case-in-chief, is that correct?

1 MS. MAYES: Your Honor, just to clarify, the
2 statement that was made to or is documented to have been
3 made to the psychiatrist, Vernetta Hill, is something that
4 the State would intend to offer if Mr. Lewis testifies.
5 And that statement dealt with the fact that it is
6 documented according to Mr. Lewis who saw the codefendant
7 enter the child's room. But just to clarify the Court's
8 earlier question. As to overall evidence in this case
9 that Mr. Lewis attempted suicide, that is something that
10 the State would intend to offer in our case-in-chief.
11 Without his statements that would implicate the
12 codefendant and that was also in the incident report by
13 Investigator Plaxico. I think we dealt with that briefly
14 back on a pretrial matter, that Mr. Plaxico had visited
15 him in the hospital on October the 18th and that was
16 following his overdose. And there were some statements
17 made and we believe that those statements would be subject
18 to redaction. But as for the fact that Mr. Lewis did take
19 an overdose, that is something later on that during the
20 State's case-in-chief, the State would intend to offer or
21 to proffer as potential evidence.

22 THE COURT: And my clerk and I did receive an email
23 of the, I believe, Massachusetts case. While we were
24 driving over my clerk had an opportunity to review that, I
25 have not had an opportunity to review either the

1 Massachusetts case or the other one. My clerk is telling
2 me he has emailed me those and I will review those
3 shortly. Mr. Wise, I will be happy to hear from you
4 regarding the mental health records and why they should
5 not be permitted to be used.

6 MR. WISE: Well, I think that is under title
7 44-22-90, communications from mental health professionals
8 are privilege, period. I know of no exceptions that would
9 come under this. And at least it is not listed there
10 except for a catchall phrase, it says as otherwise
11 authorized or permitted to be disclosed by statute. I
12 know no statute that would make an exception in this
13 particular case on that. So, I think under that statute
14 it doesn't come in, period.

15 THE COURT: What do you say to that, Ms. Mayes?

16 MR. WISE: Obviously if he took the stand and opened
17 the door argument but I don't think it comes in under that
18 statute, period.

19 THE COURT: So, your position is that even on cross
20 it would not come in under that statute?

21 MR. WISE: I don't think it comes in unless he says
22 something that is, I can't imagine what he would say that
23 would open the door. But I guess it could. I guess he
24 could deny going to seek mental health treatment, yes,
25 that would open the door. But outside of that I don't see

1 what would open the door to it. And the problem I have,
2 Your Honor, is twofold. The other part of it is, I don't
3 think the evidence of the suicidal attempt is misleading.
4 I think it is highly prejudicial and it is certainly more
5 prejudicial and probative. Now, the State through an
6 order of confidentiality has gotten these records and has
7 had a chance to go through them. There is nothing in
8 those statements, those mental health records that says he
9 did anything wrong. So, therefore to put in front of this
10 jury the idea of that he committed suicide because he was
11 personally involved in this is simply misleading to the
12 jury and certainly more prejudicial and probative because
13 there is no value that this, there is nothing in the
14 mental health records to indicate that that is what the
15 reason was. So, the jury is left to speculate to the
16 reason when in reality the reason is set forth with his
17 conversations with his counsel was not reason at all. So,
18 I think to put in front of the jury the idea that he
19 committed suicide or tried to commit suicide is because he
20 was, he felt he was responsible for this child's death and
21 therefore that is why they should convict him is just
22 grossly misleading.

23 THE COURT: Correct me if I am wrong, Mr. Wise, but I
24 believe one of the statements perhaps did reference his
25 concern that maybe he did not do nothing to prevent.

1 MR. WISE: But that is not the criminal
2 responsibility in this case. He has the, the boyfriend
3 had no legal responsibility towards this child. And I
4 granted he said he felt like he should have done more, he
5 said he didn't do more. But that certainly is not
6 probative as to whether or not he committed this act upon
7 the child.

8 THE COURT: Ms. Mayes, what is the State's position
9 of Mr. Wise's argument? And we have got twofold, we have
10 got general admissibility issue under Title 44, which Mr.
11 Wise asserts is contained in that section that he cited,
12 44-22-90. And then we have the ancillary issue about the
13 improper, if the evidence of suicide were introduced the
14 records from the V.A. don't indicate the level of guilty
15 knowledge or that it would be improper to allow that
16 evidence to come in because there is nothing in those
17 records that indicates on behalf of Mr. Wise's client.
18 So, deal whichever order you want to.

19 MS. MAYES: Yes sir, Your Honor. I will first
20 address the admissibility of Mr. Lewis' suicide attempt.
21 Your Honor, the State's position is that this evidence
22 would be admissible for several reasons. The first being
23 the probative value as to his state of mind immediately
24 following these events. And secondly as potential
25 evidence of guilty knowledge. When we look how these

1 sequence of events unfolded, Audrina Hepburn was injured
2 during the early morning hours of October 13th.
3 Approximately three days later on the 16th her mother,
4 girlfriend of the defendant, Ashley Hepburn was arrested
5 for great bodily injury to a child. The following day on
6 October the 17th, Audrina was pronounced dead at
7 Greenville Memorial Hospital as a result of her injuries.
8 And then the following day on October 18th is when the
9 defendant, Brandon Lewis, attempted suicide by overdose.
10 He was initially treated at the Laurens County emergency
11 room and made statements there not only to medical staff
12 but also to Investigator Plaxico. And following his
13 treatment at the Laurens County Hospital is when he was
14 transferred to the V.A. Hospital and seen there by staff
15 and made several additional statements, at least one of
16 which appears on its face to be inconsistent with his
17 prior statements both to law enforcement and to medical
18 personnel. But as to the issue to the admissibility of
19 the overdose, Your Honor, there are some cases that the
20 State has I have submitted for consideration. One is
21 State versus Aldridge, that is a Georgia case from 1997
22 which deals with the fact that the attempted suicide was
23 relevant as showing consciousness of guilt. And
24 consciousness of guilt has been upheld in a number of
25 South Carolina cases as evidence of flight, robbing

1 witnesses, things of that nature have all been upheld as
2 evidence indicative of consciousness of guilt. The State
3 versus Grant is one of the cases I believe we submitted to
4 the Court that deals with evidence of flight. There is
5 also going to be testimony in this case that Brandon Lewis
6 ran away on at least one occasion when Investigator
7 Plaxico showed up at his house. So, the State's position
8 is that all of these factors are interlocking as evidence
9 of his overall consciousness of guilt. Now some of the
10 statements that were made to Investigator Plaxico in the
11 emergency room deal with the fact that he felt like he
12 could have done more or that he could have prevented it.
13 Mr. Wise takes the position that he has no legal
14 responsibility but that is not an element under the
15 homicide by child abuse statute. That particular statute
16 applies to any person who has access to a child, not just
17 a caregiver or a parent. Secondarily, with the
18 understanding that the implication of the codefendant
19 would be redacted during the State's case-in-chief. We
20 still believe that the overall evidence connecting the
21 overdose to this sequence of events is relevant and
22 probative. Now, on the second issue as to the statement
23 to the psychiatrist, Dr. Hill, that statement was that he
24 saw the codefendant going into the child's room. Now,
25 Your Honor, as previously indicated that statement is

1 different than the statement that he, one of the
2 statements that he gave to law enforcement indicated that
3 he heard some footsteps going into the child's room. It
4 seems to be quite a substantial difference. And it is
5 also inconsistent with his original statement to law
6 enforcement as well as statements that he made to medical
7 providers and to EMS.

8 THE COURT: I would agree that that would be proper
9 impeachment evidence. The question I think for the Court
10 is whether or not the fact that it was made to a health
11 care provider, to a physician during the course of mental
12 health treatment, whether that renders it admissible. As
13 a threshold matter and Mr. Wise, I ask that you weigh in
14 on this. As I read the statute, obviously there is a
15 distinction, there is a distinction between disclosure and
16 admissibility. And my understanding is that some Judge
17 last year ordered the information disclosed. The question
18 for the Court now is whether it is admissible on its face
19 for purposes of impeachment, it would appear to be
20 relevant to a degree because there is that inconsistency
21 between the statement that he gave law enforcement and the
22 subsequent statement to the physician, Dr. Hill at the
23 V.A. So, would y'all care to address that issue,
24 admissibility versus disclosure because it has already
25 been disclosed. The statute cited to by you, Mr. Wise,

1 would appear to relate primarily to disclosure.

2 MR. WISE: Your Honor, the confidentiality on the
3 disclosure, the fact that the mental health records, I
4 think everybody was ordered to destroy, except for me,
5 what they got except for anything that they thought would
6 be, that they may be able to use and it was just clearly
7 not, there is not any indication of any waiver on Mr.
8 Lewis' part.

9 THE COURT: I am not asserting that he and I believe,
10 I would assume that the record is sufficiently protected
11 on the disclosure issue. And certainly that is a separate
12 issue than what we are dealing with at this point and
13 time.

14 MR. WISE: Well, I think if it is privilege it is not
15 admissible even if it is disclosed.

16 THE COURT: When you look at the section dealing with
17 statutory privileges under Title 19, the only privilege
18 that I see would be, that might apply to this case would
19 be 19-11-95 dealing with competency of patients of mental
20 illness or emotional conditions. That section would
21 appear to limit privilege to an employee, to those
22 individuals who are employees of the Department of Mental
23 Health or perhaps directly licensed by them. So, if we
24 are discussing admissibility I think that we have to touch
25 on Title 19 and that section in determining whether it is

1 proper impeachment evidence should Mr. Lewis decide to
2 take the stand. Do you understand what I am getting at,
3 Mr. Wise, that perhaps the Title that you cited, the
4 section that you cited, 44-22-90 deals with disclosure.
5 But when we are talking about privilege such as priest-
6 pentinent privilege or husband-wife privilege or
7 attorney-client privilege, we are looking to Title 19 for
8 purposes of admissibility.

9 MR. WISE: Except for the fact that 44-22-90 says,
10 may prevent a witness from disclosing privilege
11 information, witnesses only appearing in court. So,
12 clearly relates to admissibility also.

13 THE COURT: He was voluntarily admitted to the V.A.,
14 correct?

15 MR. WISE: That is correct.

16 THE COURT: In an effort to reconcile the privileges
17 contained in Title 19 with that and the section cited by
18 Mr. Wise. Mr. Wise, in 44-22-10 and of course we are
19 dealing with the rights of mental health patients, that
20 section of the law defined patient under subsection (11)
21 meaning an individual undergoing treatment in the
22 Department. Department is defined as the State Department
23 of Mental Health. It states further that the term does
24 not include a person committed to the Department pursuant
25 to chapter 48 of Title 44. I am not sure that is

1 applicable here. No, it is not, that is the sexually
2 violent predator act. I am not certain, Mr. Wise, that
3 your client was a patient within the definition of 22-10.

4 MR. WISE: He may not have been but I think under
5 44-22-90 is much broader than that, they don't limit that,
6 communications with members of the Department. They
7 include mental health professionals generally including
8 general physicians. And it is not limited in that
9 provision to employees of the Department. I think that is
10 the time to give a person, regardless of whether he seeks
11 mental health treatment, a privilege from disclosure and
12 use it in court.

13 THE COURT: Mr. Wise, I am very sympathetic to, you
14 are well aware of my prior job and I am very sympathetic
15 to the flight of the mentally ill and perhaps there is a
16 strong public argument to be made for a blanket privilege
17 of the kind that you assert. Again, I think there is a
18 distinction between disclosure and admissibility. I don't
19 know, based upon what I reviewed in Title 44-22-10 that
20 your client would meet the definition of a patient. And
21 it is quite apparent that the definition is in that
22 subsection intended to be used, the entire chapter dealing
23 with rights of mental health patients.

24 MR. WISE: I just find it strange that the
25 legislature would protect the mental health records of

1 someone in the Department of Mental Health but not protect
2 the mental health records of someone who went to a
3 psychiatrist as a general practice psychiatrist.

4 THE COURT: I understand that is peculiar, Mr. Wise,
5 and I was considering this very issue last night and I
6 hate to draw upon my knowledge from law school but my
7 knowledge when I was in law school I do specifically
8 recall a professor stating that when they addressed
9 privileges, it was my evidence professor and when the
10 legislature understood to address the issue of privilege
11 in South Carolina physicians and medical providers took
12 the position because, took a position of that because they
13 had a duty to maintain disclosure independent of the
14 statute, that they did not need a statute. And that is
15 the reason that the legislature elected to limit mental
16 health privileges to merely those individuals who are
17 confined to the Department of Mental Health or sought
18 treatment through the Department of Mental Health. I
19 cannot cite you chapter or verse and again I am drawing
20 upon what I recall from law school, it would sound as if
21 the professor was informing that that was the legislative
22 history of this statute. But I cannot give you the
23 specific reference to any sort of committee hearings or
24 anything else concerning that. Do you have anything that
25 you can find on that issue. And of course this predates

1 all of our practice, all of our collective engaging
2 practice of law. My initial impression, Mr. Wise, is that
3 section doesn't protect your client or doesn't prevent
4 admissibility. You may have an appellate issue on the
5 disclosure issue, the initial disclosure issue. But my
6 initial impression, and again, your client's case won't
7 start until probably sometime next week. My initial
8 impression is that this section does not apply to your
9 client, that is not a final ruling. I will allow you, if
10 you wish, to conduct any additional research as far as the
11 legislative history of that section to confirm or to
12 refute what I have asserted. But, again, I am drawing
13 upon something that I learned over 20 years ago. All
14 right, suicide, let's turn to that issue. While I am
15 waiting for this to come up on my email.

16 MR. WISE: I didn't get that cite for that Georgia
17 case.

18 MS. MAYES: That cite is 494, SE2d, 368, 1997. The
19 State versus Aldridge.

20 THE COURT: While I am waiting for the email to come
21 through that my clerk has forwarded to me, Mr. Wise, my
22 clerk will email that to you in just a moment. Okay. Ms.
23 Mayes, how does the State intend to offer in its
24 case-in-chief the evidence of the suicide, simply put up
25 Officer Plaxico and he testifies I went to the hospital

1 and I found out that Mr. Lewis had tried to kill himself?

2 MS. MAYES: Your Honor, that testimony would come
3 through Investigator Plaxico that he received information
4 that Mr. Lewis had taken an overdose or attempted suicide
5 through an overdose. Now, we also have staff at Laurens
6 County Hospital that could verify he was admitted for an
7 overdose, not an accidental overdose but an attempted
8 suicide through conversations made with the patient in
9 that regard.

10 MR. WISE: I don't think it is going to come in
11 through Officer Plaxico, it may come in through the
12 Laurens County personnel. What Officer Plaxico knows is
13 what he was told by the Laurens County personnel.

14 THE COURT: And what I am trying to do is get a feel
15 out of concern for the assertions you are making, Mr.
16 Wise, that the evidence of suicide in a vacuum certainly
17 has a greater prejudicial impact than if the whole story
18 were to be told. The Laurens County Hospital personnel,
19 was a statement made to them by Mr. Lewis that was
20 consistent or along the same lines as the subsequent
21 statements which were made to the V.A. physicians?

22 MS. MAYES: Your Honor, the Laurens County Hospital
23 did not document the specifics of--

24 THE COURT: The motive or his state of mind or
25 anything, they didn't document that?

1 MS. MAYES: They noted that his girlfriend's baby had
2 passed away and that there was depression related to that
3 incident.

4 THE COURT: And I presume that the State does not
5 intend to follow that up with evidence from the V.A. as to
6 what Mr. Lewis stated to that physician because my
7 recollection of the statements to them was that he was
8 very close to the child and he formed a bond with the
9 child and I am paraphrasing. And the suicide attempt was
10 a stupid idea but it was the result of his grief over the
11 loss of a child. There was never any culpable statement
12 made to anybody at the V.A.. And my recollection of the
13 chain of events, he was admitted to the V.A. pretty
14 promptly after he presented at the Laurens Hospital, I
15 think it was just a matter of a day to two.

16 MR. WISE: Later that same day or the following day.

17 THE COURT: Right. Mr. Wise has a point, that the
18 evidence of suicide in a vacuum could be more prejudicial
19 than probative especially when there is no statement made.
20 If there was a statement, Ms. Mayes, and I am sure you
21 would very much like to have it. But if there was
22 something, a statement made along the lines of I tried to
23 kill myself because I was responsible for the child dying
24 that lends itself more towards the culpability issue that
25 I think that you are pursuing than I am grief stricken and

1 I took an overdose because I didn't know how to cope with
2 it.

3 MS. MAYES: Your Honor, it is addressed at some point
4 in the doctor's dictation of that he would benefit from
5 counseling because of his grief reaction as well as
6 blaming himself concerning the death of his
7 ex-girlfriend's daughter. So that may be a matter we have
8 to look into in more debt. It is not something that is
9 going to be admissible or that the State is offering on
10 today.

11 THE COURT: My initial impression on that is that if
12 you intend to go into suicide it is only fair that Mr.
13 Wise be allowed to explore in greater detail some of the
14 other documents, some of the other records. And again, it
15 is your intention to offer this through Plaxico or through
16 the nurse at the hospital? I am talking about the local
17 hospital here in Laurens. Who do you seek to elicit this
18 from?

19 MS. MAYES: Yes sir, Your Honor. The State's intent
20 was to offer Laurens County Hospital's staff member to
21 confirm that Mr. Lewis was treated there on October 18th
22 pursuant to an overdose as well as the testimony of
23 Officer Plaxico that he did see him at the hospital on the
24 18th.

25 THE COURT: Okay. The hospital worker who saw Mr.

1 Lewis, did they get a narrative of what caused him or an
2 explanation as to what, from Mr. Lewis as to what caused
3 him to do this? Did they have the necessary information
4 to provide context to what he claimed was the motive for
5 suicide? What I am saying, Ms. Mayes, is I am not going
6 to let you have it both ways. If you are going to go into
7 suicide you are going to need to or I am going to allow
8 Mr. Wise to question or probe the witness on cross and I
9 am going to give him a good bit of latitude in doing so.
10 If you go into suicide he has the opportunity because
11 there is nothing in the medical records that indicate
12 guilty knowledge. So if you are asking for that inference
13 of guilty knowledge or state of mind from the fact that he
14 attempted suicide, out of fairness because there is in the
15 record, there is an absence of that in the record, Mr.
16 Wise is going to be able to fully and completely cross any
17 witnesses called on subsequent explanations. I agree that
18 the law may very well be with you on that.

19 MR. WISE: And unfortunately when we get to
20 cross-examine witnesses we may end up with some problems
21 with some statements. Well, and that is why I think it is
22 just best to leave it alone.

23 MS. MAYES: We don't have any objection, Your Honor.
24 to the full context of statements coming in. The
25 statement related to his grief or what he reported to me.

1 However, we are looking at the situation where we really
2 can't offer the statement that was made to Plaxico about
3 should have done more. We can't offer that in our
4 case-in-chief anyway.

5 THE COURT: Which statement are you talking about,
6 you lost me there for a second.

7 MS. MAYES: The statement that is documented to
8 Investigator Plaxico and that I believe we dealt with
9 briefly on Wednesday. Investigator Plaxico had noted that
10 he spoke with Mr. Lewis at the Laurens County Hospital on
11 October 18th and that was the suicide attempt. And at
12 that point Plaxico stated for him not to try anything like
13 that again. Brandon Lewis then stated to Plaxico that he
14 felt like he could have done something to prevent it
15 because he heard what was going on and he blames himself.
16 So, we understand that that would not be admissible in our
17 case-in-chief.

18 MR. WISE: But if they put up evidence of suicide
19 then I am entitled to cross-examine the contents in which
20 this suicide took place. The unfortunate part is that
21 Officer Plaxico who was at the hospital talking to my
22 client had knowledge of what my client has said previously
23 also. And in context I think, in all honesty, if you are
24 going to address that in context you have got to deal with
25 the issue of what he knew before he got to the hospital

1 about what my client had told me.

2 THE COURT: And then we have Bruton.

3 MR. WISE: Then we have got Bruton.

4 THE COURT: How do we get around Bruton, Ms. Mayes,
5 and admit the evidence of suicide while also getting
6 context to the only evidence in this case. It is not my
7 concern if we admit the suicide evidence, Bruton is going
8 to prevent any sort of reference to him knowing that she
9 was abusing the child, treating the child poorly. So that
10 can't come in to provide context. We are left with
11 suicide and he tried to kill himself therefore as a jury
12 you can infer, state of mind you can infer evidence of
13 guilty knowledge from the suicide. And, again, there is
14 no evidence of, nothing in the medical records and the
15 file is about two inches thick. Nothing in any of that
16 that indicates any such level of culpability. Correct me
17 if I am wrong. All we have got is suicide.

18 MS. MAYES: Yes sir, Your Honor. He does not admit
19 anything about his own involvement to the V.A. Hospital.
20 However he does make the statement about seeing the
21 defendant go into the child's room which again is an
22 inference that we are not getting the full story because
23 we have yet another inconsistent statement. We understand
24 the Court's position about the concerns. I mean we are
25 looking at the same situation now that offering this

1 evidence does raise some Bruton issue in case-in-chief.
2 We certainly feel like it would be something probative
3 during Mr. Lewis' testimony.

4 THE COURT: Okay, don't mention suicide during the
5 case-in-chief. I think that we agree. All right. What
6 else do we have this morning, we have got Jackson v. Denno
7 and a possible search warrant issue?

8 MS. MAYES: That is correct, Your Honor.

9 THE COURT: Are you ready to go on that and, Mr.
10 Wise, do you have anything else you need to touch on?

11 MR. WISE: No, sir.

12 THE COURT: How do you want to handle this, what do
13 you want to do first, Ms. Mayes?

14 MS. MAYES: We are prepared to go forward on the
15 Jackson v. Denno first.

16 THE COURT: Very good, Ms. Mayes, proceed.

17 MS. MAYES: The State calls Investigator Franklin.

18 R.E. Franklin, after being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 By Ms. Mayes:

22 Q Mr. Franklin, were you previously employed with the
23 Laurens County Sheriffs Office?

24 A Yes, ma'am.

25 Q And just to clarify, are you currently employed

1 there?

2 A No, ma'am.

3 Q But going back to the time period of October 13th of
4 2009 can you tell us whether or not you were working in
5 the capacity of a lieutenant for the sheriffs department
6 during that time period?

7 A Yes ma'am.

8 Q Now, how did you become familiar with the case
9 involving Ashley Hepburn?

10 A She was brought into Lieutenant Jim Burns office and
11 he and I began talking to her at which time, we first
12 advised her of her rights.

13 Q I am going to show you a document and ask you whether
14 or not you recognize this document?

15 A Yes ma'am, this is the standard advisement of rights
16 form that the sheriffs office used for our people we
17 interview or suspects or criminals or whatever.

18 Q All right. And specifically as to this document how
19 do you recognize it?

20 A It has my signature as the one that did advise the
21 defendant of her rights.

22 Q And what is the date reflected on this particular
23 document?

24 A It is 10/13/2009 at 15:54 which would be 3:54 in the
25 evening.

1 Q So that is 3:54 p.m, is that correct?

2 A Yes, ma'am.

3 Q On October 13th?

4 A Yes, ma'am.

5 Q And at this point and time was Ashley Hepburn in
6 custody?

7 A No, ma'am.

8 Q Do you know whether or how under what means she
9 arrived at the law enforcement center?

10 A My understanding was that she came in of her own free
11 will.

12 Q All right. And what was your understanding about how
13 she might be related or involved in an investigation
14 concerning severe injuries to a sixteen month old child?

15 A My understanding was that a child, come to find out
16 later was her child, had been taken to the hospital with
17 severe injuries to its brain at that time and was in the
18 hospital in severe condition.

19 Q I am going to ask you to start at the very top of
20 this statement and ask you exactly what you, let me ask
21 you, who actually was responsible for advising Ms. Hepburn
22 of her rights?

23 A I was.

24 Q Could you start at the top and state for the record
25 exactly what you advised Ms. Hepburn of?

1 A I read it verbatim and I said, before we ask you any
2 questions you must understand your rights. And I said you
3 have the right to remain silent. And I said do you
4 understand these rights and she responded, yes sir. So I
5 put an X in the yes box. And I said anything you say can
6 and will be used against you in a court of law. And I
7 said do you understand these rights. And she said yes.
8 And I said you have a right to talk to an attorney or a
9 lawyer for advisement for her, we ask you any questions
10 and have him present during any questioning. And I asked
11 her did she want a lawyer at this time and she said no.
12 And I put an X in that box. I said if you have no money
13 to pay a lawyer's fee the Court would appoint one to
14 represent you without cost to you. I asked her did she
15 understand those rights. And then I said if you decide to
16 answer any questions without a lawyer present you still
17 have the right to remain, to stop answering at any time
18 and you still have the right to stop answering until you
19 can talk to a lawyer. And I asked her did she understand
20 those rights and she, and then I asked her do you
21 understand the rights that I have explained to you. And
22 she says yes so I again, I X'd that particular box. And
23 then it says do you want a lawyer now and she said no. I
24 X'd that particular box. And I said do you want to answer
25 any questions now. And she says yes. And so I X'd that

1 box. And then I give it to her and got her to sign the
2 signature and put the time on there. And it was 15:55 at
3 that time. I then signed it and had Lieutenant Jim Burns
4 to sign it as a witness also.

5 Q And does this document bear the signature of Ashley
6 Hepburn?

7 A Yes, it does.

8 MS. MAYES: Your Honor, at this time we would offer
9 this as State's or Court's exhibit 1.

10 THE COURT: Any objections?

11 MR. ABLE: No objection.

12 MR. WISE: No objection.

13 THE COURT: Without objection and that is State's 1.

14 (Whereupon, State's Exhibit 1 was marked for
15 identification only.)

16 Q Now, you said previously that Ms. Hepburn had arrived
17 on her own, let me ask you this. When you were
18 questioning her was she in custody at any point, meaning
19 was she in handcuffs or being held against her will?

20 A No, ma'am.

21 Q Do you recall where in the law enforcement center the
22 interview took place?

23 A It was in Lieutenant Burns' office.

24 Q Now, when you advised Ms. Hepburn of those rights and
25 prior to obtaining her signature did she appear to

1 understand the questions that were read to her?

2 A Yes, ma'am.

3 Q Was her speech coherent?

4 A Yes.

5 Q Did you coerce or threaten her in any way in order to
6 have her waive her rights?

7 A No, ma'am.

8 Q Did you make any promises to her in exchange for her
9 waiving her rights?

10 A No, ma'am.

11 Q To the best of your knowledge was the waiver of
12 rights obtained freely and voluntarily?

13 A Yes, ma'am.

14 Q At any point did she ask to stop questioning or ask
15 for an attorney?

16 A No, ma'am.

17 MS. MAYES: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 MS. MAYES: Nothing further at this time.

20 THE COURT: Mr. Able.

21 MR. ABLE: Yes, sir.

22 CROSS-EXAMINATION

23 By Mr. Able:

24 Q Officer Franklin, did you question my client at that
25 time?

- 1 A We did pose a few questions, yes sir.
- 2 Q When you say, we, you and Officer Burns?
- 3 A Me and Officer Jim Burns.
- 4 Q And what was the substance of those questions?
- 5 A We just asked her what was going on, if she wanted to
- 6 talk to us, you know, tell us what the deal was. And if I
- 7 can remember correctly, it has been a long time ago. She
- 8 just seemed like she told me that she had gone to bed and
- 9 put her infant in her bed, in the crib or cradle or
- 10 whatever the child slept in.
- 11 Q Did you make any notes about those conversations?
- 12 A No sir, I didn't.
- 13 Q Do you know if Officer Burns did?
- 14 A I am not sure.
- 15 Q Anything else in substance she told you?
- 16 A No sir, not right off.
- 17 Q You didn't obtain a written statement?
- 18 A No sir, I didn't.
- 19 Q Do you know if Mr. Burns did?
- 20 A I am not sure.
- 21 Q Y'all questioned her together the whole time?
- 22 A Yes, sir.
- 23 Q At any time did one of you question her alone?
- 24 A Not to my knowledge, I don't remember that.
- 25 Q Did you ask Ms. Hepburn how long she had been awake

1 that day?

2 A No sir, I don't remember that question.

3 Q Were you aware that she had been up all night at the
4 hospital?

5 A No, sir.

6 Q Were you aware she had been up all day the day
7 before, did you ask her anything about how much sleep she
8 had had?

9 A No, I don't remember that question, no sir.

10 Q Do you know if she had eaten that day?

11 A I don't remember that question.

12 Q And you and Mr. Burns, how long were y'all with her
13 that day?

14 A We was with her just a short time, I believe the SLED
15 agents came in and wanted to talk with her so we
16 relinquished her to the SLED agents.

17 Q Do you know what their names were?

18 A No sir, I don't remember their names.

19 Q Did she have any family with her or anything like
20 that?

21 A I believe her father brought her in and he was out in
22 the, what we call the break room.

23 Q Was he allowed to be with her during that time?

24 A Not at that time, no.

25 Q Did she appear tired?

1 A No more than usual, no more than I was.

2 Q Did you ask her to write a statement?

3 A No sir, I don't believe that I did.

4 Q That is all I have.

5 THE COURT: Anything on redirect?

6 MS. MAYES: Nothing at this time, Your Honor. The
7 State calls Agent Casey Baccomo Kirkland.

8 Casey Kirkland, after being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 By Ms. Mayes:

12 Q Agent Kirkland, how did you become involved in the
13 investigation concerning injuries to a sixteen month old
14 child by the name of Audrina Hepburn?

15 A I received a call from Lieutenant Plaxico the morning
16 of October 13th in reference to a sixteen month old that
17 had been injured. He asked me to come to Greenville
18 Memorial Hospital.

19 Q And to clarify, where are you employed?

20 A South Carolina Law Enforcement Division in Columbia.

21 Q And how long have you been an agent with the State
22 Law Enforcement Division?

23 A Since April of '08.

24 Q And how is that being an agent with SLED you became
25 involved in a child, a case involving injuries to a child?

1 A The coroner's office always contacts Child Death
2 Investigations to report a child death. I had worked
3 previous cases with Lieutenant Plaxico, he called me and
4 asked for assistance at that time. SLED is there to
5 assist local law enforcement.

6 Q All right. And so on the morning of October 13th of
7 2009 following the phone call you received from
8 Investigator Plaxico what steps did you take next into the
9 investigation?

10 A I went to my captain and informed her of
11 circumstances that I knew about the case at that time.
12 She sent myself and Agent Sarah Hurt to Greenville
13 Memorial Hospital to assist Laurens County. We got there
14 and the two of us and Lieutenant Plaxico, we photographed
15 the child at that time.

16 Q And that was at Greenville?

17 A Yes, ma'am.

18 Q And what happened after you photographed the child?

19 A We spoke with the father, Daniel Hepburn. We
20 received a statement from him. We spoke with DSS. At
21 that time Laurens County had asked Ms. Hepburn to go back
22 to the sheriffs office and I believe her father took her
23 back to the sheriffs office. Agent Hurt and myself went
24 back to the sheriffs office later that afternoon. And at
25 that time spoke to Ms. Hepburn after Laurens County.

1 Q All right. And just to clarify, what was your
2 understanding of Ms. Hepburn's connection to the child on
3 the date in question?

4 A She was the mother of the child and was one of the
5 caregivers at the time the child was brought to the
6 hospital.

7 Q So, after you left Greenville where did you go?

8 A I went to Laurens County Sheriffs Office.

9 Q And where did you first have contact with Ms.
10 Hepburn?

11 A In the office on the second floor and she was
12 previously interviewed by two gentlemen.

13 Q Was one of those gentlemen Lieutenant Franklin who
14 just left the courtroom?

15 A Yes, ma'am.

16 Q What was your understanding about whether or not Ms.
17 Hepburn had been advised of her Miranda warnings or her
18 Miranda rights?

19 A I knew she had been advised of her rights.

20 Q And how were you aware of that?

21 A I was told by Lieutenant Burns.

22 Q All right. And at any point during your contact with
23 Ms. Hepburn did you see the Miranda, waiver of Miranda
24 rights form?

25 A I can't recall.

1 Q Now, going back to how you first became involved in
2 this case did you have an understanding of whether or not
3 Ms. Hepburn was in custody?

4 A Yes, ma'am.

5 Q And what was your understanding?

6 A She was not in custody.

7 Q And what was your understanding of how she had
8 arrived at the law enforcement center?

9 A Her father brought her to the sheriffs office.

10 Q And do you know where she had been prior to arriving
11 at the Laurens County Sheriffs Office?

12 A Greenville Memorial Hospital.

13 Q And when you had contact with Ms. Hepburn was she in
14 handcuffs?

15 A No, ma'am.

16 Q Was she being held against her will?

17 A No, ma'am.

18 Q And when you entered the room was anyone else in
19 there?

20 A Myself and Agent Hurt at that time.

21 Q And for what purpose did you enter the room following
22 Lieutenant Franklin?

23 A We wanted to establish a timeline. At that time we
24 were not given any information as to what happened and we
25 wanted a timeline based on our, based on the timeline from

1 the day before.

2 Q And when you entered the room how did you introduce
3 yourself to Ms. Hepburn?

4 A Agent Baccomo at the time.

5 Q And was she aware that you were a law enforcement
6 officer?

7 A Yes, ma'am.

8 Q And did she agree to participate in an interview with
9 you?

10 A Yes, ma'am.

11 Q And how did you document any information you received
12 during the course of the interview?

13 A I took handwritten notes.

14 Q And do you have copies of those notes with you today?

15 A Yes, ma'am. Then I also wrote a memorandum of the
16 interview, typed it.

17 Q The notes that you mentioned previously, were you
18 taking those notes during the course of the interview?

19 A Yes, ma'am.

20 Q At any point during your interview with Ms. Hepburn
21 did she ask for an attorney?

22 A No, ma'am.

23 Q Did she ever indicate that she did not want to
24 participate in the interview any further?

25 A No, ma'am.

1 Q Did she appear to the best of your knowledge to be
2 participating in the interview freely and voluntarily?

3 A Yes, ma'am.

4 Q Was her speech coherent?

5 A Yes, ma'am.

6 Q Did she appear to have any problems understanding the
7 questions that you were communicating to her?

8 A No, ma'am.

9 Q Or the questions that Agent Hurt was communicating to
10 her?

11 A No, ma'am.

12 Q Was she threatened or coerced in any way in order to
13 participate in the interview?

14 A No, ma'am.

15 Q Were any promises made by you or by Agent Hurt in
16 order to get her to participate in the interview?

17 A No, ma'am.

18 Q I am going to ask you to refer to the memorandum of
19 the interview that you previously mentioned was prepared.
20 This memorandum of the interview is prepared based on what
21 information?

22 A The notes that I took during the interview.

23 Q And I am going to ask you to start at the beginning
24 of the details of the interview and for purposes of this
25 hearing to relate the full interview as you noted had been

1 provided to you by Ms. Hepburn based on your notes.

2 A Read this entire memorandum?

3 Q Yes.

4 A An interview was conducted on October 13th, 2009 at
5 6:00 p.m. by Special Agent Casey K. Baccomo and Special
6 Agent Sarah Hurt with Ashley Hepburn, Audrina Hepburn's
7 mother on October 13th, 2009 at 6:00 p.m. This interview
8 was conducted in reference to the death of Audrina
9 Hepburn. Ashley stated that on October the 12th of 2009
10 she got up with the kids around 8:00 a.m. and ate cereal
11 with marshmallows. Ashley stated that when, that they
12 then watched Sponge Bob and went through the toy boxes.
13 Ashley stated that Audrina had just started walking.
14 Ashley stated that her boyfriend, Brandon, got out of
15 class around 1:45 or 2:00 p.m. and came by her house about
16 4:00 p.m. or so. Ashley stated that Brandon arrived at
17 the house at the same time her mother did. Ashley stated
18 that she hung out with her mother and the kids. Ashley
19 stated that Brandon left within an hour in coming to our
20 house at 4:00 p.m. because his grandma was sick. Ashley
21 stated that they ate dinner around 8:00 p.m. which
22 consisted of steaks, green beans and macaroni. Ashley
23 stated that Audrina ate dinner in her highchair and then
24 Owen, Audrina's brother sat beside her mom. Ashley stated
25 that after dinner they all sat around and watched

1 television. Ashley stated that Audrina was happy while
2 they watched television. Ashley stated that she gave both
3 Audrina and Owen a bath and there were toys in the
4 bathtub. Ashley stated that Brandon came back over about
5 the time she was getting the kids out of the bathtub.
6 Ashley stated that Brandon dressed Owen and she dressed
7 Audrina. Ashley stated that she gave Audrina a bottle
8 around 9:00 p.m. because she was fussy, not tired and did
9 not want to go to bed. Ashley stated that Brandon, Owen,
10 Audrina and herself watched football for a while. Ashley
11 stated that she put some Orajel on Audrina's gums because
12 she was teething. Ashley stated that she popped Owen on
13 the butt because he would not brush his teeth. Ashley
14 stated that she then went to her room to read two books to
15 Owen and they both fell asleep in her bed. Ashley stated
16 that Brandon asked her if she wanted to watch Congo and if
17 she wanted any food that his grandmother made and she fell
18 asleep again. Ashley stated that the next thing she
19 remembers is that she was standing in the hallway and
20 Brandon saying something was wrong with Audrina. Ashley
21 stated that they ran into the living room with Audrina and
22 Audrina was not breathing properly. Ashley stated that
23 something would have happened or she was crying she would
24 have been able to hear. Ashley stated that her mother
25 tried to breathe for Audrina and 911 was called. Ashley

1 stated that Owen did not wake up during any of this.
2 Ashley stated that Brandon told her he thought she had a
3 seizure. Ashley stated that Brandon told her that he
4 found Audrina laying horizontal, face down, not moving and
5 was up against the side of the crib. Ashley stated that
6 does not put it past Audrina's father to do something like
7 this to Audrina because he has aggressive behavior.
8 Ashley stated that Brandon was watching TV during all of
9 this. Ashley later stated that Audrina was put to bed
10 around 10:30 and that it took her thirty minutes to get
11 Owen to go to sleep that night. Ashley also stated that
12 she thought she was so tired that she probably couldn't
13 sleep and she ended up falling asleep. Ashley stated that
14 she never saw her mother or her mother's boyfriend come
15 out of their bedroom. Ashley stated that her boyfriend,
16 Brandon, was watching television in the living room and
17 was probably surprised she fell asleep. Ashley stated
18 later that Audrina was whining, cried all the time and was
19 different than her son. Ashley also stated that there was
20 a slight bruise on Audrina's chin and a bruise on
21 Audrina's stomach. Ashley stated that when Audrina would
22 fall she did not cry. End of statement.
23 Q And when you asked her or when you noted that she had
24 responded to a question by saying that they ate cereal
25 with marshmallows, who was she referring to?

1 A The kids.

2 Q And when she talked about, they went through the toy
3 boxes, who was she referring to?

4 A Her and the kids.

5 Q And when she talked about her sitting up in the
6 highchair eating supper, who was she referring to?

7 A Audrina.

8 Q And looking at your notes did that appear to be a
9 fair and accurate documentation of your interview with
10 Ashley Hepburn?

11 A Yes, ma'am.

12 Q And at the close of your interview with Ms. Hepburn,
13 was she in custody at that point?

14 A No, ma'am.

15 Q Nothing further.

16 THE COURT: Mr. Able.

17 CROSS-EXAMINATION

18 By Mr. Able:

19 Q Officer, you didn't obtain a written statement from
20 my client, did you?

21 A No, sir.

22 Q And she told you during your interview that she had
23 not injured or hurt Audrina, correct?

24 A I do not recall.

25 Q You were aware she had been up all night at the

1 hospital?

2 A She was asked and she said she had been up since
3 12:30 a.m. on 10/13/09.

4 Q And this was at what time, the interview?

5 A It started at 6:00 p.m. on 10/13/09.

6 Q And you discussed with her the fact that she had, you
7 did talk to her about her going to bed with Owen that
8 night?

9 A Yes, sir.

10 Q And what time was that?

11 A 11:00, around 11:00, 10:30, 11:00.

12 Q And you have got the timeline of her being up the day
13 before, October 12th?

14 A Yes, sir.

15 Q She had been up somewhere close to 30 hours when you
16 interviewed her, a couple of hours sleep that night?

17 A Yes, sir.

18 Q Did you know if she had eaten?

19 A I do not.

20 Q Did you ask her?

21 A I believe we offered at that time.

22 Q What was offered?

23 A If she needed to go to the restroom or anything to
24 eat, before we started because that is when we asked her
25 how long she had been up.

1 Q Now, prior to you and Officer Hurt--

2 A Sarah Hurt.

3 Q You and Officer Hurt interviewed her, did you
4 acknowledge the fact that she had been interviewed by
5 Officer Franklin and Mr. Burns, Officer Burns?

6 A Yes, sir.

7 Q How long did your interview take?

8 A Probably an hour at the most, I don't know right off.

9 Q The interview was conducted at 6:00 p.m.?

10 A Yes, sir.

11 Q Was that when it started?

12 A That is when it started.

13 Q So it went into 7:00 p.m. that evening?

14 A Yes, sir.

15 Q And do you know what time she got there to the
16 sheriffs office?

17 A I know I, on my goldenrod that I keep a daily
18 schedule of what I have done that can tell me when I left
19 Greenville and went to the sheriffs office. I do not know
20 exactly what time she arrived. I can say based off of
21 what I heard today.

22 Q So, you were at the hospital when she was at the
23 hospital?

24 A Yes.

25 Q At Greenville Hospital?

1 A Yes, sir.

2 Q So you left from Greenville Hospital about the time
3 she came back to the sheriffs office?

4 A I can look at my goldenrod and tell you when I left.

5 Q Okay, if you want to do that.

6 A I left Greenville at 15:00 hours which is 3:00 p.m.
7 on October 13th.

8 Q So, what time would you have arrived back at the
9 sheriffs office?

10 A Probably 3:45.

11 Q And you believe Ashley had been there about that
12 time?

13 A Yes, sir. She was there when I got there.

14 Q So, she had already been there a couple of hours when
15 you interviewed her?

16 A I don't know how long she had been there.

17 Q Well, you had been there a couple of hours before you
18 interviewed Ashley?

19 A Yes, sir.

20 Q So, she could had been there longer than that?

21 A I have no recollection of how long she had been
22 there.

23 Q Now, you were aware, of course, that her sixteen
24 month old child was in the hospital in Greenville with
25 severe injuries?

- 1 A Yes, sir.
- 2 Q Did you have your weapon on you?
- 3 A Yes, sir.
- 4 Q Did you have a side holster or what?
- 5 A Yes, sir.
- 6 Q Was it visible?
- 7 A I had a coat on, a suit coat.
- 8 Q What about the other agent?
- 9 A She had a suit coat on.
- 10 Q Both of you had your sidearms?
- 11 A Yes, sir.
- 12 Q You identified yourself as SLED agents?
- 13 A Yes, sir.
- 14 Q Were you present at the subsequent interview with Mr.
- 15 Plaxico?
- 16 A No, sir. I was outside the room for a short amount
- 17 of time.
- 18 Q I don't understand.
- 19 A I was outside the room, I was not in there with
- 20 Lieutenant Plaxico during his interview.
- 21 Q During any of the interviews?
- 22 A No, sir.
- 23 Q How about the other agent?
- 24 A No sir, she was outside with me.
- 25 Q Did you obtain any other statements from my client

1 other than what you just read to us?

2 A No, sir.

3 Q That is the only time you spoke with her?

4 A Yes, sir.

5 Q That is all I have.

6 THE COURT: Ms. Mayes.

7 REDIRECT EXAMINATION

8 By Ms. Mayes:

9 Q On the question of how long Ms. Hepburn had been up,
10 what was your understanding based on the interview of what
11 Ms. Hepburn was doing prior to the arrival of EMS at her
12 home?

13 MR. ABLE: I am sorry, what was your understanding?

14 THE COURT: What was her understanding of what your
15 client was doing prior to the arrival of EMS at the house.

16 MR. ABLE: I am going to object to it. No foundation
17 laid as to her understanding, it would be hearsay.

18 MS. MAYES: I can lay a foundation, Your Honor.

19 THE COURT: Go ahead, Ms. Mayes.

20 Q Did you speak with her concerning the timeline of
21 events?

22 A Yes, ma'am.

23 Q And what did she report to you she was doing on the
24 evening of October 12th into the early morning hours of
25 October 13th?

1 A She was asleep.

2 Q And at what point did EMS arrive at the home?

3 A Based off of her interview?

4 Q Or at any point, if you are aware, what date and time
5 did EMS arrive at the home?

6 A Around 1:30 on October 13th.

7 Q All right. Now, when Plaxico or Investigator Plaxico
8 did his interview how close in time did that follow the
9 end of your interview with Ms. Hepburn?

10 A He went right in after I came out or Agent Hurt and
11 myself came out.

12 Q Nothing further.

13 MR. ABLE: Nothing.

14 THE COURT: Thank you, ma'am, you can step down. Ms.
15 Mayes.

16 MS. MAYES: The State calls Investigator Plaxico.

17 Robert Plaxico, after being duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 By Ms. Mayes:

21 Q Investigator Plaxico, where are you employed and what
22 capacity?

23 A Laurens County Sheriffs Department as an
24 investigator.

25 Q And how long have you been with the sheriffs

1 department?

2 A 18 years.

3 Q And how did you become involved in the investigation
4 concerning injuries to a sixteen month old child, Audrina
5 Hepburn?

6 A I was the investigator on call.

7 Q And at what point were you advised that a child had
8 been injured?

9 A It was about 1:30 in the morning of the 13th.

10 Q And what did you first do in response to receiving
11 this information?

12 A Myself and Investigator Ben Blackmon went to Self
13 Memorial Hospital in Greenwood.

14 Q And who did you have contact with at the hospital
15 when you first arrived there?

16 A Dr. Curry.

17 Q All right. And can you kind of lead us through the
18 sequence of events after you arrived at the hospital and
19 you spoke with Dr. Curry, who is Dr. Curry?

20 A She was I assume the doctor in charge at the ER that
21 night or she was the one seeing Audrina.

22 Q And you spoke with the Doctor, what happened next?

23 A She informed us her opinion of what had happened and
24 we talked to Ashley Hepburn that night just a little bit
25 and we asked Brandon Lewis if he would come to the

1 sheriffs department so we could talk to him. Ashley was
2 going to go to Greenville Memorial Hospital with Audrina.

3 Q When did you first have contact with the mother of
4 the child, Ashley Hepburn?

5 A We talked to her just a little that night and I
6 actually walked out to my vehicle and talked just a little
7 bit and then we talked to Mr. Lewis.

8 Q I am going to show you the incident report in this
9 case and ask you whether or not you recognize it?

10 A I do.

11 Q And who was with you when you first had contact with
12 Ms. Hepburn, when you talk about the emergency room you
13 are talking about Self Hospital in Greenwood?

14 A Yes, ma'am.

15 Q Who was with you when you first had contact with Ms.
16 Hepburn?

17 A Investigator Blackmon.

18 Q Okay. Any other deputies present. Do you have a
19 copy of your incident report with you?

20 A There was a Brandon Strickland from Greenwood County
21 was working the emergency room that night and we just
22 talked to him just a little bit. I don't know if he had
23 contacted Ashley. I am not sure.

24 Q And do you know whether or not Deputy Garrison was
25 present?

1 A We called him over to the hospital and we got his
2 basic information from the report and then he transported
3 Brandon back to Laurens County for us.

4 Q And who actually spoke with Ms. Hepburn there at the
5 Greenwood Hospital?

6 A I did.

7 Q And do you know whether or not Deputy Garrison spoke
8 with her also?

9 A I do not, I don't think he did. He could have had to
10 get some basic information.

11 Q All right. Where did you first speak with Ms.
12 Hepburn?

13 A We were inside of the hospital and I asked her if she
14 wanted to walk outside and she did and we walked to my
15 truck and Investigator Blackmon walked out there and he
16 and her sat in my truck. I let her smoke a cigarette and
17 we just talked a little bit, what she had thought had
18 happened or whatever.

19 Q And at that point and time you were in the parking
20 lot at Greenwood Hospital?

21 A Yes, ma'am.

22 Q Was she in custody?

23 A No, ma'am.

24 Q Did she indicate anything to you of substance
25 concerning her knowledge of the events that might have

1 injured Audrina?

2 A Not at that time.

3 Q And where did you go next?

4 A We went back in the hospital and we talked to Richard
5 Lewis and we asked him would he come to the sheriffs
6 department for an interview and we knew, we let Ms.
7 Hepburn go to Greenville with her child.

8 Q All right. And when did you have contact with the
9 codefendant in this case, Brandon Lewis?

10 A There at Self Memorial Hospital.

11 Q All right. And just to clarify for the record,
12 following your contact with both Ms. Hepburn at Greenwood
13 Hospital and Mr. Lewis at Greenwood Hospital were
14 interviews done at the sheriffs department?

15 A They were.

16 Q And who was first interviewed at the sheriffs
17 department?

18 A Mr. Lewis.

19 Q And when Mr. Lewis was at the sheriffs department
20 being interviewed where, if you know, was Ms. Hepburn?

21 A I presume she was in Greenville Hospital.

22 Q All right. When did you next have contact with Ms.
23 Hepburn?

24 A We went to Greenville that day and I talked to her up
25 there and asked her if she would come down to the sheriffs

1 department so we could talk to her. And then later on
2 that same afternoon she came down to the sheriffs
3 department, she was brought down there by a family member.

4 Q All right. When you say she was brought by a family
5 member do you know who that family member was?

6 A I think it was her dad.

7 Q All right. Who actually asked her to come to the
8 sheriffs department to be interviewed?

9 A I did.

10 Q Tell us how that conversation occurred.

11 A She was in the waiting room and I just asked her if
12 she could come down some time later, I might of talked to
13 her dad at the same time and asked him if he could bring
14 her down there that afternoon so we could interview her.

15 Q All right. And did Ms. Hepburn seem to be agreeable
16 to coming to Laurens to participate in the interview?

17 A She did.

18 Q And did she agree to participate in the interview at
19 the sheriffs department?

20 A She did.

21 Q Once you were at the sheriffs department where did
22 you first see Ms. Hepburn?

23 A They came in and somebody went downstairs and I went
24 to get them and they were brought upstairs. There were
25 actually five officers, four of them are off of one

1 office. And she was taken in there.

2 Q And when you say they, who are you referring to?

3 A Well, Ms. Hepburn was brought up there to that office
4 complex and she was taken into Investigator Burns office
5 and Investigator Burns and Investigator Franklin
6 interviewed her.

7 Q When you say she was brought again you have indicated
8 that she was brought by her father?

9 A Yes, ma'am.

10 Q At any point after arriving at the law enforcement
11 center was she placed into custody?

12 A No, ma'am.

13 Q Was she told she was under arrest?

14 A No, ma'am.

15 Q Was she threatened or coerced in any way in order to
16 participate in any interview?

17 A No, ma'am.

18 Q Were any promises made to Ms. Hepburn in exchange for
19 her to participate in an interview?

20 A No, ma'am.

21 Q When did you have one on one contact with Ms.
22 Hepburn?

23 A Investigator Franklin and Investigator Burns
24 interviewed her first and then the two SLED investigators
25 interviewed second and then I went in there after that and

1 interviewed her.

2 Q What was your understanding or what information did
3 you have regarding whether or not Ms. Hepburn had been
4 advised of her Miranda rights?

5 A When I walked in the Miranda rights form was laying
6 on the desk and I saw that she had signed it and Mr. Burns
7 and Mr. Franklin had signed it as witnesses.

8 Q At any point did she advise you that she did not wish
9 to participate in an interview?

10 A No, ma'am.

11 Q At any point did she ask for an attorney?

12 A No, ma'am.

13 Q Did she appear to be participating in the interview
14 freely and voluntarily?

15 A She did.

16 Q How did you later document any information you had
17 received from Ms. Hepburn?

18 A I did a supplemental report.

19 Q Do you have a copy of that supplemental report with
20 you?

21 A I do.

22 Q Can you tell us what, if anything, occurred during
23 the course of the interview that is relevant to the case
24 involving Ms. Hepburn.

25 A While we talked it appeared to me that she didn't

1 believe some stuff that I was telling her. So, I let her
2 read the second statement that Mr. Lewis had gave and then
3 she had some verbal remarks to that after she read that
4 statement.

5 Q And you are referring to the second written statement
6 that Mr. Lewis had made?

7 A Yes, ma'am.

8 Q And who was that written statement made to?

9 A I don't remember which investigator actually took
10 that statement.

11 Q Had you been provided a copy of it?

12 A I had.

13 Q And how, if at all, did that statement involve Ms.
14 Hepburn for purposes of this hearing?

15 A Mr. Lewis had said that he was watching TV and in
16 that statement he says that he heard Audrina Hepburn start
17 crying and then he heard footsteps coming from another
18 bedroom into Audrina's bedroom. And then he heard what he
19 thought to be Audrina being shaken and then he heard the
20 footsteps go away. And then some time later he got him
21 something to eat and asked Ashley if she wanted something
22 to eat. And then he checked on Audrina and she was
23 unresponsive.

24 Q And you indicated that during the course of your
25 interview you had shared some information with Ms.

1 Hepburn?

2 A I let her read that entire statement and after she
3 read it she kind of got quiet and then she said, oh my god
4 all of this is true but I don't remember hurting my baby.

5 Q And what happened after that?

6 A She kind of got quiet and I led her into a
7 conversation, sometimes when you have a traumatic
8 experience your brain erases it out. And she asked me if
9 I thought that she had hurt her baby but just didn't
10 remember it and I told her that I thought she would
11 remember it and she kind of raised her voice at me and
12 told me she didn't hurt her baby. And at that point I
13 terminated the interview and she left the sheriffs
14 department.

15 Q Nothing further at this time.

16 CROSS-EXAMINATION

17 By Mr. Able:

18 Q Officer Plaxico, you are the lead investigator on
19 this case?

20 A Yes, sir.

21 Q And there was no written statement from Ms. Ashley
22 Hepburn at any time during your investigation, was there?

23 A No, sir.

24 Q You didn't obtain a written statement at the
25 hospital?

1 A No, sir.

2 Q Officer Franklin and Officer Burns didn't obtain a
3 written statement?

4 A No, sir.

5 Q The SLED agents didn't obtain a written statement?

6 A No, sir.

7 Q And you didn't obtain a written statement?

8 A No, sir.

9 Q During the interview that you had with her, with Ms.
10 Hepburn there were no tape recordings or video recordings
11 of any nature, recording what y'all were saying or
12 anything like that?

13 A No, sir.

14 Q Now, it is your position that Ashley read the
15 statement that was given by Mr. Lewis, the second
16 statement and then she says you, she says, oh my god all
17 of this is true but I don't remember hurting my baby.

18 A That is correct.

19 Q And then you contend she goes on to say, asking you,
20 do you think I did this to my baby and didn't, and don't
21 remember it?

22 A That is true.

23 Q And then she said in response to your question, you
24 can contend, I wouldn't hurt my baby, I wouldn't hurt my
25 baby.

- 1 A That is correct.
- 2 Q Nobody else was present during this interview, was
- 3 there?
- 4 A No, sir.
- 5 Q Nobody else was in the room?
- 6 A No, sir.
- 7 Q Nobody heard her make these statements?
- 8 A No, sir.
- 9 Q Nobody else can testify that you know of that these
- 10 statements were made?
- 11 A Correct.
- 12 Q Nothing, there was nothing put in writing at that
- 13 time about what she said?
- 14 A No, sir.
- 15 Q You made no notes as to the conversation?
- 16 A I did just a supplemental report.
- 17 Q All right, sir. You made no notes contemporaneous at
- 18 that time?
- 19 A No, sir.
- 20 Q As to any statements that she made?
- 21 A No, sir.
- 22 Q Now, the supplemental report that you are referring
- 23 to, that is the second supplemental report?
- 24 A I would presume if it is the one that looks like
- 25 this.

1 Q Let me see. What is the date on this one, it says
2 date interchanged October 11, 2010?

3 A Yes, sir.

4 Q So, we are talking about October of 2010 on that
5 supplemental report?

6 A Yes, sir.

7 Q Now, there was an earlier supplemental report done,
8 wasn't there, are you aware of that?

9 A Yes, sir.

10 Q What is the date on that one, Officer?

11 A October the 19th of 2009.

12 Q October 19th of 2009?

13 A Yes.

14 Q So, the report that you are referring to and I will
15 call it the second supplemental report which is dated
16 October 11, 2010 with these statements that you attribute
17 being made by Ashley Hepburn. That supplemental report
18 was prepared almost a year later?

19 A Yes, sir.

20 Q Now the first, the initial incident report in this
21 matter was filed the same day or dated the same day,
22 October 13th of 2009?

23 A Yes, sir.

24 Q And I believe it says in there you spoke about
25 Officer Garrison, Deputy Garrison. It says that she, that

1 Deputy Garrison spoke with the victim's mother, Ashley

2 Hepburn? Do you see that?

3 A Yes, sir.

4 Q Who prepared that incident report?

5 A Garrison.

6 Q Your name is on there as the Lieutenant, correct?

7 A Yes, sir.

8 Q And in that capacity did you review it as a
9 supervising officer?

10 A No, sir. I just showed that it come to me for
11 followup investigation.

12 Q On that incident report the narrative says that
13 Deputy Garrison spoke to the victim's mother, Ashley
14 Hepburn and stated, who stated she put the child in the
15 crib to go to sleep at approximately 2:30 p.m. on
16 10/12/2009. Ms. Hepburn stated the child was a little
17 fussy today due to the fact that the child was teething
18 but overall she was okay. Ms. Hepburn stated that as she
19 put the child down she fell asleep and was later awakened
20 by Mr. Lewis who was holding the unresponsive child,
21 correct?

22 A Yes, sir.

23 Q Now, the first supplemental report, incident report,
24 supplemental dated October 19th of 2009, you prepared that
25 one, correct?

1 A Yes.

2 Q It has got your name up at the top, Robert Plaxico?

3 A Yes.

4 Q And we have, it is dated October 19th of 2009?

5 A Yes, sir.

6 Q And it says review date, October 19th of 2009, who
7 would have reviewed it?

8 A It would of went to Captain Stephon Williams.

9 Q So the first supplemental incident report that we
10 have dated October 19th of 2009, you were the one that
11 prepared that?

12 A Yes, sir.

13 Q And that was prepared six days after this incident on
14 October 13th of 2009?

15 A Yes, sir.

16 Q Now, in that statement or that supplemental report
17 that you prepared dated October 19th of 2009 about a
18 fourth of the way down you talk about Mr. Lewis being
19 interviewed at the Laurens County Sheriffs Office,
20 correct?

21 A Yes, sir.

22 Q And he provided two written statements that day,
23 correct?

24 A He did.

25 Q One early in the morning hours, I believe between

1 6:00 and 7:00 a.m.

2 A Could have been, I don't know what time.

3 Q But he provided one written statement earlier?

4 A He did.

5 Q And then later in the afternoon or up to the
6 afternoon he provided a second statement?

7 A He did.

8 Q And this incident report that you are referring to,
9 you are talking about having interviewed or Mr. Brandon
10 having been interviewed, I am sorry, Mr. Lewis having been
11 interviewed. And it says that after a false statement was
12 given to law enforcement he again stated he wished to talk
13 to an investigator. So, he had already given those two
14 statements, correct, according to this statement, the
15 report?

16 A He had given one and wanted to give another one.

17 Q Yes sir, and he gave another one?

18 A He did.

19 Q Okay. So, those interviews with Mr. Lewis had
20 already been done?

21 A They had.

22 Q When you spoke with Ms. Hepburn at the Greenwood
23 Hospital had you had an opportunity to speak to her again
24 until she got to the sheriffs office?

25 A Just up at the Greenville Hospital but it wasn't an

1 interview.

2 Q It wasn't an interview, you asked her to come down?

3 A I asked her to come down.

4 Q In this first supplemental report you prepared dated
5 October 19th of 2009, after Mr. Lewis had given his two
6 statements you then say or the statement says then, I
7 guess that is the investigating officer, that would be
8 you?

9 A Yes, sir.

10 Q As you prepared this statement, investigating officer
11 interviewed Ashley and she stated that she had done
12 nothing to the child, that she had just woke up to her
13 boyfriend yelling for help?

14 A Yes, sir.

15 Q And that is your supplemental report?

16 A That is what I put at the time, yes sir.

17 Q And that was prepared six days after this incident?

18 A Yes, sir.

19 Q And it was prepared six days after you interviewed
20 her at the sheriffs office?

21 A Yes, sir.

22 Q Now, as to the October 19th, 2009 statement there is
23 nothing else in that entire statement about anything
24 Ashley said on that interview on October 13th of 2009?

25 A No, sir.

1 Q All it says is that, she stated that she had done
2 nothing to her child and that she was just woke up by her
3 boyfriend yelling for help?

4 A Correct.

5 Q Now, the statement that Ms. Mayes was asking you
6 about, that is what we will term the second supplemental
7 report dated October 11, 2010?

8 A Yes, sir.

9 Q Now, so that, if my math is correct, October 11th of
10 2010, that was 363 days after the original incident report
11 of October 13th of 2010?

12 A Correct.

13 Q And further if my math is correct it would be 357
14 days after the first supplemental report of October 19th
15 of 2009?

16 A That would be correct.

17 Q And you didn't interview Ashley any time after that
18 October 13th of 2009 interview at the sheriffs office?

19 A No, sir.

20 Q As you stated before, there were no notes made
21 contemporaneously of the conversation?

22 A Correct.

23 Q No audio recording?

24 A Correct.

25 Q No video recording?

1 A Correct.

2 Q And you came back a year later and made the second
3 supplemental report?

4 A I did.

5 Q Now, that evening, as you stated in that report of
6 October 11th, 2010, and let me just ask you, you prepared
7 this report and it has got your name at the top of it,
8 right?

9 A Yes, sir.

10 Q As to this report you state in their that Ashley had
11 gotten there or that Ashley was interviewed first by
12 Franklin and Burns of which no statement, I am sorry,
13 Ashley Hepburn was then interviewed by Franklin and Burns
14 of which no statement was given but she did sign her
15 waiver of rights?

16 A Correct.

17 Q All right. Were you at the sheriffs office that
18 entire time?

19 A I was.

20 Q You didn't sit in on the interview with Mr. Burns and
21 Mr. Franklin?

22 A I did not.

23 Q But you were there in the building?

24 A I was.

25 Q Do you recall what time she got there?

- 1 A It was sometime after 3:00 o'clock, I don't remember
2 the exact time.
- 3 Q Okay. And I think a SLED agent said that she
4 interviewed Ashley at 6:00 o'clock?
- 5 A Could have.
- 6 Q So, you recall she got there after 3:00?
- 7 A I do.
- 8 Q You then say in the incident report of October 11th
9 of 2010 Ashley Hepburn was then interviewed by SLED agents
10 Casey Kirkland and Sarah Hurt?
- 11 A Yes, sir.
- 12 Q Now, Casey Kirkland, she had another name at the time
13 this matter, at the time of this incident, October 13th of
14 2010, correct, I mean 2009?
- 15 A I don't recall.
- 16 Q This statement was prepared late enough that she now
17 has her married name?
- 18 A Yes, sir.
- 19 Q You go on to say that Ashley was interviewed by the
20 SLED agents and no written statement was obtained?
- 21 A Correct.
- 22 Q You know there was a memorandum of that conversation
23 between the SLED agents and Ashley?
- 24 A No sir, I haven't seen one.
- 25 Q You are the lead investigator and you are not aware

1 that they had prepared a memorandum of that conversation?

2 A No, sir.

3 Q Have you ever read it?

4 A No, sir.

5 Q Not familiar with it in any way?

6 A No, sir.

7 Q Would it surprise you to know that Ashley made no
8 statements in that interview as she made to you or that
9 you allege she made to you?

10 A I don't have a clue.

11 Q You interviewed her alone you said?

12 A I did, left the door cracked open.

13 Q And you say, you said during your direct testimony
14 that Ashley had made these statements in response to her
15 reading the second written statement of Mr. Lewis?

16 A Yes, the second statement that he gave.

17 Q Okay. That is not in your incident report, is it?

18 A No, that is just only in the supplemental.

19 Q That is not in your supplemental report, let me see,
20 you say Ashley Hepburn was then interviewed by Plaxico at
21 which time she started crying and said, oh my god all of
22 this is true, et cetera. You don't say anything in the
23 incident report about her having read the statement of
24 Brandon Lewis?

25 A No sir, it is not in there.

1 Q I am sorry?

2 A No, sir.

3 Q In this second supplemental report of October 11th of
4 2010 you say Plaxico then terminated his interview, the
5 interview and no written statement was obtained from
6 Ashley Hepburn. Ashley Hepburn was then released and left
7 at the Laurens County Sheriffs Department. So you
8 released her from your custody?

9 A No sir, she was never in custody, she was just
10 allowed to leave.

11 Q But you said she was released?

12 A She never was in custody.

13 Q You never prohibited her from leaving?

14 A No, sir.

15 Q Officer, as to these statements that you attribute to
16 my client, do you remember at the preliminary hearing on
17 January the 13th of 2010 I asked you about what evidence
18 you had in this case, do you remember that?

19 A Yes, sir.

20 Q And I specifically asked you, one moment, I asked
21 you, Officer, what evidence do you have that says my
22 client was involved with the shaking of this baby other
23 than the statement of Richard Brandon Lewis. You told me
24 at that time, at this time nothing, no other evidence?

25 A Correct.

1 Q And that was three months, the date of that
2 preliminary hearing was January 13th of 2010. And you
3 told me at that time that you had no other evidence that
4 would show her involvement?

5 A Correct.

6 Q And that was three months after October the 13th of
7 2009?

8 A Correct.

9 Q And you didn't say anything about any statements
10 being made by my client at that time?

11 A I did not.

12 Q So, you said at that time there was no evidence that
13 Ms. Hepburn was involved in the injuries to Audrina except
14 for the second statement of Mr. Lewis?

15 A That is what I said at the preliminary.

16 Q And that was sworn testimony at the preliminary,
17 wasn't it?

18 A Correct.

19 Q That day, October 13th that you interviewed my
20 client, you know of course as a lead investigator that she
21 had been interviewed once by Franklin and Burns?

22 A Correct.

23 Q She had been interviewed by the SLED agents?

24 A Correct.

25 Q And yours was the third successive interview?

1 A It was.

2 Q Did you have an opportunity to review any of the
3 notes made by SLED?

4 A I did not.

5 Q You knew she had been up for a considerable time,
6 didn't you?

7 A I didn't know if she had taken a nap at Greenville, I
8 mean I don't know what happened at Greenville.

9 Q Well, you knew that EMS was called in on this case
10 about 1:30 a.m.

11 A Correct.

12 Q And you saw Ashley at the hospital over in Greenwood?

13 A I did.

14 Q What time was that?

15 A It had been somewhere, 2:00 or 2:30. I would guess
16 when we got the call.

17 Q In the a.m.?

18 A Yes, in the a.m.

19 Q And you had talked with her there at the hospital and
20 knew she had very little sleep, of course, between the
21 night of October 12th and October 13th, when she was at
22 the hospital?

23 A Correct.

24 Q You could have interviewed her the next day, couldn't
25 you Officer?

1 A We chose to interview her that day.

2 Q You already had sheriffs deputies interview her, SLED
3 agents interview her, you could have chose to interview
4 her the next day?

5 A I chose to interview while she was there.

6 Q All right. On the second supplemental report dated
7 October the 11th of 2010, the one that came back and made
8 a year later. It says on October the 13th of 2009 at
9 approximately 14:30 hours and 15:00 hours, that would be
10 what 2:30 p.m. to 3:00 o'clock p.m.

11 A Yes, that was a typo on my part. It was in the
12 morning.

13 Q It was in the a.m., so that is a mistake on there?

14 A It is.

15 Q But that should be 2:30--

16 A To 3:00 o'clock in the morning.

17 Q 2:30, right, so this is wrong?

18 A The time is, correct, the way it looks there.

19 Q What time was it that you started interviewing Ashley
20 there at the sheriffs office that afternoon, that evening,
21 that afternoon?

22 A I would say somewhere around 6:00 or 7:00 o'clock in
23 the afternoon.

24 Q Were you aware if she had eaten or not?

25 A I was not.

- 1 Q Did you ask her?
- 2 A Not that I recall.
- 3 Q You knew her child was in the hospital?
- 4 A I did.
- 5 Q And you knew her child was in grave condition?
- 6 A I did.
- 7 Q She didn't have her family with her during the
- 8 interview?
- 9 A No, sir.
- 10 Q Did you have your weapon?
- 11 A Yes, sir.
- 12 Q On your side?
- 13 A Yes, sir.
- 14 Q You didn't sit in on the previous interview, I may
- 15 have asked you that.
- 16 A No, sir.
- 17 Q And these statements that you attribute to Ashley
- 18 making at that interview were not in the original first
- 19 supplemental report dated October 19th of 2009?
- 20 A They were not.
- 21 Q They don't appear anywhere until your supplemental
- 22 report dated October 11th?
- 23 A They appear in the family court transcript.
- 24 Q That was in May of 2010?
- 25 A Correct.

1 Q That is the first time?

2 A I think so.

3 Q Then you waited five months to do a supplemental
4 report?

5 A I did.

6 Q That is all I have.

7 THE COURT: Before we go back on redirect we are
8 going to take a five minute break. Officer Plaxico, don't
9 talk about your testimony and we will be right back.

10 (Whereupon, a short break was taken.)

11 THE COURT: All right, Ms. Mayes, redirect.

12 MS. MAYES: Yes sir, Your Honor, I actually have a
13 matter to address. At the outset there had been a motion
14 for sequestration which was made by defense counsel. And
15 we have now started testimony, testimony has been under
16 way for several witnesses. And our understanding is that
17 there are defense witnesses in the courtroom or a witness
18 is present in the courtroom that include Doris Davis,
19 David Crumley and Hazel Edward. Your Honor, this was the
20 motion requested by defense counsel. At this point, the
21 sequestration, the State has no issue with that. We have
22 had our witnesses sequestered but we have no objection to
23 waiving this sequestration request. We just need
24 clarification on that matter.

25 THE COURT: We will take, my initial reaction is if

1 they intend to remain in the courtroom then they won't be
2 able to testify. Mr. Able and Mr. Wise, do y'all have
3 anything on this.

4 MR. ABLE: They were also witnesses from the State,
5 not just defense witnesses, they were being subpoenaed by
6 the State. I didn't realize they were in here but and
7 they were summoned to be here by the State just like I
8 issued a subpoena as well. So they don't intend to stay
9 in here I don't believe.

10 MR. WISE: The question that I have is that the two
11 witnesses on me, I believe, are my client's mother and
12 grandmother. I have no clue what the State is going to
13 call them to testify to because I don't know of any
14 relevant testimony they have about this matter. And if
15 they can represent to the Court how they would advance the
16 State's case then I am willing to cross-examine both of
17 those witnesses on cross-examination. How they are going
18 to advance the State's case, fine. But to exclude his
19 mother and grandmother from the trial for whatever
20 probative value any of that testimony may have I think is
21 a little harsh. At least have some idea that they have
22 some relevance to the trial.

23 THE COURT: I would very much like for your client --
24 but a witness is a witness is a witness and I granted the
25 motion to sequester.

1 MR. WISE: I would call upon the State to represent
2 to the Court that they have some probative value for the
3 State's case and not just listed to keep them out of the
4 courtroom.

5 MS. MAYES: Your Honor, it is noted in the incident
6 report that they were present during an occasion in which
7 Mr. Lewis fled from law enforcement after law enforcement
8 arrived at the home. That certainly may be an issue in
9 this case. We have no objection to family members being
10 exempted from sequestration. That includes family members
11 of the defense, both of the defendants and family members
12 related to the victim in this case. We have never had an
13 objection to that, we would want to make that, extend the
14 sequestration to include any exception of the grandmother
15 of Mr. Lewis, the parent of Ms. Hepburn as well as the
16 grandparents of the victim in this case, the Hepburn's.

17 THE COURT: Do you have a problem with that, Mr.
18 Able?

19 MR. ABLE: Which grandparents is she talking about?

20 MS. MAYES: The grandparents of the victim, Audrina
21 Hepburn, that would be Ms. Hepburn and Mr. Ebel.

22 MR. ABLE: I won't agree with that.

23 THE COURT: Would you agree to Mr. Wise's client's
24 mother and grandmother being--

25 MR. ABLE: I don't have any objection to that.

1 THE COURT: What was the other witness, which are the
2 ones that you specifically have an objection to being in
3 here.

4 MR. ABLE: Rita Ebel and Kenneth Ebel.

5 MS. MAYES: Rita Hepburn is the grandparent of the
6 victim in this case, Audrina Hepburn. She is the paternal
7 grandmother. She is married to Kenneth Ebel. Now, the
8 State does not intend to call him as a witness, he was on
9 the witness list but the State does not intend to call
10 him. As to Rita Hepburn, she is a potential witness in
11 this case but so is Ms. Starnes and Ms. Lewis who are
12 related to Mr. Lewis and Doris Davis who is the mother of
13 Ashley Hepburn. And as we stated, we would be willing to
14 agree for family members to remain present but it would
15 have to apply equally to family members related to the
16 victim and the defendants.

17 THE COURT: So you are okay with Rita and Kenneth
18 Ebel being in here?

19 MR. ABLE: No, sir.

20 THE COURT: You are not okay with that.

21 MR. ABLE: Kenneth, if they are not going to call him
22 as a witness I don't have any objection to that.

23 THE COURT: Do you intend to call Mr. Ebel as a
24 witness?

25 MR. ABLE: No, sir.

1 THE COURT: Do you intend to call him, Ms. Mayes, or
2 do you know?

3 MS. MAYES: Mr. Ebel, no sir, Your Honor.

4 THE COURT: All right. You don't intend to call him?

5 MR. WISE: No, sir.

6 THE COURT: How about Rita?

7 MS. MAYES: Yes sir, Your Honor.

8 THE COURT: Mr. Ebel can come back in. Your client's
9 immediate family can come back in, the mother and
10 grandmother. Rita needs to stay out.

11 MS. MAYES: And, Your Honor, Ms. Doris Davis who is
12 the mother of Ashley Hepburn was present at the scene
13 would also fall under the sequestration order.

14 MR. ABLE: I sent her out, Judge.

15 MR. WISE: To be frank with you, I didn't really
16 consider this part testimony that sequestration would
17 apply to.

18 MR. ABLE: That is true too. I didn't think so
19 either.

20 THE COURT: So Doris Davis is out, Rita is out. Are
21 yours, his folks still here.

22 MR. WISE: They are still here.

23 THE COURT: Everybody okay with who is not in the
24 courtroom at this point and time.

25 MS. MAYES: There was one more person who was

1 present, Your Honor, her name is Hazel Edwards and we
2 don't know these people by sight. Hazel Edwards, she was
3 a defense witness as well and is related to Ms. Hepburn,
4 we just need to make sure is also sequestered.

5 MR. ABLE: Okay.

6 THE COURT: We are good on that. Just make sure the
7 individuals who are sequestered or your respected
8 witnesses you will apprise them of that. Let's continue
9 with the Jackson v. Denno. Ms. Mayes, redirect.

10 REDIRECT EXAMINATION

11 By Ms. Mayes:

12 Q Now, Investigator Plaxico, I believe you mentioned
13 that prior to preparing the supplemental report you had
14 testified previously regarding the verbal statement made
15 by Ms. Hepburn?

16 A I did.

17 Q Where and under what circumstances did you testify
18 regarding that?

19 A It was in family court.

20 Q And that was on or about May 18th of 2010?

21 A Yes, ma'am.

22 Q And was Mr. Able present for those proceedings?

23 A He was.

24 Q Now, going back to the incident report, do you have a
25 copy of the first original incident report that was filed

1 on October 13th of 2009?

2 A Yes, ma'am.

3 Q And who filled out that report?

4 A Deputy Garrison.

5 Q I am going to ask you to look at the first page of
6 that particular incident report. Mr. Able was asking you
7 about the statement attributed to Ms. Hepburn that she put
8 the child in the crib to go to sleep at approximately
9 10:30 on October 12th, who was that statement made to?

10 A It would have been Deputy Garrison, he did the
11 report.

12 Q Nothing further at this time.

13 THE COURT: Anything on recross?

14 MR. ABLE: One moment, Your Honor.

15 THE COURT: Yes.

16 RECROSS-EXAMINATION

17 By Mr. Able:

18 Q Officer Plaxico, concerning the testimony you gave at
19 the family court hearing May 18th of 2010, you had been,
20 your direct examination was by the DSS attorney, Ms.
21 Houck, correct?

22 A Correct.

23 Q And she questioned you about this case?

24 A She did.

25 Q And then I had a chance to cross-examine you?

1 A You did.

2 Q And then, Mr. Wise cross-examined you?

3 A He did.

4 Q And it was not until Mr. Wise's cross-examination
5 that you made the statement, she starting crying basically
6 and said all of that is true but I don't remember hurting
7 my child?

8 A Correct.

9 Q That is all I have, Your Honor.

10 MS. MAYES: May we approach on a scheduling matter,
11 Your Honor.

12 THE COURT: Yes.

13 (Whereupon, a bench conference was held.)

14 THE COURT: Ms. Mayes, any additional witnesses on
15 this issue?

16 MS. MAYES: No sir, Your Honor.

17 THE COURT: Mr. Able, I will be happy to hear from
18 you on your motion.

19 MR. ABLE: Judge, primarily I am sure the Court is
20 aware that the issue as a result of this hearing are the
21 statements Officer Plaxico attributes to my client
22 pursuant to the second supplemental report. That report
23 is dated October 11th of 2010, brought out in his
24 cross-examination almost a year subsequent to this
25 incident, almost a year subsequent to the first

1 supplemental report wherein he stated on October 19th that
2 Ashley, that she stated that she had done nothing to the
3 child, that she had just woke up to her boyfriend yelling
4 for help. And then some twelve months later coming back
5 and supplementing that to include the statements he
6 attributes to her of, oh my god all of this is true but I
7 don't remember hurting my baby. Judge, part of the
8 voluntariness of any statement, I think you have to look
9 at even if the statement was made. These statements are
10 so glaringly suspicious, so glaringly questionable I
11 believe that they should be suppressed and excluded from
12 the trial of this case. And I think the questionability
13 of the, of the statements, the matter by which the
14 testimony was elicited and the questions that would be
15 raised by that testimony I think lends itself to a 403
16 argument as to the prejudicial effect and any probative
17 value it would have. I think it is so glaringly, just,
18 the question has to be raised as to whether or not the
19 statements were even made. And I think that has to be
20 raised in the sense of voluntariness. If they weren't
21 made, of course, they couldn't be voluntary. So, I would
22 move the Court to suppress them, to exclude them, the
23 statements of Officer Plaxico that is contained within the
24 second supplemental report. As to the issue of
25 voluntariness, Judge, the Court's, I don't think there is

1 any questions but my client having been up for many hours
2 that night with her child, worried about her child, her
3 child was at the hospital with these injuries, not eaten,
4 her family was not with her. She had been interviewed
5 successively three different times, first by Officer
6 Franklin and Burns and then by the SLED agents then by
7 Plaxico. She had been there, from the testimony it
8 appears sometime after 3:00 until we know, Officer Plaxico
9 started interviewing her after 7:00 o'clock that night.
10 And I think looking at the totality of it the statements
11 that would be attributed to my client by Officer Plaxico
12 were not voluntarily made. I questioned him, I said, he
13 could have questioned her the next day, her baby was in
14 the hospital fighting for its life and join that with the
15 other things that I just mentioned. I think that there is
16 some question of voluntariness and the statements should
17 be excluded from the trial of the case.

18 THE COURT: Ms. Mayes, what is your position.

19 MS. MAYES: Yes, sir.

20 THE COURT: I think, it would appear, Mr. Able, am I
21 correct, that you are focusing solely on the supplemental
22 statement that was made October 11th, 2010. That seems to
23 be what your argument is.

24 MR. ABLE: Yes, sir. Those are the ones that I think
25 should be questionable.

1 THE COURT: Ms. Mayes.

2 MS. MAYES: Yes sir, Your Honor. As Investigator
3 Plaxico stated, he had testified previously about the
4 content of that verbal statement at a family court
5 proceeding in May of 2010 and subsequently to that
6 documented it in the form as a written supplemental which
7 he is not required to do but he did for the benefit of the
8 investigation and for advising all parties. No doubt the
9 documentation matter is something that Investigator
10 Plaxico can be questioned about by Mr. Able but it does
11 not affect the voluntariness of the statements. Every
12 indication here is that Ms. Hepburn freely and voluntarily
13 participated in the interview. She arrived with a family
14 member, she waived her Miranda rights in writing pursuant
15 to the Miranda form which is Court's exhibit 1. She did
16 not ask for an attorney as indicated by all parties that
17 interviewed her and that she later left on her own and
18 ultimately was not arrested until three days later. So,
19 the State's position is that pursuant to Jackson v. Denno,
20 freeness and voluntariness of Ms. Hepburn in the
21 participation of these interviews has been established.

22 THE COURT: All right. And this perhaps goes to a
23 factual issue more than anything else. I was kind of
24 waiting for somebody to bring this out. But the
25 supplemental report, the final paragraph which as I stated

1 cannot be eluded during the State's case-in-chief because
2 it indicates a polygraph test. But the next to the last
3 paragraph ends with Plaxico and Robert Wilkie then left
4 the Laurens County Hospital. The next paragraph, Plaxico
5 then met with Brandon Lewis at Clemson University to see
6 if he would take a polygraph to clear himself from the
7 case. Plaxico walked out on the football field and
8 discussed honesty, et cetera, et cetera. At the time that
9 this alleged statement was given by Ms. Hepburn Mr. Lewis
10 was a student at Piedmont Tech, he hadn't been admitted to
11 Clemson yet. That is according to the V.A. records
12 subsequent to the suicide. My understanding was that he
13 was arrested at Clemson University by law enforcement when
14 he was charged with this particular crime.

15 MS. MAYES: Yes sir, Your Honor, I do not believe
16 that last paragraph is referring to October 18th of 2009.

17 THE COURT: It would be nice if perhaps an officer
18 was a little bit more precise in the temporal variance
19 between 10/18/09 and then going into, Plaxico then met
20 Brandon Lewis at Clemson University. The way the
21 narrative is reported in this it seems to be, long
22 continuing narrative.

23 MR. ABLE: You have the issue too of the name of the
24 SLED agent at the time of the incident is different and
25 then this statement has her married name, I assume her

1 married, as if it were prepared for that day.

2 THE COURT: For purposes of Jackson v. Denno the
3 Court's concern is whether or not Miranda rights were
4 given and whether the State has met the threshold burden
5 of proving by a preponderance of the evidence that the
6 statement was given freely and voluntarily. It is for the
7 jury to determine whether or not the statement was given
8 beyond a reasonable doubt. Mr. Able, I do understand your
9 concerns that and if there were some evidence that this
10 was a figment of the officer's imagination or an erroneous
11 recollection which was written down on October the 11th of
12 2010 perhaps your position would have greater merit. I
13 understand one-hundred percent what you are getting at,
14 Mr. Able. But obviously a statement should not take
15 place, should not by definition be a voluntary statement.
16 We do, however, have the testimony at the DSS hearing
17 which predates the statement by five or six months. So,
18 there is a prior, there is a time prior to when this
19 supplemental incident report was given. Obviously I think
20 that you have a great deal of areas that perhaps that you
21 could cross-examine Officer Plaxico and the fact that
22 nobody was with him when he made the statement, the fact
23 that it was not recorded, that it wasn't written out
24 contemporaneously, they didn't, he showed your client a
25 copy of the statement, that he did not get her to sign it.

1 That he has an agent's name wrong when he writes the
2 report in October of '10, that he then relates to Mr.
3 Lewis being at Clemson University and running right up
4 there and asking him for a polygraph and if the State uses
5 it they use it at their own peril. But it would appear to
6 me that the rights were in fact given to your client close
7 in time to when Officer Plaxico maintains that he met with
8 your client. The rights clearly were given to your client
9 and signed the waiver of rights sheet. This was the third
10 interview, admittedly she may have been up for a while but
11 I believe the case is State versus Parker, a 2008 Court of
12 Appeals case, the question of sleep deprivation or the
13 lack of sleep. I understand that your client may not have
14 gotten any sleep that night but that in and of itself does
15 not remedy the statement involuntary for purposes of this
16 close analysis. So, I do find that the rights were
17 properly given, your client was apprised of those rights
18 and by the preponderance of the evidence the jury should
19 be allowed to hear it, they will have to make the
20 determination of whether the State's, proof beyond a
21 reasonable doubt that the statement in fact exist or was
22 given voluntarily. That is my ruling on that. But you
23 will have latitude on cross. Search warrant, are we
24 addressing at this point and time.

25 MS. MAYES: Yes sir, Your Honor. The State calls

1 Investigator Ben Blackmon.

2 THE COURT: Just so I am aware because I haven't had
3 a chance to talk about this issue with y'all previously.
4 But what evidence was seized that we are talking about,
5 what evidence was seized as a result of the search
6 warrant. If you would, Ms. Mayes, just briefly.

7 MS. MAYES: Your Honor, the crime scene was processed
8 by the State Law Enforcement Division which included the
9 collection of a fitted sheet, a small white towel, two
10 blankets, a padded bumper from the crib. And those were
11 ultimately examined by the State Law Enforcement Division
12 and blood stains were found which are a match to the
13 victim in this case, Audrina Hepburn. In addition, Your
14 Honor, the scene was photographed by the State Law
15 Enforcement Division during the search warrant.

16 THE COURT: Thank you, Ms. Mayes.

17 Ben Blackmon, after being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 By Ms. Mayes:

21 Q Where are you employed?

22 A At Laurens County Sheriffs Office.

23 Q And in what capacity?

24 A Investigations division.

25 Q And Investigator Blackmon, how long have you been

1 with the Laurens County Sheriffs Office?

2 A Since October of 1999.

3 Q I want to take you back to the time period of early
4 morning hours of October 13th of 2009 and ask you how you
5 became involved in the investigation involving injuries to
6 a sixteen month old child, Audrina Hepburn.

7 A Yes, ma'am. Around 1:30 in the morning or so on the
8 13th of October of 2009 myself and Lieutenant Plaxico was
9 notified of this incident and Lieutenant Plaxico was the
10 on call investigator that evening and I accompanied him to
11 the Self Memorial Hospital in Greenwood.

12 Q And you and Plaxico were both present at the hospital
13 in Greenwood?

14 A Yes, ma'am.

15 Q And while at the hospital in Greenwood did you have
16 an opportunity to talk to any of the parties in the case?

17 A Yes, ma'am. I believe I spoke with a Mr. Lewis and
18 briefly spoke with Ms. Hepburn that evening.

19 Q And later at the law enforcement center did you have
20 the opportunity to interview Brandon Lewis?

21 A Yes ma'am, I did.

22 Q And during the course of the interview did you get
23 information from him concerning where the child was
24 injured?

25 A Yes, ma'am. By the statement that he had given that

1 morning, the information was that this had occurred at
2 11563 Highway 72 West in the Cross Hill area of Laurens
3 County.

4 Q All right. And so with that understanding that the
5 child had been injured at that location what if any
6 further efforts did you make regarding the investigation?

7 A I was there to assist Lieutenant Plaxico in any
8 capacity he needed which at a later time he asked me to
9 prepare a search warrant for the residence. I typed the
10 search warrant around, between 3:00 and 3:30 in the
11 afternoon on October the 15th of 2009. And I had it
12 signed by Magistrate Wayne Copeland on October the 16th
13 the following morning and around 10:00 o'clock in the
14 morning.

15 Q All right. I am going to show you a document and ask
16 you whether or not you recognize it?

17 A Yes, ma'am.

18 Q And how do you recognize this document.

19 A That would be the search warrant that we prepared and
20 had signed by Magistrate Copeland.

21 MS. MAYES: Your Honor, at this time we would have
22 this marked as Court's exhibit 2 for purposes of this
23 hearing.

24 THE COURT: Any objection, well it is not in so we
25 will mark this as State's 2 for ID.

1 (Whereupon, State's Exhibit 2 was marked for
2 identification only.)

3 Q Now, Investigator Blackmon, let me ask you first
4 specifically to the search warrant, who prepared the
5 search warrant?

6 A I typed it.

7 Q And who signed the search warrant?

8 A I signed it the following morning in front of Judge
9 Copeland.

10 Q And what was the date?

11 A The date in which I signed it?

12 Q Right.

13 A October the 16th of 2009.

14 Q All right. I am going to ask you to start at the
15 beginning of the affidavits and state for the record the
16 description of property which was to be sought, that went
17 to the search warrant.

18 A Okay. A description of property sought affidavit is
19 any and all items of evidentiary value including but not
20 limited to bedding, food, formula, medications, blood,
21 hair, fibers, measurements, photographs, diapers, bottles
22 and pacifiers, clothing, playpens, papers, personal
23 effects and any and all other items of physical,
24 serological trace evidence related to the abuse of the
25 child. And any and all other items of evidentiary value

1 associated with this case.

2 Q And what was the description of the premises to the
3 search?

4 A According to the affidavits, the premises to be
5 searched was 11563 Highway 72 West in Laurens County. At
6 the Laurens County Sheriffs Office, turn left onto Highway
7 76 traveling East, travel approximately 8.1 miles to the
8 intersection of Highway 72 and Highway 76, turn right onto
9 Highway 72 West, travel approximately 11.5 miles to the
10 listed address of 11563 Highway 72 West, turn left into
11 the drive of the residence. The residence is a white in
12 colored mobile home with gray shutters. Scope of the
13 search to include the residence, persons at the residence,
14 vehicles, outbuildings, curtilage and general property
15 designated as 11563 Highway 72 West.

16 Q And what information was provided pursuant to the
17 probable cause or your belief that the property sought
18 would be on the premises?

19 A According to the affidavits of the search warrant the
20 contents believes that the property sought on the subject
21 premises would be that on October the 13th of 2009 the
22 Laurens County Sheriffs Office was notified of a possible
23 child abuse case concerning a sixteen month old victim,
24 Audrina Hepburn in which medical staff at Self Memorial
25 Hospital in Greenwood County told the Laurens County

1 Sheriffs Office that injuries found on the victim were
2 associated with either the baby being shaken or battered
3 by the hand of another. During the investigation it was
4 discovered that the victim was located at the above listed
5 residence at the time of the incident which was confirmed
6 by written and oral statements given to the Laurens County
7 Sheriffs Office.

8 Q All right. And when you are referring to the written
9 and oral statements would that include the previous
10 statement that you mentioned of Brandon Lewis?

11 A Yes, ma'am.

12 Q And are you aware of whether or not Ashley Hepburn
13 had also participated in the interviews with law
14 enforcement and medical personnel?

15 A I believe she had spoke with Lieuetenant Plaxico and
16 others.

17 Q And was there any question that the child was found
18 injured at this particular location?

19 A There was no question during my preparing of the
20 affidavits.

21 Q And what information was put on the affidavits
22 concerning the description of the premises to be searched?

23 A On the affidavits of the search warrant or the
24 actual--

25 Q On the actual search warrant.

1 A Okay.

2 Q What address was listed, let me ask you that.

3 A The address listed on the search warrant was 11563
4 highway 72 West in Laurens County.

5 Q All right. And then specifically did the search
6 warrant again say the description of property to be
7 potentially seized if found?

8 A Yes, ma'am. The search warrant does contain a
9 description of property which is again any and all of
10 evidentiary value including but not limited to bedding,
11 food, formula, medications, blood, hair, fibers,
12 measurements, photographs, diapers, bottles, pacifiers,
13 clothing, playpens, papers, personal effects and any and
14 all other items that is physical, serological, trace
15 evidence relating to the abuse of the child and any and
16 all other items of evidentiary value associated with this
17 case concerning the abuse of Audrina Hepburn.

18 Q And who all was present for the execution of the
19 search warrant to the best of your recollection?

20 A To the best of my recollection, Lieutenant Plaxico,
21 Investigator Jim Burns and a SLED agent by the name of
22 Melissa Skipper.

23 Q And for what reason was the State Law Enforcement
24 Division involved in going to the search warrant?

25 A The State Law Enforcement Division was requested to

1 come to that location with us to collect any evidence
2 found at the scene and also to take it back to have it
3 analyzed by their technicians.

4 Q And tell us a little bit about what you recall
5 concerning the, what happened once you arrived at the
6 premises?

7 A Once we arrived at the premises I handed over the
8 search warrant to Lieutenant Plaxico for service. And I
9 believe a SLED agent went in and proceeded to take
10 photographs and collect items that were deemed as
11 evidence.

12 Q Do you also have with you a copy of the return?

13 A Yes, ma'am.

14 Q And who signed off on the return?

15 A Judge Wayne Copeland signed off on the return.

16 Q And which officer presented the return?

17 A Lieutenant Plaxico actually executed the warrant and
18 then I returned it to Judge Copeland that afternoon.

19 Q And can you take a look at the copy of the return?

20 A Yes, ma'am.

21 Q What, if anything, do you notice concerning the date
22 and time?

23 A I notice two things. When Lieutenant Plaxico filled
24 out the return he executed it at 10/16/09 at 10:30 and he
25 wrote p.m. instead of a.m. and I also noticed that when

1 Judge Copeland dated the warrant he, looks to me to be a
2 10 day of October of 2009 and then he signed it. The zero
3 on the 10 doesn't look complete.

4 Q Okay. And can you tell us whether or not those two
5 things would be errors?

6 A Those are errors, yes ma'am.

7 Q And what is the date that the search warrant was
8 executed?

9 A The day the search warrant was executed was October
10 the 16th of 2009 at around 10:30 a.m.

11 Q And what can you tell us concerning items which were
12 seized or removed from the home pursuant to the search
13 warrant?

14 A According to the return, one fitted sheet, one small
15 white towel, two blankets, one padded bumper and then
16 there is a scribble mark with the initials of Lieutenant
17 Plaxico over to the side.

18 Q And can you tell us whether or not the State Law
19 Enforcement Division took photographs while present at the
20 scene?

21 A Yes, ma'am.

22 Q Okay. Can you tell us whether or not there were
23 measurements and things of that nature done inside of the
24 home for purposes of a diagram?

25 A I believe they were taken by the SLED agent.

1 Q And ultimately was the return signed by the Judge?

2 A Yes, ma'am.

3 Q Nothing further at this time.

4 THE COURT: Mr. Able?

5 MR. ABLE: I have no questions.

6 THE COURT: Ms. Mayes.

7 MS. MAYES: Nothing further, Your Honor.

8 THE COURT: Mr. Able, any argument on this thing? No
9 additional witnesses on this issue?

10 MS. MAYES: No, Your Honor, not on this matter.

11 THE COURT: I assume, Ms. Mayes, that you maintain
12 that the search warrant was properly executed, that any
13 errors were merely scrivener's errors and that otherwise
14 the material seized should be introduced. Would that be
15 correct?

16 MS. MAYES: Yes sir, Your Honor.

17 THE COURT: Do you have anything to counter that, Mr.
18 Able?

19 MR. ABLE: No, sir.

20 THE COURT: That is my ruling. Can I see counsel at
21 sidebar, please, real quick.

22 MR. WISE: Can I put something on the record.

23 THE COURT: Yes sir, I am sorry. Let's do the
24 sidebar first and then maybe we need to put two things on
25 the record.

1 (Whereupon, a bench conference was held.)

2 THE COURT: All right, the record should reflect that
3 I just had a sidebar with counsel for the defendants and
4 the State, I received a message from the Clerk's office
5 which was apparently received today around 11:50 which is
6 about thirty minutes ago, one of the jurors, juror number
7 117 and I am going to mark this as a Court's exhibit. I
8 don't see any need to place on the record the reason for
9 the juror seeking to be excused. She was seated as a
10 juror yesterday. I think the email that Betty Anne ask
11 the juror to send kind of speaks for itself. And I
12 explained to counsel at sidebar that I didn't feel it was
13 appropriate and counsel agreed with me at sidebar. I
14 didn't feel it appropriate at this time to serve as a
15 juror. I am going to mark this as a Court's exhibit
16 number 2.

17 (Whereupon, Court's Exhibit 2 was marked for
18 identification only.)

19 THE COURT: Any objection for me excusing, appointing
20 the next alternate, the next person that was drawn or the
21 first alternate that was drawn?

22 MS. MAYES: No sir, Your Honor.

23 MR. ABLE: No objection.

24 MR. WISE: No objection. Three alternates looking
25 real good now.

1 THE COURT: We will appoint then Stephen Patton the
2 first alternate that was drawn. He will take Ms. Stone's
3 place. You have a matter?

4 MR. WISE: Yes sir, I do, Your Honor. I am going to
5 renew my motion to sever this trial on the grounds that
6 now that you have ruled that statement admissible. When
7 Ms. Hepburn says, oh my god all of this is true. That is
8 a statement that completely exonerates Brandon Lewis from
9 this crime. She looked at the statement in which he had
10 said he heard her stomp into the room and do something to
11 the child. And if she looked at that statement and says,
12 oh my god it is true that, that means he is telling the
13 truth, he wasn't in the room, she was and he is
14 exonerated. The problem is under the ruling with both of
15 them being tried together the written statement that she
16 is going to be looking at, if my client remains in this
17 trial is going to be, the part where he incriminated her
18 is going to be excluded. So, her context looking at a
19 statement saying, oh my god all of this is true is
20 meaningless unless you have the sentence in there that
21 says, when my client says he heard her stomp into a room
22 and do something to the child. So, I can't use a
23 statement that completely exonerates my client from a
24 codefendant in a joint trial.

25 THE COURT: Ms. Mayes, what is the State's position

1 on this and how do you intend to offer this evidence.

2 MS. MAYES: Yes, Your Honor. I do not believe that
3 that statement would be admissible, obviously
4 case-in-chief as it pertains to the story that Mr. Lewis
5 related to the footprint or footsteps. Let me go back and
6 address what Mr. Wise said about the fact that it
7 completely exonerates his client. The issue here with the
8 verbal statement is that it is open for interpretation.
9 She clearly stated to Investigator Plaxico as he
10 documented that she denied hurting her baby in any way.
11 He had documented that after the original interview and
12 actually said she was adamant about that and he terminated
13 the interview. What he is referring to is showing her a
14 copy of the statement. She says all of this is true but I
15 did not hurt my baby. So, looking at it from the
16 standpoint of completeness she is saying that there are
17 events in that statement which is true but I did not hurt
18 my baby. So, it appears she is denying that aspect of
19 that statement but acknowledging the other aspects of the
20 statement leading up to the scenes of that night.

21 MR. WISE: Actually the quote by the officer I think
22 was, but I do not remember hurting my baby, in that
23 statement.

24 MS. MAYES: And then immediately thereafter denied
25 harming the child in any way. But to answer the Court's

1 question on how we intend to offer it, we know that Mr.
2 Lewis' statement acknowledging that or claiming that he
3 heard the footsteps is not admissible. So, in terms of
4 showing her something and her saying all of this is true I
5 don't know that that could be properly understood by the
6 jury in any context. So, the State's position is that
7 what would be admissible is her saying I don't remember
8 hurting my baby and I did not hurt my baby.

9 THE COURT: What is the statement that is going to be
10 elicited from the Lieutenant with regard to Ms. Hepburn
11 again.

12 MS. MAYES: Yes sir, Your Honor. What the State
13 would propose pursuant to Bruton is that the officer be
14 allowed to testify that Ms. Hepburn reported to him I
15 don't remember hurting my baby. She said, do you think I
16 did this to my baby and I don't remember it. And he
17 replied, I think you remember and you need to tell me what
18 happened. And she stated, I wouldn't hurt my baby, I
19 wouldn't hurt my baby. And this is the State's position
20 because it simply is not clear based on the statement of
21 Ms. Hepburn at portion or portions she is referring to
22 when he is confronted with a second statement. According
23 to Investigator Plaxico she says all of this is true but I
24 don't remember hurting my baby which is open to the
25 interpretation that she is acknowledging that she was

1 asleep while he was up watching TV but she takes exception
2 or disagrees with any portion of the statement that would
3 implicate her.

4 THE COURT: Also doesn't it, Ms. Mayes, the
5 implication that she hurt her baby, she simply didn't
6 remember doing it.

7 MS. MAYES: I think that is one interpretation, yes
8 sir, Your Honor.

9 THE COURT: If that is a fair interpretation of the
10 statement and we not use the statement which Mr. Lewis
11 provided, get in context to Ms. Hepburn's reaction it is
12 quite obvious that the word, this, t-h-i-s, in that
13 portion to intend to use, do you intend to elicit from the
14 Lieutenant. Ashley asked Plaxico, do you think that I did
15 this to my baby and don't remember it. This has to refer
16 to the statement, correct?

17 MS. MAYES: Well, actually Your Honor, my
18 interpretation is she is saying this as in injuring her
19 child. But I understand the Court's position is this
20 could be also perceived as the statement.

21 THE COURT: We have a wonderfully and of course
22 timely statement, supplemental incident report completely
23 detailed. Ms. Mayes, I am struggling to see how that you
24 could use this statement in any other way and to elicit
25 the officer her denial of hurting her baby. If you would

1 do otherwise would be to implicate Bruton. You have
2 already redacted a good portion of Mr. Lewis' statement.
3 She started crying and said, oh my god all of this is true
4 but I don't remember hurting my baby. Asked Plaxico, do
5 you think I did this and I don't remember. Mr. Able, you
6 want to weigh in on this?

7 MR. ABLE: Judge, you just stated, I believe the
8 appropriate redaction would leave, I wouldn't hurt my
9 baby, I wouldn't hurt my baby. I mean otherwise it opens
10 up a lot of potential landmines.

11 THE COURT: What was Plaxico's testimony as to what
12 he said and he had inquired to Ms. Hepburn's statement
13 where she starts crying and said, oh my god all of this is
14 true, et cetera. What preceded that again?

15 MR. WISE: He showed her my client's second statement
16 and then in response to reading that second statement
17 which he said she read that is when he said she made that
18 response.

19 THE COURT: That is the one where--

20 MR. WISE: Hearing steps stomping down the hall and
21 going into the room.

22 THE COURT: Ms. Mayes, you have an additional problem
23 that I encourage you to consider eliciting testimony about
24 these statements just as testimony so that you don't
25 unintentionally run afoul of Bruton. The testimony of the

1 Lieutenant who just testified is that he was alone when he
2 interviewed Ms. Hepburn on the supplemental statement.
3 Obviously Sergeant Moody is the one who took the statement
4 from Mr. Lewis. It is obviously a written statement which
5 would have to be redacted. So, the Lieutenant is alone
6 with Ms. Hepburn when he shows her this statement. The
7 jury obviously is going to know that there is a written
8 statement out there. If Mr. Moody is going to testify how
9 do you want to deal with that, what would your suggestion
10 be to deal with that?

11 MS. MAYES: Your Honor, I believe the first statement
12 in writing by Mr. Lewis is one where there is no
13 objection, hasn't been any objection to defense counsel.
14 That written statement would be coming in. The second
15 statement as Your Honor pointed out that is the typed
16 written statement obtained by which would not be submitted
17 in physical form to the jury case-in-chief. It would be
18 testified to verbally subject to redaction. Of course,
19 ultimately that may change if Mr. Lewis testifies. In
20 regards the verbal statement from Plaxico I think based on
21 what we are looking at at this point he can't say anything
22 regarding showing her that second statement other than
23 maybe he confronted her with his statement which could be
24 verbal or written. That would be the only way I would
25 know to handle it.

1 MR. WISE: Can I muddy the water. My client is
2 entitled to offer evidence third party guilt. There is no
3 clear example of third party guilt that I can think of
4 than testimony from Officer Plaxico that upon reading my
5 client's statement in which he says he heard her stomp
6 down the hall and go into the other room and say, and then
7 she says, all of that is true. That is clear evidence of
8 third party guilt that my client is entitled to admit into
9 evidence.

10 THE COURT: I understand, agreed. You may do that in
11 your case.

12 MR. WISE: I am entitled to introduce evidence of
13 third party guilt in the State's case when I cross-examine
14 Officer Plaxico.

15 THE COURT: I understand. According to Federal
16 precedence however, Mr. Wise, my understanding is that the
17 rule of completeness which we have gone into in detail,
18 the case law strongly indicates that the right of
19 confrontation is going to trump that procedural rule. I
20 understand. That is what the case law is. So, yes, you
21 have the right to offer evidence of third party guilt.
22 You may do that on cross, you may do that in the manner
23 you choose to do so as long as you don't run afoul of the
24 second statement impinged upon Mr. Hepburn's right of
25 confrontation.

1 MR. WISE: Then my client cannot receive a fair trial
2 if I cannot cross-examine Officer Plaxico on third party
3 guilt and that is why I move again for a severance because
4 it is the only practical thing to do.

5 THE COURT: I understand your position, Mr. Wise.

6 MR. WISE: And I would refer to the Court to Holmes
7 versus South Carolina, U.S. Supreme Court Case at 547,
8 U.S. 319 pretty well I think says that my client's trump
9 is in that particular circumstance.

10 THE COURT: Is that the case dealing with third party
11 guilt?

12 MR. WISE: That is the case dealing with third party
13 guilt.

14 THE COURT: It came out about four years ago.

15 MR. WISE: Five years ago.

16 THE COURT: While my Clerk is pulling that up, the
17 third party guilt issue arises in a context where a person
18 independent of someone who has been indicted or is
19 currently on trial, I believe that is the circumstances of
20 that case, correct. That the, that case was seeking to
21 offer evidence, unindicted, uncharged individual.

22 MR. WISE: That is the distinction, it is a guilt of
23 another person other than my client is really what you are
24 talking about. Evidence that tends to do that and that
25 tends to do it.

1 THE COURT: I understand what you are saying. What
2 portion of Holmes are you citing?

3 MR. WISE: Well, they are just talking in the terms
4 of the fact that it is a constitutional right to present
5 evidence of a third party guilt and it is a recognized
6 under the sixth amendment and the due process clause of
7 the fourteenth amendment. And I am entitled to produce of
8 third party guilt regardless of whether or not my client
9 testifies. Evidence of third party guilt can't be
10 conditioned upon my client testifying.

11 THE COURT: I agree. You are entitled to call any
12 witness that you chose to establish.

13 MR. WISE: And I am entitled to cross-examine any
14 witness to the extent that that witness can produce
15 evidence of third party guilt and that is what the officer
16 in this case can do.

17 THE COURT: So far as you cannot run afoul of Bruton
18 and the other defendant's right to confrontation.

19 MR. WISE: Then why does her right on Bruton trump my
20 rights to have third party guilt put before that jury.
21 That is the question that I really have.

22 THE COURT: Perhaps might I suggest that the same
23 reason that your client's rights not to have a Bruton
24 situation arise with respect to him could equally trump
25 her rights.

1 MR. WISE: That is the problem of trying these cases
2 together. You cannot give both of them a fair trial when
3 you try them together.

4 THE COURT: I realize that that is a logistical
5 problem, Mr. Wise. Again, respectfully, I believe that
6 the case is against you on that.

7 MR. WISE: There is no cases out there that is going
8 to say, I will be frank with the Court, that are going to
9 say my client's right to produce third party guilt is
10 trumped by another client's right to a Bruton problem. If
11 it is out there I will be shocked. We can adequately,
12 both peoples rights to a fair trial simply by trying them
13 separately with no problems whatsoever. It is the State
14 that has elected to create this problem, not us.

15 THE COURT: All right. USA of America versus
16 Kaminski and Fahr, F-A-H-R. 692, F.2d 505. Ms. Mayes, do
17 you care to comment on this?

18 MS. MAYES: Yes sir, Your Honor. The case law is
19 specific to joint trials has established that because of
20 two defendants having antagonistic defenses, blaming each
21 other is not a sufficient grounds for a severance. Mr.
22 Wise's argument is that he is entitled to offer evidence
23 of third party guilt. Well, that holds true in any case
24 where codefendants are tried together and are pointing the
25 finger at each other which is a quite common predicament.

1 So, the third party guilt issue is going to arise any time
2 codefendants blame one another. The issue of him being
3 denied the right to assert a third party guilt defense is
4 not the case. He certainly, during the State's
5 case-in-chief can point the finger at Ms. Hepburn through
6 a number of ways, circumstantially, through his client's
7 statement that he didn't do anything to the child, there
8 are a number of ways that he can infer that Ms. Hepburn
9 did this without getting into that particular portion of
10 the statement that Mr. Lewis made. His rights to assert a
11 third party guilt offense are not being denied.

12 MR. WISE: It is just being denied the most effective
13 way of doing it, that is all that is being done. Because
14 the statement from that officer is the most effective and
15 clearcut means of establishing third party guilt there is.
16 And I am being denied of that right, Mr. Lewis is being
17 denied of that right. And Kaminski, they clearly said
18 there was no prejudice. We can show clear prejudice in
19 this case.

20 THE COURT: Mr. Wise, I appreciate your position and
21 it's not that the Court is not sympathetic to your
22 position or the dilemma that you find yourself in.
23 Obviously there are circumstances where perhaps a
24 defendant is the only person who might be in the position
25 to recuse certain evidence through an officer's testimony.

1 He has the constitutional right not to testify. Certainly
2 your client has the constitutional right to present his
3 case, to present third party guilt and he may testify, he
4 may not testify depending upon what the circumstances are.
5 The best that I can do is, the best the Court can do under
6 circumstances such as this is to permit evidence to come
7 in which would not violate either Ms. Hepburn or Mr.
8 Lewis' rights of confrontation. And certainly if you wish
9 to present a defense you are entitled to do so. You also
10 have every right to rest upon the charge that I will give
11 to the jury and the State has the burden of proving your
12 client's guilt and certainly you don't have to present any
13 kind of defense. If it is your desire to do so though the
14 Court will welcome it, certainly the jury may consider it.
15 But I have considered your argument, your motion, your
16 renewed motion for a severance is denied. We will
17 continue forward with the joint trial. Ms. Mayes, I would
18 suggest that you tread very lightly on these particular
19 issues. Mr. Wise's comments yesterday in-chambers that
20 there are a number of landmines in this case, perhaps he
21 is very correct. You probably need to be very careful with
22 how you proceed with some of these witnesses.

23 MR. WISE: I gather from that that I would not be
24 permitted to cross-examine Officer Plaxico about what Ms.
25 Hepburn said in relation to my client's statement?

1 THE COURT: I was seeking to limit, what I was
2 suggesting to Ms. Mayes just now is that the statement
3 with response given by Ms. Hepburn is going to be perhaps
4 some more limited issue than we initially hoped.

5 MR. WISE: But my question is--

6 THE COURT: What do you intend to ask?

7 MR. WISE: I intend to ask Officer Plaxico, did you
8 show Ms. Hepburn my client's second statement to which he
9 would say yes. And I would say, and in that statement
10 didn't he say that he heard her tiptoe down the hall or
11 stomp down the hall. And he will say, yes. And then I
12 will say, and after reading that statement didn't she say,
13 oh my god all of this is true, to which he will say yes.
14 That is what I intend to cross-examine him on.

15 MR. ABLE: And of course there will be an objection
16 well before he got that far into it, Your Honor.

17 THE COURT: Mr. Wise, I am not preventing you from
18 calling the Lieutenant as a witness, I am not preventing
19 you in any way, shape or form from asking him any question
20 that is relevant or proper at the particular time that
21 that question is asked.

22 MR. WISE: Well, that doesn't help me any because I
23 think it is all relevant and proper. And unless you
24 specifically tell me I cannot ask those three questions I
25 intend to ask those three questions.

1 THE COURT: I believe you can ask that question but
2 it would have to be done in your case-in-chief.

3 MR. WISE: I don't think you have a right to limit my
4 cross-examining the State's witnesses and then if I call
5 Plaxico back on my case-in-chief you still got the same
6 problem.

7 THE COURT: Under Bruton I don't see much of an
8 alternative, Mr. Wise.

9 MR. WISE: Well, there is an alternative.

10 THE COURT: I have already ruled.

11 MR. WISE: A very simple alternative.

12 THE COURT: I understand. We made a full record of
13 that on Wednesday and I think we have revisited that
14 issue.

15 MR. WISE: So, I am prohibited from asking Officer
16 Plaxico those questions on cross?

17 THE COURT: Mr. Wise--

18 MR. WISE: I need to know.

19 THE COURT: I understand.

20 MR. WISE: And you can wait until Officer Plaxico
21 testifies to let me know if you want to.

22 THE COURT: Is he going to be one of your first
23 witnesses?

24 MS. MAYES: No sir, Your Honor, he would not testify
25 today.

1 THE COURT: When do you plan on calling him,
2 tomorrow, Friday?

3 MS. MAYES: Possibly tomorrow, Your Honor, we have
4 some medical witnesses that need to be dealt with.

5 THE COURT: It is more likely Friday?

6 MS. MAYES: Late tomorrow or Friday.

7 THE COURT: All right.

8 MR. WISE: I will continue to research the issue too.

9 THE COURT: That is what we will do. I am holding in
10 abeyance my ruling at this point. And I realize that the
11 State has called both of these cases together, they have a
12 right to do it. This is a joint trial. For the reasons I
13 put on the record on Wednesdays, a different Court
14 Reporter, those are the reasons we are going forward today
15 with those defendants and your motion of severance is
16 being denied. And I shall take the matter under further
17 advisement and have an opinion for you or a ruling for you
18 at the appropriate time.

19 MR. WISE: If I find any more cases I will advise the
20 Court too.

21 THE COURT: I am familiar with Holmes. I often
22 thought that it was very strange that a criminal defendant
23 was in the position to argue or being prohibited from
24 arguing that, yes, a crime occurred. But I am just not
25 the one that did it. So, I think Holmes probably set a

1 lot of things straight. It does make sense. I understand
2 the rule against third party guilt and perhaps the
3 historical value of it. Mr. Able, you are standing.

4 MR. ABLE: Yes, sir. I just was wanting to clarify
5 what we had determined or what will be determined
6 concerning the statement that is attributed to her and how
7 the State will be allowed to proceed in questioning
8 Officer Plaxico concerning that statement and the Bruton
9 issue.

10 THE COURT: I am not clear on it myself, Mr. Able.

11 MS. MAYES: We leave that in the Court's discretion,
12 Your Honor.

13 MR. WISE: I guess we stay away from all of this in
14 opening statements as a matter of precaution.

15 THE COURT: Well, opening statements--

16 MR. WISE: Everybody just waive openings.

17 THE COURT: I would suggest that everyone stay away
18 from this unless Ms. Mayes is willing to state she is not
19 going to go into anything other than general denial once
20 Officer Plaxico, certainly I am not telling you how to try
21 your case, Ms. Mayes. But it would seem that the October
22 11th, 2010 report may possess greater liabilities for your
23 case than it does probative value. That is your call. I
24 believe the purposes for those it may be best to avoid any
25 sort of presentation of what any one witness specifically

1 would testify to. Time for a quick bite, we will
2 reconvene at 2:00 o'clock. The jury will be back then.
3 We will have an opening charge and then we will go
4 straight into opening arguments.

5 (Whereupon, a lunch break was taken.)

6 THE COURT: Is the State ready to proceed?

7 MS. MAYES: Yes sir, Your Honor.

8 THE COURT: Mr. Able?

9 MR. ABLE: Yes, sir.

10 THE COURT: Mr. Wise?

11 MR. WISE: Yes, Your Honor.

12 THE COURT: The record should reflect that I received
13 a note that was handed to me by one of the bailiffs from
14 juror Russell M. Conner, that is juror number 35. And Mr.
15 Conner was the first juror selected yesterday to actually
16 serve on the jury. The note basically says I would like
17 to speak with the Judge to make sure I correctly
18 understood a juror question yesterday. Signed, Russell
19 Conner and dated today's date. I met with counsel
20 in-chambers before we came out here. I am going to ask
21 Mr. Conner to step out and counsel, if it is okay with me
22 doing this, I am going to ask Mr. Conner to step out and
23 we will just have a brief discussion with him down here
24 next to the Court Reporter so that he hopefully will feel
25 more comfortable relating to us what his confusion or what

1 his issue might be. So, if you will go ahead and bring
2 out Mr. Conner, Russell Conner, just him and not the other
3 jurors, please. Ms. Mayes, Mr. Able and Mr. Wise, if you
4 will all approach.

5 (Whereupon, Juror Russell Conner came into open court
6 and a bench conference was held with Mr. Conner.)

7 THE COURT: Mr. Conner, good afternoon, come on down,
8 sir. Good to see you again. I got your note, it says you
9 have a question or you wanted to make sure you understood
10 a question.

11 Mr. Conner: Six years ago there was a criminal
12 charge and a pretrial intervention six years ago and
13 completed that satisfactory.

14 THE COURT: That doesn't count. Thank you for
15 telling us. Return to the jury room and we will have you
16 out in just a moment, sir. Mr. Conner related to me the
17 circumstances on which the Clerk's record, the Court
18 Reporter did record those and Mr. Conner will remain with
19 us. I assume there is no objection from anyone that the
20 juror will be allowed to serve and I will allow him to
21 serve. Anything before we bring the jury out, Ms. Mayes?

22 MS. MAYES: Nothing from the State, Your Honor.

23 MR. ABLE: No, sir.

24 MR. WISE: No, sir.

25 THE COURT: Let's have the jury.

1 (Whereupon, Court's Exhibit 3 was marked for
2 identification only.)

3 (WHEREUPON, the jury came into open court at
4 approximately 2:11 p.m.)

5 THE COURT: Ladies and gentlemen of the jury, welcome
6 back. I trust that y'all had a restful evening last
7 night. I appreciate you coming back and being so prompt.
8 Y'all are all here early. And that is always reassuring.
9 We had an emergency situation arise involving one of the
10 jurors that was selected yesterday. And it became
11 necessary to relieve her from her obligations as a juror
12 therefore who is Stephen Patton, Mr. Patton. Mr. Patton,
13 you are going to fill in for the juror that I had to
14 excuse for those emergency reasons. If you will now
15 actively participate in the deliberations once the case is
16 sent to the jury for its deliberations. Now, ladies and
17 gentlemen of the jury, as I announced yesterday we are now
18 about to begin the case of the State of South Carolina
19 versus Richard Brandon Lewis and Ashley Nicole Hepburn.
20 Before we begin this trial I want to tell you that this
21 trial is probably going to be different from what you
22 might expect. Most people don't have an opportunity to
23 come in here into court and to see what happens and hear
24 on a daily basis. Most people get their perceptions of
25 what jury trials are like from watching movies and

1 watching television and reading about cases in books. And
2 from what you may have seen on television or read about in
3 books or seen in the movies you may have to come to
4 believe that trials are often filled with circumstances
5 and dramatic moments. I will assure you that while all of
6 these things may at times be true obviously this trial is
7 not for entertainment. It is a fundamental part of our
8 democracy. It is a search for the truth, ladies and
9 gentlemen. And in an effort to make that justice is done
10 between the parties who are before the Court searching for
11 the truth and making sure justice is done is often very
12 time consuming and a laborious process, quite the contrary
13 of what you may have come to expect from watching cases on
14 television and reading about them in books. Ladies and
15 gentlemen, the courtroom is a place of honor, it is
16 dedicated to protecting and preserving citizens rights to
17 what many are called the greatest criminal justice system
18 ever created. The attorneys appearing before you today
19 are certainly advocates for the parties and positions
20 which they represent. But first and foremost, ladies and
21 gentlemen, they are officers of this court and they are
22 sworn to uphold the integrity of our judicial system for
23 the search for the truth. I assure you that you can
24 expect them to be professional, courteous and competent,
25 ethical in all of their dealings with you. In a moment

1 you will be taking an oath to try this case to reach a
2 fair and just verdict. And you are also expected of
3 course to be professional, reasonable and ethical in the
4 performance of your duties. I want to thank you for
5 accepting this very important duty in our criminal justice
6 system today and I want to thank you for your willingness
7 to remain with us and be with us as we proceed through
8 this trial. Now, with that, Madame Clerk, if you will
9 administer the oath to the jury, please.

10 (Whereupon, the jury was sworn at approximately 2:14
11 p.m.)

12 THE COURT: Was there any juror who was unable to
13 take the oath, if so please stand.

14 (No response.)

15 THE COURT: No one is standing. Ladies and
16 gentlemen, what I am now about to say to you is intended
17 as a introduction to the trial of this case. I will
18 instruct you on the law which is applicable in this case
19 at the end of the trial before you retire and deliberate
20 and consider your verdict. This is merely an explanation
21 of the process that we will use in the coming days so that
22 you can better understand what might be happening. Please
23 do not take any notes during the course of these
24 proceedings. It has been my experience that if you take
25 notes, that if jurors takes notes sometimes that will

1 distract them from the testimony which is being given.
2 You will note during the course of the trial I do take
3 notes and as I will explain to you in a moment, the reason
4 I take notes is that our roles are sometimes, are very,
5 very different. The role that you have is quite different
6 from the role I have. And therefore there are certain
7 reasons I must take notes during the course of the trial.
8 But, again, please don't take any notes while the trial is
9 going on. You will have an opportunity by not taking
10 notes to better observe and pay attention and focus your
11 attention on the witnesses and testimony that you hear.
12 Now, ladies and gentlemen, the defendants in this case,
13 Ms. Hepburn and Mr. Lewis have been charged by indictments
14 filed in this court with the crimes of homicide by child
15 abuse and aiding and abetting homicide by child abuse.
16 The elements of these crimes will be explained to you
17 later. As I explained to you yesterday, ladies and
18 gentlemen, an indictment is simply the means by which a
19 charge is brought into this court and it is not in any way
20 evidence of any of the allegations contained in the
21 indictments. The defendants in this case have plead not
22 guilty to these charges. The State therefore has the
23 burden of proving each and every element of the indictment
24 beyond a reasonable doubt. It will be your duty, ladies
25 and gentlemen, to decide whether the State has met that

1 burden. Your purpose as jurors is to find and determine
2 the facts. You are the sole judges of the facts of this
3 case. And at any time I make any comment regarding the
4 facts you must disregard that comment. You are to
5 determine the facts from the testimony which you will hear
6 and the other evidence which was introduced to you in this
7 court. It is up to you to determine the inferences which
8 you feel may properly be drawn from the evidence. It is
9 especially important that you perform your duty in
10 determining the facts diligently and conscientiously
11 because ordinarily, ladies and gentlemen, there is no way
12 to correct an erroneous determination of facts by a jury.
13 On the other hand with equal emphasis the same law that
14 makes you the judges of the facts of the case makes me the
15 Judge of the law. The law that is given by the Court is
16 the only law that you may consider. You must accept it
17 and follow it even though you may disagree with it. I
18 can't tell you what the facts of this case are. Your job
19 is to take the law as I give it to you, apply it to the
20 facts as you find them to be from the testimony of the
21 witnesses and the evidence which is introduced. And after
22 doing that you will render your verdict, a true and just
23 verdict under the oath that you have just taken as jurors.
24 Now, ladies and gentlemen, until I advise you to begin
25 your deliberations you must not discuss this case with

1 anyone including your fellow jurors, friends, family
2 members, anyone, of course you can't discuss it with
3 anyone involved in this case. After the case is submitted
4 to you you must discuss it only in the jury room with your
5 fellow jurors. The attorneys and the parties in this case
6 again have been advised that they have no contact with you
7 throughout these proceedings. So anyone involved in this
8 case pass you in the hallway or pass you in the courtroom
9 and they don't say hello to you please understand they are
10 not being rude, they are simply following my instructions
11 that to have no contact with you at all. Now, during this
12 trial don't read, listen to, watch any news reports about
13 this case, perform any internet searches about this case,
14 I was abundantly clear about that yesterday in my initial
15 charge to you. This includes anything that could be on
16 the internet, television, radio, newspapers. If you
17 happen to come across something like, the story pops on
18 the evening news or whatever, turn it off. If something
19 comes across the papers, something is printed in the paper
20 don't read it. You can't consider anything that you may
21 of read or heard about this case outside the courtroom
22 whether before or during this trial. Ladies and
23 gentlemen, it is important that you keep an open mind and
24 not decide any issues in this case until all the evidence
25 has been presented, the closing arguments have been

1 submitted to you and I have instructed you in the law that
2 is applicable in this case. It is your solemn
3 responsibility to determine the guilt or the innocence of
4 the defendants and your verdict must be based solely on
5 the evidence as it is presented to you in this trial and
6 the law as I instruct you during the close of the trial.
7 Now, in a moment the Solicitor, Ms. Mayes, will make what
8 is called an opening statement. She will explain to you
9 what the issues are in the case or at least what she
10 believes the issues are. The attorneys for the defendants
11 may also make opening statements although they are not
12 required to do so. What the attorneys tell you during
13 their opening statements, ladies and gentlemen, is not
14 evidence in this case, it is only their contention as to
15 what the issues are. Again, the evidence in this case
16 will be presented to you by the testimony of sworn
17 witnesses from the witness stand right in front of you and
18 any exhibits introduced into evidence in this case. Now,
19 ladies and gentlemen, from time to time during the trial
20 of this case you may hear one of the parties something in
21 the effect of Your Honor, I object or Your Honor, I have a
22 matter of law to take up with the Court. Or sometimes I,
23 myself, might find it necessary to ask if you leave, that
24 I excuse you to the jury room while I take up a matter of
25 law with the attorneys in the case. The reason I am

1 asking you to leave the courtroom, ladies and gentlemen,
2 because sometimes as a matter of law it might be necessary
3 for me to make a comment on the facts that are produced
4 throughout the trial. I am not allowed to tell you what
5 the facts are in the case, that is not my job, that is not
6 my province, that is your responsibility. I don't want
7 anything that I may say or any comment that I may make in
8 ruling on a matter of law will affect what you find the
9 facts to be therefore I will excuse you from the trial.
10 During those times that I do have to take matters of law
11 so anything that I say will have no effect on you
12 whatsoever. Ladies and gentlemen, in determining what the
13 true facts are in this case you must decide whether or not
14 the testimony of witnesses are believable. It will be my
15 responsibility to rule as a matter of law whether certain
16 testimony is admissible at all or not. But once the
17 testimony is admitted, whether or not you believe it is
18 solely for you to determine. Deciding whether to believe
19 a witness you have a right to consider the interest that
20 any witness has, the bias of any witness, the prejudice
21 of any witness, the opportunity for the witness to have
22 seen the matters and things about which the witness may
23 testify and the way the witness acts on the witness stand.
24 You have the right to consider anything that is in the
25 record in this case that would help you to evaluate the

1 testimony of the witnesses. That means it is your duty to
2 pay close attention to the witnesses, to observe the
3 witnesses and listen to them and pay close attention to
4 the attorneys and the Court. Please don't let your
5 thoughts wonder. Pay close and strict attention to the
6 testimony in the case so at the end of the trial you will
7 be able to render a true and just verdict according to the
8 oath that you have just taken. Now, I am going to appoint
9 Mr. Corley as the foreperson of the jury. You don't have
10 to move right now but when you come back after I excuse
11 you for a break or when you come back out I will ask you
12 to sit right here in the chair at the very end with the
13 lady in the blue, purple shirt. If you will stay there
14 throughout the trial. I need the alternates to remain
15 where you are, stay in those two seats. The rest of you
16 can move about as you need to. If you are having trouble
17 hearing any testimony in this case give me some signal and
18 raise your hand and if you find that one of the jurors is
19 having difficulty hearing the testimony perhaps afford
20 that juror a seat on the front row up here so that they
21 can hear a little better. Now, Mr. Foreperson, it will be
22 your duty to preside in the jury room over the
23 deliberations and to be the jury spokesperson here in
24 court. It will also be your job to write the verdict and
25 there will be instructions on that at a later point and

1 time. Your primary role, Mr. Foreman, is to preside over
2 the deliberations and make sure every juror has a full and
3 fair opportunity to have their fair say. Okay. Now in
4 order to preserve every ones rights I will give the
5 parties an opportunity to object to anything that I have
6 said during these opening remarks to you. Any objection
7 from the State, Ms. Mayes?

8 MS. MAYES: Not from the State, Your Honor.

9 THE COURT: Mr. Able?

10 MR. ABLE: No, sir.

11 THE COURT: Mr. Wise?

12 MR. WISE: None.

13 THE COURT: We will now begin the trial. Ms. Mayes,
14 you are recognized for your opening statements.

15 MS. MAYES: May it please the Court.

16 THE COURT: Yes, ma'am.

17 MS. MAYES: Ladies and gentlemen, what this case is
18 really about is broken trust. Because in this case a
19 little girl, sixteen months old, her trust was betrayed by
20 the people that she should be able to rely upon the most
21 to protect her, her own caregivers. And in this case that
22 is her mother, Ashley Hepburn and her mother's boyfriend,
23 Brandon Lewis. You will hear testimony that this crime
24 happened here in Laurens County in the Cross Hill section
25 back on October 13th of 2009, the very early morning hours

1 of October 13th of 2009. You will hear testimony that in
2 that home was little Audrina, her two-year-old brother,
3 Audrina's mother, Ashley Hepburn; Brandon Lewis, the
4 boyfriend of Ashley Hepburn; her maternal grandmother,
5 Doris Davis; and then Doris Davis' boyfriend or fiancée,
6 David Crumley. You will hear testimony that on the night
7 this happened which was a Monday night, Monday night
8 football was on, October 12th. You will hear testimony
9 that Audrina was fine that day. You will hear testimony
10 that that night she ate supper with her family in her
11 highchair. You will hear testimony that later on that
12 night she took a bath, she was given a bath by her mother,
13 Ashley Hepburn. You will hear testimony that the
14 grandmother and the grandmother's boyfriend, they went to
15 bed in another part of the house. And after they went to
16 bed they didn't come back out. And as Audrina was given
17 her bath and later put to bed by her mother, Ashley
18 Hepburn and Brandon Lewis who was there you will hear
19 testimony that they were the only two people who were with
20 Audrina in those later evening hours. So after 8:30 and
21 after 9:30 and after 10:30 it turns into the early morning
22 hours of October 13th. And you will hear testimony that
23 Audrina was found unresponsive in her crib. You will hear
24 testimony about what happened once EMS arrived at the
25 scene and took Audrina to the hospital in Greenwood and

1 later to Greenville Memorial. Her injuries were severe,
2 they were catastrophic. She could not have, I submit she
3 would not recover from these injuries ultimately because
4 she had what was diagnosed as a subdural hematoma and a
5 subarachnoid hematoma but to all of us what that means is
6 severe bleeding in the brain. You will hear testimony
7 that this is attributed to child abuse. In addition to
8 those injuries Audrina had what is called retina
9 hemorrhages which is bleeding into and behind the eyes
10 into multiple layers of the retina. Again these injuries
11 attributed to child abuse. You will hear testimony that
12 Audrina was covered in bruises. Bruises to her head, her
13 face, her neck, her jaw, her torso, her arms and even on
14 the inside of her ear. You will hear testimony this
15 constellation of injuries is child abuse. Ultimately
16 Audrina had an autopsy performed by Dr. Ward, Dr. Michael
17 Ward, he is out of Greenville. Audrina was in the
18 hospital all the way until October 17th where ultimately
19 she could not be saved. You will hear testimony that Dr.
20 Ward determined her death to be a homicide. Again in
21 these circumstances homicide attributed to child abuse.
22 The law is simple in this case, ladies and gentlemen,
23 because this isn't a murder case, this is a case involving
24 homicide by child abuse. And what we mean by that is
25 extreme indifference to human life. So it is not like a

1 murder case where somebody plots or plans to kill someone
2 and there is a whole lot of premeditation that comes
3 before it. In a case like that, child abuse, I submit it
4 is a situation where there is rage, there is frustration
5 and ultimately an outburst violence against a child for
6 whatever reason, for whatever reason to compel someone to
7 commit such a crime. Extreme indifference to human life.
8 The second charge concerning both of these defendants is
9 what is called aiding and abetting child abuse. What that
10 means is assisting, concealing, anything of that nature to
11 allow the child abuse to occur. What is child abuse and
12 again at a much later stage of the trial the Judge will
13 charge you exactly what our laws determine child abuse to
14 be. Child abuse can be inflicting injuries or it can mean
15 neglect. And it is defined as an act or an omission. An
16 act can be inflicting injuries, an omission can be
17 the failure to protect. And act or omission including
18 child abuse and neglect. And ultimately both defendants
19 in this case, Ashley Hepburn and Brandon Lewis are charged
20 in this case concerning the killing of Audrina Hepburn.
21 Finally you will hear testimony in this case that it is
22 unmistakably clear that Audrina was injured fatally on
23 that particular night that we are talking about, that
24 Monday night that turned into Tuesday morning. You will
25 hear testimony from medical experts that her injuries were

1 so severe that she would have been immediately
2 symptomatic. Audrina would not have been sitting up in
3 her highchair eating dinner. Audrina would not be walking
4 around, Audrina would not be alert and interactive with
5 her caregivers. These injuries were so severe you will
6 hear testimony that she would of immediately exhibited
7 symptoms, made the caregivers immediately aware. There is
8 no doubt, I submit, that these injuries occurred on the
9 night in question. And there is no doubt I submit that
10 Audrina was killed in her room. You will hear testimony
11 that during the course of the investigation law
12 enforcement went to the home, law enforcement seized
13 certain evidence from the home including bedding from
14 Audrina's crib. And you will hear testimony that there
15 was blood in Audrina's crib. She was killed that night in
16 her own room in her crib where she should have been most
17 safe. After all is said and done, ladies and gentlemen, I
18 submit the State will prove beyond a reasonable doubt this
19 case against Ashley Hepburn and Brandon Lewis.

20 THE COURT: Thank you, Ms. Mayes. Mr. Able.

21 MR. ABLE: Thank you, Your Honor.

22 THE COURT: Yes.

23 MR. ABLE: Good afternoon. If you don't recall my
24 name is Bryan Able, I am here representing Ashley Hepburn
25 who is seated at the table with me. A lot of the comments

1 that the Solicitor made are true. When she talked about
2 October 12th, 2009 and the history of that day and the
3 early morning hours of October 13th, 2009. A lot of that
4 is true. That day was a very typical day for my client
5 and her children. She has two children, Owen and Audrina
6 and the death of Audrina is what brings us here today.
7 She is married, I am going to go ahead and tell you that,
8 she is married to Mr. Daniel Hepburn. Mr. Daniel Hepburn
9 is the father of both of the children. Now, during that
10 time of October 12th of 2009 she and Mr. Hepburn were
11 separated. And Mr. Richard Brandon Lewis, her
12 codefendant, was her boyfriend. But as I said, October
13 12th of 2009 was a very typical day. Ashley doesn't work,
14 she is a stay at home mom. She was living in Cross Hill
15 as the Solicitor said, the Cross Hill section of the
16 County. Her mom is Doris Davis, she lived there with her
17 mom, her mom's boyfriend, Mr. Crumley, her and the two
18 kids. They got up that morning, Ashley and her children,
19 they got up that morning about 8:00 o'clock, ate
20 breakfast, had lunch. She played with them, went outside
21 with them, watched television with them, did all the
22 things that a mom is suppose to do with her kids during
23 the day. They laid down about 2:00 o'clock that afternoon
24 to take a nap. They got up about 4:00 o'clock from their
25 nap. It was at that time that Mr. Lewis came over to

1 visit and he stayed for a little while and then Ashley's
2 mom and Ashley's mom's boyfriend, Mr. Crumley, came home
3 from work. They sat around and watched television for a
4 little while then they decided they would get dinner
5 ready, Ashley cooked, they had steak that night and Mr.
6 Crumley charcoaled steaks. And you will hear evidence
7 that Ashley cooked dinner and had green beans and
8 macaroni. Well, shortly after Ms. Doris Davis and Mr.
9 Crumley got home Mr. Lewis had left. He was only there
10 for a little while that afternoon. After dinner Ashley
11 put the dishes in the dish washer and Mr. Crumley and Ms.
12 Davis, they went to bed, it was about that time that
13 Ashley decided to get the children ready for bed and draw
14 their bath, she ran a bath. And it was right along in
15 there that Mr. Lewis came back for a visit that night. As
16 I told you they were boyfriend and girlfriend, were seeing
17 each other at the time. Excuse me. Ms. Davis helped
18 Ashley get the children to the bath, she picked up, you
19 will hear her say that she picked up Audrina and took her
20 into the bathroom so she could get her bath. They got
21 their bathes, Ashley dressed Audrina, Mr. Lewis was there,
22 he dressed Owen and got them ready for bed. And that was
23 in the early evening hours, well, about 9:00 o'clock that
24 evening. And they watched television, they went into the
25 children's room, they played a little bit, they went in

1 and as the Solicitor said, it was Monday night football,
2 they were out watching football. They were in the den
3 area, Mr. Lewis, Ashley and the two kids. Ashley decided
4 to go ahead and try to put Audrina down for the night.
5 The children shared a bedroom, she took Audrina back there
6 and laid her down. But she was teething, sixteen month
7 old, she was cutting some teeth. So, after a little while
8 Ashley went back and got her out of the bed, got her out
9 of her crib, took her back in the den, applied some Orajel
10 to her gums, they stayed in the den a little while longer
11 and then she decided, we are going to try to lay you down
12 again and we are going to give you a bottle. She gave her
13 the bottle, put her back in the crib and that is when
14 things started to change. She put the baby down to try to
15 get the baby to sleep. Her and Owen, they got some story
16 books, went over into Ashley's bedroom, they didn't stay
17 in Audrina or the children's bedroom. Went into Ashley's
18 bedroom in another part of the house across the hall. Her
19 and Owen got in the bed, she was reading bedtime stories
20 to Owen. Owen fell asleep, she fell asleep in her room
21 and left Richard Brandon Lewis awake watching television.
22 She was asleep in the bed, Ashley was asleep in the bed.
23 You will hear testimony that Ashley was asleep in the bed
24 with Owen. Mr. Lewis, after being in the den for some
25 time came around, came in the bedroom where Ashley was,

1 asked her if she wanted to get up and watch a movie, asked
2 her if she wanted something to eat. She said no, she
3 wanted to go back to sleep and she went back to sleep.
4 The next thing you will hear testimony about, the next
5 thing that Ashley Hepburn saw was Richard Brandon Lewis
6 holding Audrina lifeless, limp in his arms. He was
7 telling her something is wrong, I can't get Audrina to
8 wake up. She jumped out of the bed, took her daughter,
9 frantic, panicking, went through the house screaming for
10 her mother to help. EMS was called and they took the
11 child to Self Regional Hospital in Greenwood. Ladies and
12 gentlemen, it is our position that once you hear all the
13 testimony in this case, you are going to hear a lot, you
14 are going to hear a lot of witnesses over the next few
15 days. Once you hear all the testimony in this case you
16 will come to the conclusion as a juror that the State
17 hasn't carried its burden in this case and that Ashley
18 Nicole Hepburn is not guilty of the crimes that she has
19 been charged with. Listen to all of the evidence, listen
20 carefully. At the end of this trial the Judge will give
21 you the law as he has said. Take that law as he gives it
22 to you and apply it to the facts, apply it to the evidence
23 that you hear comes from this stand and I am confident
24 that you will return a verdict of not guilty against my
25 client. Thank you.

1 THE COURT: Thank you, Mr. Able. Mr. Wise.

2 MR. WISE: Mr. Foreman and ladies and gentlemen of
3 the jury, I represent Richard Brandon Lewis in this
4 matter. He is the young man sitting here next to me, he
5 met Ashley Hepburn several years ago, they lived in the
6 same community in the Cross Hill area. Sometime in April
7 or May of 2009 he ran across her as people do and they
8 started dating each other, went out for a while. When
9 they first started dating it wasn't on that regular of a
10 basis. But probably sometime in July it became a little
11 more regular basis. He would spend some time at Ms.
12 Hepburn's house, would not spend every night there but he
13 would spend the majority of nights there, would be there
14 two or three nights a week. And he was there that night,
15 there is no question about that. Listen to the testimony
16 in this case, I think you are going to find that Mr. Lewis
17 had a good relationship with the child. They have accused
18 Mr. Lewis of aiding and abetting the abuse of this child
19 starting in August the 1st of 2009. You will not find any
20 testimony on that in this case. In fact the testimony
21 will be that at a birthday party in August Mr. Lewis was
22 taking care of the child, for Audrina. Taking care of
23 her, cleaning up when she got ice cream on her and stuff
24 like that, had a good relationship with her. On this
25 particular night in question he was there at the house,

1 his girlfriend was there also. Later in the night after
2 Ms. Hepburn put the child to bed he was getting ready to
3 go to bed and went to check on the child as he does
4 somewhat on occasions, walked in and noticed the child
5 wasn't looking right and wasn't feeling right, wasn't
6 doing right. He went on and checked on the child and
7 found that the child was barely breathing. He then picked
8 the child up, immediately called the caregiver, the
9 mother, called 911 saying something was wrong with the
10 child. The police arrived along with EMS and the
11 investigation ensued. What you will find in this
12 testimony is this, the day of the incident, Mr. Lewis was
13 interviewed by the police, gave the police a statement and
14 was not arrested. You will find in May of 2010 some seven
15 to eight months after this incident that was during a
16 family court involving this incident Mr. Lewis testified
17 in that hearing, he was not arrested. Then he was not
18 arrested until September of 2010, some eleven months after
19 this incident when he was a student up at Clemson
20 University. And that is when he was first formerly told
21 that he was being accused of killing this child. This is
22 a tragic case. You will look at pictures that are tragic
23 that no human being should have to look at. But
24 unfortunately you are going to be required to. Not
25 because you want to but because things are going to be

1 introduced and the Court is going to tell you that they
2 are in evidence, to look at the evidence. I don't want to
3 look at them any more than you do but they are there.
4 What this case against Richard Lewis is about purely is
5 circumstantial evidence case. This case is on
6 speculation, conjecture and surmise. Listen to the
7 testimony, listen to it carefully, listen to it carefully
8 because you cannot convict someone regardless of how
9 horrendous the crime, regardless of how bad it is,
10 regardless of how much your human instincts cry out for
11 vengeance on somebody. You still cannot convict on
12 speculation, conjecture and surmise. And unfortunately
13 for Audrina that is what this case is about. There is
14 going to be no proof that Richard Lewis assaulted that
15 child that night that caused her death. The proper
16 verdict for Richard Lewis' case should be not guilty.
17 Thank you.

18 THE COURT: Thank you, Mr. Wise. Ms. Mayes, call
19 your first witness please.

20 MS. MAYES: The State calls Ashley Thompson.

21 Ashley Thompson, after being duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 By Ms. Mayes:

25 Q Ms. Thompson, where are you employed?

1 A Currently?

2 Q Currently.

3 A Sandlot Food Stores.

4 Q And prior to that where were you employed?

5 A I was a 911 dispatcher.

6 Q And where were you a 911 dispatcher at?

7 A Laurens County.

8 Q And how long did you work in that capacity?

9 A Approximately two years.

10 Q And during the course of your time as a 911
11 dispatcher do you recall whether or not you were involved
12 in taking an emergency call involving injuries to a
13 sixteen month old child in the Cross Hill section?

14 A Yes, ma'am.

15 Q And do you have with you any documentation concerning
16 that call?

17 A I do not.

18 Q I am going to ask you how is it that calls are
19 documented, Ms. Thompson.

20 A They are entered into the computer. As we get the
21 call a screen pops up and we are required to enter
22 everything that we are being told, address, the person
23 that calls, all of the information coming in is detailed
24 down to the second.

25 Q And when you do the computerized documentation that

1 you are talking about is that something you are trained
2 in?

3 A Yes, ma'am.

4 Q And is any kind of official report documented in
5 conjunction with taking that call?

6 A Either an EMS report or law enforcement usually
7 coincides with the report that we put into the computer.

8 Q I am going to show you a document and ask you whether
9 or not you recognize it?

10 A Yes, ma'am.

11 Q How is it that you recognize that?

12 A I entered all of this information into the computer.

13 Q All right. I am going to refer you back to the night
14 of October 13th of 2009 and ask you according to your own
15 documentation on what time was that call received?

16 A The call came in at 1:30 a.m.

17 MS. MAYES: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 Q Just want to back up a little bit. You said 1:30 and
20 would that be p.m. or a.m.

21 A At a.m.

22 Q So, at 1:30 a.m. the call is received and again
23 according to your documentation on what date did this
24 occur?

25 A October the 13th of 2009.

1 Q So, we are talking about the early morning hours of
2 October 13th of 2009. Now, what happens once the call is
3 received, what is the next step.

4 A We ask the information as far as what is the
5 emergency, the name, the address and the caller then gives
6 us that information and we put all of that into the
7 computer.

8 Q And is that information entered into the computer by
9 you?

10 A Yes, ma'am.

11 Q And so when you ask about or in this particular case
12 when you ask about the nature of the call or the nature of
13 needing emergency services what information was provided
14 to you?

15 A There was a sixteen month old child that was
16 breathing but not responding and that had not been sick.

17 MR. ABLE: Your Honor, I would just like to have, I
18 would like to stand somewhere I can see what she is--

19 THE COURT: You and Mr. Wise should feel free to move
20 about as needed without--

21 MR. ABLE: I just don't want to invade anybody.

22 THE COURT: If you want to move over where you can
23 see.

24 MR. ABLE: Just so I can see.

25 THE COURT: Or up here for that matter.

1 Q And concerning that particular portion of the
2 document where you ask about the history about what has
3 lead to this. Any additional information provided?

4 A No, none other that she had been put down about 11:30
5 and they had went in to check on her and that is when they
6 found her unresponsive.

7 Q So around 11:30 and you say put down, if you can
8 refer specifically to your report, what is the notation on
9 your report?

10 A They put her to bed about 11:30.

11 Q All right. Now, after documenting this information
12 does the report indicate at what time emergency services
13 or an ambulance would have actually arrived at the scene?

14 A Medic 4 which is a Cross Hill ambulance, they arrived
15 at the scene at 1:40 a.m.

16 Q So about ten minutes later?

17 A Yes, ma'am.

18 Q Now, Ms. Thompson, in addition to the documentation
19 concerning the call how else are 911 calls documented by
20 Laurens County Emergency Services?

21 A They are recorded as well.

22 Q Have you had the opportunity to review or listen to
23 the audio recording that pertains to this particular call?

24 A Yes, ma'am.

25 Q And can you tell us whether the recording or audio

1 that you heard is a fair and accurate representation of
2 the call you received on the early morning hours of
3 October 13th?

4 A Yes, ma'am.

5 MS. MAYES: Your Honor, at this time we would offer
6 State's, I believe it is exhibit 3, the audio recording.

7 THE COURT: Any objection, Mr. Able?

8 MR. ABLE: No, sir.

9 THE COURT: Mr. Wise?

10 MR. WISE: No objection.

11 THE COURT: In evidence without objection is State's
12 3.

13 (Whereupon, State's Exhibit 3 was admitted into
14 evidence.)

15 THE COURT: Do you want to publish?

16 MS. MAYES: Yes sir, Your Honor, we would offer to
17 publish at this time.

18 THE COURT: Any objections?

19 MR. ABLE: No, sir.

20 MR. WISE: No, sir.

21 THE COURT: You may proceed.

22 (Whereupon, the 911 tape was played to the jury
23 starting at 2:50 p.m. and ended at 2:54 p.m.)

24 Q Now, Ms. Thompson, according to your report what
25 other action was noted in this particular case following

1 the arrival of EMS on the scene about 1:40 a.m.

2 A They were asked to send up MedTrans to fly her out.

3 Q When you are referring to MedTrans you are talking

4 about a helicopter?

5 A Yes ma'am, it is an emergency flight.

6 Q And was she able to be taken by helicopter?

7 A No, they were declined due to the weather at the

8 time.

9 Q And after that notation what else was noted?

10 A It was at 2:30 Self Regional in Greenwood called and

11 said they needed DSS to call in reference to possible

12 child abuse.

13 Q And that was at 2:30 a.m.?

14 A Yes, ma'am.

15 Q And you received that call, when you say Self you are

16 talking about Self Hospital in Greenwood?

17 A Yes, ma'am.

18 Q And did you follow through with that notification to

19 DSS in reference to possible child abuse?

20 A Yes, ma'am. They contacted the hospital directly.

21 Q And what other notations were made concerning your

22 communications with Self Hospital Emergency Room?

23 A They called back at approximately 6:29 that same

24 morning and said that the officers, when they were there

25 they had left the baby's gown, they put it in a bag for

1 evidence and they needed them to come back up there and
2 pick it up.

3 Q Okay. So, the people at the emergency room had put
4 the child's clothing into a bag for evidence?

5 A Yes, ma'am.

6 Q And did you communicate that information to law
7 enforcement as well?

8 A I did.

9 Q Nothing further at this time.

10 THE COURT: Mr. Able, cross.

11 CROSS-EXAMINATION

12 By Mr. Able:

13 Q Concerning this 6:29 a.m. call, it says an RN at Self
14 ER called and the officers had left the baby's gown?

15 A Yes, sir.

16 Q So, the baby's gown was left over at the hospital?

17 A Right, they had put it in a bag for evidence and they
18 had left it at the hospital.

19 Q Thank you.

20 MR. WISE: I have no questions.

21 THE COURT: Thank you, you may step down. Any
22 objection to excusing this witness?

23 MS. MAYES: No, Your Honor.

24 MR. ABLE: No, sir.

25 MR. WISE: None from the defense.

1 THE COURT: You are free to go, thank you very much
2 for coming. Ms. Mayes, call your next witness.

3 MS. MAYES: The State calls Calvin Duckett.

4 Calvin Duckett, after being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 By Ms. Mayes:

8 Q Mr. Duckett, where are you currently employed?

9 A Currently I am employed with Abbeville County
10 Emergency Services.

11 Q All right. And prior to working with Abbeville
12 Emergency Services where were you employed?

13 A I was employed with Laurens County Emergency
14 Services.

15 Q And what is your job description with emergency
16 services?

17 A I am a paramedic.

18 Q Tell us a little bit about the education and training
19 that you obtain in order to become a paramedic.

20 A Six months of EMT school with road experience and
21 another ten weeks of intermediate class and right at two
22 years of paramedic school.

23 Q And how long have you been working in emergency
24 services approximately prior to October of 2009?

25 A Roughly about 18 years.

1 Q And when you run a call such as responding to a
2 residence and someone needs to be transported to the
3 hospital how is a call like that documented?

4 A There is a trip sheet filled out. Basically what you
5 find when you arrive on the scene, what treatments you
6 render to the person, any medications, vitals, where you
7 took the patient to, condition on arrival, pick the
8 facility you transported the patient to.

9 Q And do you routinely make those trip reports whenever
10 you have a call?

11 A If I am the primary attending I do all of those.

12 Q And can you tell us whether or not you were involved
13 in responding to a emergency call in the Cross Hill
14 section of Laurens on or about the early morning hours of
15 October 13th of 2009?

16 A Yes, I was.

17 Q And did you prepare a documented report or a trip
18 report as you termed it in connection with that particular
19 case?

20 A Yes ma'am, I did.

21 Q And do you have the document with you today?

22 A I do.

23 Q Can you look at that document and tell us, according
24 to your documentation, of what time EMS would have arrived
25 on the scene at that residence?

1 A We arrived at 1:40 a.m.

2 Q And that would be on the scene?

3 A That would be on the scene.

4 Q And at what point, if your document tells you, would
5 you have been actually at the patient, in other words
6 inside the home rendering treatment to her?

7 A We got to the patient at 1:42 a.m.

8 Q What if anything did you note about Audrina's
9 condition once you arrived?

10 A We arrived, she was being held by a lady, she was
11 unresponsive, she was breathing, did have a pulse but she
12 was unresponsive to any kind of stimuli.

13 Q And when you say unresponsive what do you mean by
14 that?

15 A She was unconscious.

16 Q Okay. And when you say that she didn't respond to
17 any stimuli what efforts are taken in order to try and get
18 a response?

19 A With a child that young usually rubbing the bottom of
20 the feet, lightly rubbing between their shoulders.

21 Q And following your notation that she was unresponsive
22 or unconscious as you put it what measures were taken to
23 give her medical treatment?

24 A First off we assessed that she had an open airway
25 where she could breathe. We asked if she had any kind of

1 medical problems, allergies, past medical history. And at
2 that point we went ahead and took her to the unit, the
3 lighting was not very good in the house so we went ahead
4 and took her to the unit where it would be a little bit
5 more controlled environment.

6 Q When you say the unit, you are referring to what?

7 A The ambulance.

8 Q Okay. Now, in your documentation that you mentioned
9 previously who actually prepared that, who would be
10 responsible for preparing the report that goes along with
11 running a call?

12 A That would be me.

13 Q And if you could refer to that and tell us exactly
14 what you noted when you said before that you asked if she
15 had any problems. Is that considered necessary for
16 medical diagnosis and treatment to ask those questions?

17 A Yes, it is.

18 Q And is it normal or routine when you arrive on the
19 scene to an unconscious person to try to obtain some kind
20 of history as to what may have occurred?

21 A Yes.

22 Q And does your document reflect whether or not you
23 question family members in this case?

24 A It does. We noted that she had been acting normal
25 before she was put to bed and that they had gone through

1 the house to check on her and she, they found her
2 unresponsive in her crib.

3 Q So, according to the information you were given by
4 the family she was acting normal before going to bed?

5 A Yes ma'am, that is correct.

6 Q And do you remember whether there was one person or
7 multiple people in the room as you were providing
8 treatment to Audrina?

9 A There were multiple people.

10 Q And did anyone dispute that history of that
11 information about her being normal prior to going to bed?

12 A No.

13 Q What happened next?

14 A We took her to the ambulance, laid her on a stretcher
15 and proceeded to take her clothes off and do an
16 examination, started giving her oxygen.

17 Q And when you say that her clothes were removed how is
18 the clothing removed in a situation like this?

19 A They were cut with scissors.

20 Q All right. What if anything did you note concerning
21 her sleeper or the clothing that she was wearing as it was
22 removed?

23 A There appeared to be stain, very light stain, we
24 weren't sure at the time if it may have been blood or
25 juice.

1 Q Okay. And does your documentation describe the
2 appearance of that stain, the color of the stain?

3 A It has, it could have been fruit juice.

4 Q Specifically in your documentation, if you could just
5 refer to your document concerning any notations about
6 cutting the sleeper and observations made?

7 A Appearance of juice. Once her sleepers were removed
8 we noted bruising to the body.

9 Q And do you have documentation with you?

10 A Yes.

11 Q If you could please refer to any notations that were
12 made about cutting the sleeper off?

13 A Didn't note obvious blood, did notice something
14 reddish that could have been fruit juice.

15 Q Where did you notice something reddish, is that in
16 your documentation?

17 A Yes.

18 Q So you noticed something reddish. Did she appear to
19 be bleeding from any parts of the body that you could see?

20 A Not that we could see, no.

21 Q All right. And so you made a notation of possible
22 juice?

23 A Yes.

24 Q And then you mentioned that after the sleeper was cut
25 you noted bruising?

1 A Yes, several bruises.

2 Q If you could refer directly to the report and I want
3 to ask you specifically any bruises that were documented
4 in your report, you were there at the scene at 1:40 or
5 1:42 a.m.

6 A We noted one bruise approximately three-quarter of an
7 inch to the left of the belly button.

8 Q That would be what area of the body?

9 A Left abdomen. Also noted a bruise on the chin and on
10 the jaw to the left side around the jawline.

11 Q So the chin bruise is separate from the jaw bruise?

12 A Yes. The patient had what appeared to be a mark on
13 her back, I am not certain what that was.

14 Q What if any notations did you make concerning the
15 color or appearance of the bruises that you observed.

16 MR. ABLE: Judge, I am going to object to that
17 question. I don't believe that this witness has been
18 shown or possess any expertise in aging or the color of
19 bruising.

20 MS. MAYES: I can rephrase that, Your Honor.

21 THE COURT: Go ahead.

22 Q Did you make any notation based upon your
23 observations as to whether the bruises were the same color
24 or different colors?

25 A They were different colors.

1 Q What happened next?

2 A We started to ventilate the patient with a ambu-bag
3 mask due to her pulse rate being in the sixties. Went
4 ahead and started an IV on her, noted some swelling to her
5 tongue when we started to use the ambu-bag mask on her.
6 There was no note of any allergies or anything. So, we
7 went ahead and gave her two more grams of Benadryl by IV.,
8 that was on the outside chance that it was an allergic
9 reaction due to the tongue swelling.

10 Q And at that point and time did you know for sure
11 whether the tongue swelling was due to trauma or due to an
12 allergy?

13 A We couldn't tell that, no.

14 Q So, at that point you gave her Benadryl in the
15 absence of any other information?

16 A That is correct.

17 Q Now, are family members allowed or is a parent, for
18 example, or family members, are they allowed to ride in
19 the ambulance if they elect to do so?

20 A Yes, they are.

21 Q All right.

22 A With a small child they are allowed, one family
23 member in the back. Obviously if it is a critical patient
24 we try to let them ride in the front of the ambulance,
25 with a small patient they can ride in the back.

1 Q And in this particular case was that information or
2 was that communicated to family members?

3 A I believe it was, yes.

4 Q Did anyone ride in the ambulance with you and was
5 someone else with you at the scene?

6 A I had my partner but other than my partner and one
7 firefighter that drove us in we were the only people in
8 the ambulance.

9 Q Okay. No, no family members rode in the ambulance?

10 A No, ma'am.

11 Q What if anything did you note or do you have
12 recollection of concerning once you went out to the truck?

13 A The biggest thing was the absence of family around
14 the ambulance.

15 Q What do you mean by that?

16 A Usually in a case with a small child it has been my
17 experience family members want to be right there.

18 MR. ABLE: Objection to the relevance, Your Honor.

19 THE COURT: Ms. Mayes.

20 MS. MAYES: Yes sir, I can ask a different question.

21 Q At any point did a family member follow you to the
22 truck.

23 MR. ABLE: Leading.

24 THE COURT: Sustained.

25 Q Can you tell us whether or not anyone followed you to

1 the truck other than the other medical personnel?

2 A I don't remember of anybody following to the truck.

3 Q And at what point did you arrive at, if your record
4 reflects, did you arrive at Self Hospital in Greenwood?

5 A We arrived at the hospital at 1:57 a.m.

6 Q What happened next?

7 A Once we arrived to the hospital we went in and were
8 directed to the treatment area. Placed the patient in
9 treatment room five. And at that time was met by the
10 nursing staff and gave a full report on what we had found
11 on the patient and treatments rendered to the patient.

12 Q And were you, at the time you were at the hospital
13 were you ever given any additional information concerning
14 her history or what may have happened to Audrina from any
15 of the family members?

16 A No ma'am, I never saw family members at the hospital.

17 Q Now, I want to ask you a little bit about certain
18 treatment methods. Would you or your partner have done
19 anything on this particular night that would have caused
20 injury to Audrina?

21 A No.

22 Q Is there anything about the methods that you use and
23 you mentioned previously about treatment to kind of see
24 how she responds to stimuli. Can you tell us whether or
25 not there is anything about the method you used that would

1 have caused injury to Audrina?

2 A No, I wouldn't.

3 MS. MAYES: I beg the Court's indulgence.

4 Q I am going to show you two photographs and ask you
5 whether or not, for purposes of identification, you
6 recognize what is shown or who was shown in the
7 photographs?

8 A That is the patient.

9 Q That would be Audrina Hepburn?

10 A That is correct.

11 Q You mentioned previously that one of the bruises you
12 had noted was a bruise to the abdomen, I am going to show
13 you this photograph and ask you whether or not you
14 recognize the abdominal bruise in that photograph?

15 A Yes, it is right to the left of the belly button.

16 Q All right. I am going to show you a second
17 photograph and this is of the toe area and ask you to take
18 a look at that. Would your treatment of Audrina done
19 anything to cause injuries between or around the toes?

20 A No, ma'am.

21 MS. MAYES: Your Honor, this would be State's exhibit
22 4 I believe at this time for evidence. This is the first
23 photograph shown.

24 THE COURT: Any objection that we need to take up at
25 this point and time?

1 MR. ABLE: Yes, sir.

2 THE COURT: Very good. Ladies and gentlemen of the
3 jury, there is a matter of law that I need to take up with
4 the attorneys involved in this case. I am going to ask
5 that you adjourn to the jury room for a brief moment. I
6 hope to have you back out here in a few minutes. Don't
7 discuss the case of course among yourselves. We will have
8 you back as soon as possible. Thank you.

9 (Whereupon, the jury was excused from open court for
10 a break.)

11 THE COURT: The jury is out. Mr. Able?

12 MR. ABLE: I haven't seen the photo yet.

13 THE COURT: Okay. I thought that was part of the
14 ones that were emailed.

15 MR. ABLE: I just didn't know which one it was.

16 THE COURT: While we have the jury out, I realize
17 that we may not get to all of the photos today, are you
18 looking to get to--

19 MS. MAYES: We may, Your Honor, offer some of the
20 hospital photos. One of our witnesses is a physician. We
21 have the photos ready, they are the same photographs that
22 were emailed. So anything that needs to be reviewed we do
23 have them.

24 THE COURT: If we could, we will take a few moments
25 so you guys can take a look at the photographs and perhaps

1 separate the ones that you find objectionable. Let's just
2 deal with the ones that we are dealing with today, Ms.
3 Mayes, I realize the autopsy photographs may fall into a
4 different category. They are not as graphic as I
5 initially anticipated. We will be at ease for a few
6 minutes.

7 (Whereupon, a break was taken to look over exhibits
8 and mark exhibits.)

9 THE COURT: The photographs have been separated into
10 two stacks. There appear to be a dozen photographs down
11 there. One stack of six apparently are the photos that
12 counsel for the defendants have no objection to.

13 MR. WISE: We think that these six show everything
14 that needs to be shown although we question whether this
15 witness is the one to introduce them through.

16 MS. MAYES: We are not.

17 THE COURT: While we have the photos I assume that at
18 some point and time perhaps the next witness might be the
19 one that the State would be seeking introduction of some
20 of the photos, she is the ER Doctor. I wanted to go ahead
21 and take care of this housekeeping matter while it is
22 fresh in our mind. The six photos that are immediately in
23 front of you, Ms. Mayes, the ones that Mr. Able and Mr.
24 Wise have an issue with, are you seeking to introduce any
25 of those through any of the witnesses today?

1 MS. MAYES: The one that was offered, Your Honor, as
2 State's exhibit 4, I am not sure which one, unfortunately
3 we haven't marked them yet.

4 THE COURT: What you are holding in your hand, Ms.
5 Mayes, is that State's 4?

6 MS. MAYES: Yes sir, Your Honor.

7 THE COURT: Is there any problem, Mr. Wise, Mr. Able?

8 MR. ABLE: To introduce through this photograph?

9 THE COURT: Yes.

10 MR. ABLE: Judge, I would object to that one. I
11 don't think it is represented of how he found the baby,
12 obviously taken in the hospital, some hospital and I don't
13 know which one but I don't think it accurately represents
14 the condition of the child when they found it.

15 THE COURT: Subject to this witness being able to, or
16 subject to Ms. Mayes being able to lay a foundation.
17 Let's go ahead and mark this as State's 4 subject to
18 review and lay a foundation through this witness.

19 (Whereupon, State's Exhibit 4 was marked for
20 identification only.)

21 THE COURT: That is the only photo that you are
22 seeking to introduce through this witness?

23 MS. MAYES: Yes, Your Honor.

24 THE COURT: Until the other ones come in we are going
25 to pile them up and let's keep them separated into two

1 stacks and we will deal with them if there are an
2 objection to them as you seek to. Go ahead and mark them
3 all for ID, the first six will be 5 through 10, the second
4 stack will be 11 through 15.

5 (Whereupon, State's Exhibit numbers 5 - 15 were
6 marked for identification only.)

7 THE COURT: Anything before we bring the jury back
8 out?

9 MS. MAYES: Your Honor, I am going to go ahead and
10 offer State's exhibit 4.

11 THE COURT: State's 4. Ms. Mayes, you want to go
12 ahead and lay a foundation for State's 4.

13 MS. MAYES: Yes sir, Your Honor. It was noted by the
14 paramedic that upon arrival and cutting off the sleeper
15 right away had noted an abdominal bruise, that same bruise
16 has been identified by the witness in a photograph that
17 was taken several hours later once she was transported to
18 the Greenville Memorial Hospital so that would be sometime
19 on the 13th within, within 12 hours of EMS providing
20 treatment to her, approximately 12 to 13 hours later.

21 THE COURT: All right. Mr. Able, as far as, Mr.
22 Wise, what is the nature of the objection. I believe the
23 witness has testified it was an abdominal bruise, the
24 picture that Ms. Mayes is proffering does show the bruise.
25 And this is a photo of the child, is this before the child

1 passed away or after the child passed away?

2 MS. MAYES: Your Honor, that photograph was taken at
3 Greenville Memorial about 12 to 13 hours after she was
4 admitted to the hospital.

5 THE COURT: Mr. Able.

6 MR. ABLE: Judge, I object of the introduction of the
7 photograph into evidence. As I stated I don't believe it
8 is representative of how this particular witness found the
9 child in the morning of October the 13th of 2009.
10 Obviously it was sometime later, he doesn't know what had
11 transpired between the time he saw the child and the time
12 the photograph was taken. So, I object on the grounds of
13 Rule 402 and 403.

14 THE COURT: I assume, Ms. Mayes, you are proffering
15 this photograph to demonstrate that the bruise was in
16 fact, you are going to elicit testimony about the fact
17 that that photograph, to demonstrate the bruise was in
18 fact on the child at the time that EMS picked up the child
19 and the child did not subsequently get bruised by hospital
20 personnel. Is that where you are going with this?

21 MS. MAYES: Yes sir, Your Honor.

22 THE COURT: Subject to your objection, Mr. Able, I
23 will allow the witness to testify to this photograph. Are
24 you seeking admission of this photograph through this
25 witness or are you simply for publication and testimony?

1 MS. MAYES: Admission of the evidence, Your Honor.

2 THE COURT: I will allow the photograph to be
3 admitted subject to the objection. Mr. Wise, you join in
4 with Mr. Able's objection?

5 MR. WISE: Yes, sir.

6 THE COURT: Very good. It will not be necessary for
7 me to make contemporary objections when we move the
8 photograph into evidence. The exhibit is in, State's 4.

9 (Whereupon, State's Exhibit 4 was admitted into
10 evidence.)

11 THE COURT: Bring the jury in, please.

12 (Whereupon, the jury came into open court at
13 approximately 3:40 p.m.)

14 THE COURT: All right, Ms. Mayes, you may continue.

15 CONTINUE DIRECT EXAMINATION

16 BY Ms. Mayes:

17 Q Prior to the break I had asked you whether or not you
18 recognize what is shown as State's exhibit 4, who is shown
19 as State's exhibit 4. And whether or not the abdominal
20 bruise that you noted, whether or not you can identify
21 anything and tell us what information you have in that
22 regard?

23 A That was the patient. We did note the bruise on her
24 abdomen in our documentation.

25 MS. MAYES: Nothing further, Your Honor.

1 THE COURT: Mr. Able.

2 CROSS-EXAMINATION

3 By Mr. Able:

4 Q Mr. Duckett, when you went to the home my client, the
5 patient's mother was on her knees on the floor with the
6 child, wasn't she?

7 A There was a lady holding the child, yes sir.

8 Q My client?

9 A I am fairly certain it was, yes sir.

10 Q That is all I have.

11 CROSS-EXAMINATION

12 By Mr. Wise:

13 Q Mr. Duckett, you said that with a small child, the
14 mother is given a chance to ride in the ambulance?

15 A Yes.

16 Q And did you talk to Ms. Hepburn about the riding in
17 the ambulance?

18 A I had sent one of the firefighters and told them to
19 advise the family that if someone would like to ride they
20 could.

21 Q And did Ms. Hepburn ride in the ambulance?

22 A There was nobody that came back with the fire
23 department to get into the ambulance.

24 Q Ms. Hepburn didn't ride in the ambulance?

25 A No.

1 Q Did you speak to Ms. Hepburn at all that night?

2 A Other than asking brief history, if the patient had
3 any kind of medical problems or allergies, other than
4 that, no.

5 Q Thank you.

6 THE COURT: Anything on redirect?

7 MS. MAYES: No sir, Your Honor.

8 THE COURT: Recross?

9 MR. ABLE: Just briefly.

10 RECROSS-EXAMINATION

11 By Mr. Able:

12 Q You had mentioned that the fire department had been
13 called?

14 A Yes sir, that is correct.

15 Q To assist. They brought a vehicle, correct?

16 A That is correct.

17 Q And were you aware that my client rode in that
18 vehicle behind the ambulance?

19 A I was not.

20 Q Were you aware that there was another child in the
21 home?

22 A I didn't see another child. I seen several toys
23 outside that would indicate that but I never saw the other
24 child.

25 Q So, you weren't aware that my client was in the home

State of South Carolina)
County of Laurens) Court of General Session
2010-GS-30-1773, 1774

2010-GS-30-1929, 1930

State of South Carolina)
vs.) Transcript of Record
Ashley Nicole Hepburn and)
Richard Brandon Lewis)
Defendants) VOLUME II

February 22, 2011
Laurens, South Carolina

B E F O R E:

Honorable Frank R. Addy, Jr., Judge; and a jury.

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

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1 of their other child trying to get ready to come to the
2 hospital? You were riding in the ambulance?

3 A I was in the ambulance, correct.

4 Q And when she did come out she was instructed to ride
5 in the truck with the fire department, were you aware of
6 that?

7 A I was not aware of that.

8 Q Thank you.

9 THE COURT: You may step down. Any objection for
10 this witness to be excused?

11 MS. MAYES: No objection from the State, Your Honor.

12 MR. ABLE: No, sir.

13 THE COURT: You are free to go. Ms. Mayes, call your
14 next witness, please.

15 MS. MAYES: The State calls Dr. Michelle Curry.

16 Dr. Michelle Curry, after being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Mayes:

20 Q Dr. Curry, where are you employed and in what
21 capacity?

22 A I am currently with Lakelands Emergency Physicians at
23 Self Regional Health Care as an emergency physician.

24 Q All right. And how long have you been working as an
25 emergency room physician?

1 A I finished my residency in 1993, 17 years.

2 Q What information can you give us concerning your
3 educational background and training that lead to you
4 obtaining a medical degree?

5 A I completed a Bachelors Degree at Colorado College,
6 Medical Doctorate of Medicine at University of Colorado
7 and then completed specialized residency training in
8 emergency medicine. I am Board Certified in emergency
9 medicine through the American Board of Medical
10 Specialities.

11 Q All right. And so your area of speciality then is
12 emergency medicine or offering treatment in hospital
13 emergency room situations, is that correct?

14 A That is correct.

15 Q And you mentioned board certification, what goes into
16 the certification of becoming an emergency physician?

17 A Following your post-graduate studies there is a
18 requisite number of years in specialized training.
19 Following that you sit for a written examination,
20 completing a written examination, you then become eligible
21 for an oral board examination. And once you complete that
22 you obtain your certification as a specialist. And then
23 there are our annual ongoing requirements to maintain that
24 as well as recertification procedures which occur four and
25 eight and ten year cycles.

1 Q And can you tell us or estimate approximately how
2 long you have been working as an emergency room physician?

3 A I began my training in the 1990's, so approximately
4 21 years.

5 Q Have you testified previously as an expert in the
6 field of emergency medicine?

7 A Yes, I have.

8 MS. MAYES: Your Honor, at this time the State would
9 offer Dr. Michelle Curry as an expert in the field of
10 emergency medicine.

11 THE COURT: Any objection, Mr. Able?

12 MR. ABLE: No objection, Your Honor.

13 MR. WISE: No objection.

14 THE COURT: All right. The Court will recognize Dr.
15 Curry as an expert in the field of emergency medicine.
16 Ladies and gentlemen of the jury, let me advise you that
17 normally a person can't give opinion testimony. Normally
18 when a person testifies they have to testify to what they
19 either saw or heard or sense by smell or one of their
20 other senses. There is an exception however under the law
21 when someone is qualified because of education or
22 experience. They are permitted to give an opinion in
23 certain areas and the Court qualifies them in that way.
24 In this case Dr. Curry has been qualified as an expert in
25 the field of emergency medicine so she may give an opinion

1 in that area. That doesn't mean you must accept her
2 opinion but it is evidence for you to consider and use in
3 any way you see fit and give it the weight and credibility
4 that you feel it properly deserves. Ms. Mayes, you may
5 continue.

6 MS. MAYES: Yes sir, Your Honor.

7 Q Now, Dr. Curry, how long have you been working, if
8 you can give us some information about Self Hospital, how
9 long have you been working at Self Hospital or working as
10 a doctor there?

11 A I have been at Self Regional since 2002.

12 Q And primarily in the emergency room?

13 A Yes, ma'am.

14 Q Can you tell us whether or not you were working at
15 Self Emergency room on October, early morning hours of
16 October 13th of 2009?

17 A Yes, I was.

18 Q During that time did you have the opportunity to
19 provide medical treatment to a toddler by the name of
20 Audrina Hepburn?

21 A Yes, I did.

22 Q Do you have with you today your medical chart and
23 information as it pertains to Audrina Hepburn?

24 A I do.

25 Q Can you give us some information about Audrina's

1 arrival there at the emergency room, approximately what
2 time she got there and when the treatment would have
3 began?

4 A I have notes here that she arrived on the 13th of
5 October of 2009 and she was transported to us by Laurens
6 County EMS and arrived by an ambulance. I am trying to
7 find the exact time of arrival, roughly 2:00 o'clock in
8 the morning.

9 Q All right. So by 2:00 a.m. she would have been
10 inside the emergency room receiving treatment?

11 A Roughly, I have the nursing charting starting at
12 2:10, so somewhere between 2:00 and 2:10 she arrived, yes
13 ma'am.

14 Q All right. And at what point did you began assessing
15 her and providing emergency medical treatment?

16 A I was in the room upon her arrival. They had radioed
17 us they were in route to us so we were waiting for her.

18 Q What can you tell us about her condition upon
19 arrival?

20 A In general she was what I would classify as
21 critically ill. She was what we would say limp and
22 unresponsive meaning that no matter what you did to her
23 she wasn't moving or opening her eyes. The paramedics had
24 initiated an IV line, they were also assisting her
25 breathing with some supplemental oxygen. She was, she had

1 good pulse, she had a good blood pressure. I think
2 striking to me initially was her just lack of response.

3 Q And in a situation like that when a child comes in
4 and they are unconscious what steps do you take as an
5 emergency physician to try and ascertain what might have
6 happened to cause these injuries or these conditions to a
7 child?

8 A We have a lot of things happening simultaneously.
9 Obviously we want to be sure that we are securing the
10 child's breathing and airway and making sure their pulse
11 and blood pressure and respirations are all being
12 addressed. Initially our history is obtained from the
13 paramedics and EMT's, the EMS providers who are on the
14 scene. We ask them as many questions as we can as we are
15 doing everything sort of simultaneously.

16 Q And in this particular case did you have the
17 opportunity to consult with EMS that had brought her in?

18 A I did.

19 Q And was there any history known at that point that
20 could have produced symptoms or this condition in Audrina?

21 A They said they really had observed nothing and really
22 didn't have a lot of data to provide me with. They had to
23 be concerned, because they couldn't get the mouth open and
24 get her breathing well that maybe this was some type of an
25 allergic reaction. They had administered a little bit of

1 Benadryl for that. And then I specifically asked them,
2 whenever we have a child who arrives at this hour in this
3 condition, I specifically ask them if there had been any
4 history of falls, injuries, traumas, illnesses which might
5 have caused seizures or anything along those lines. They
6 shared that there was none. And I also recall
7 specifically asking them the condition of the home to
8 which and I dictated that they told me that the home was
9 in good shape.

10 Q All right. And what steps were taken next?

11 A As we put the child on the bed and tried to stabilize
12 her it became apparent that this child was critically ill
13 and we needed to have her airway protected with a
14 procedure we call intubation, this involves putting a tube
15 down into their lungs to breathe for them. This insures
16 that we are getting the maximum of oxygen and also
17 protects them in case they vomit and getting anything into
18 their lungs that shouldn't be there. Prior to an
19 intubation on a child who is breathing as Audrina was I do
20 a head to toe examination looking for clues which I did in
21 this case.

22 Q Tell us a little bit about that, about your
23 examination.

24 A Again it was noted specifically that the child did
25 not have any fever, had a pulse and a blood pressure, had

1 kind of shallow weak respirations and was very, very limp.
2 Looking over the child head to toe, one of the first
3 things we look at is the pupils to gage how much of this
4 unresponsiveness, it is part of what we call the glasgow
5 coma scale to look at the pupils and she did have reactive
6 pupils. However I noticed some retinal hemorrhages in the
7 left eye. I documented here that I could not visualize
8 the retina in the right eye very well but the left eye had
9 retinal hemorrhages. I also noticed some bruising on the
10 forehead and I specifically documented an odd shape bruise
11 at the angle of the left jaw and down over the chin.
12 Again, in getting ready to prepare her airway, her teeth
13 were fairly tightly clinched which is what was giving that
14 swollen tongue appearance for the paramedics. Once we
15 overcame that it was noticed that she did have a tongue
16 laceration. Further exam, her lungs, she had shallow
17 breathing, her heart tones were good. On the abdomen
18 there was a couple of small bruises on the front of the
19 abdomen but it didn't appear to be swollen, it was soft.
20 All of her extremities were what we call flaccid, that
21 means there was no tone to them, just hold them up and
22 they drop down, they were limp. There was some small
23 bruises noted on the upper back and some bruises over the
24 legs. We do something called a Babinski or to a toe test
25 to look which way the toes are going. Again, this was

1 trying to be done before we intubated the child because
2 once we intubate them we will have to give them
3 medications to keep them still and we don't want that to
4 interfere with the exam. So, her toes were what we call
5 Babinski positive or upgoing toes bilaterally.

6 Q And you had mentioned, after you said the
7 hemorrhages, that there was an odd shape bruise, where was
8 the odd shaped bruise?

9 A Odd shaped bruise at the angle of the left jaw
10 extending down and over the chin, it is kind of like in
11 this pattern, sort of like this.

12 Q And what was noted about the forehead?

13 A I did note a, bruise noted over the mid forehead
14 region and also one over what we term as the occiput which
15 would be the back of the head.

16 Q Tell us, Dr. Curry, what you mean by the term of
17 retinal hemorrhages?

18 A When you look inside the pupil of an eye, the back
19 part of the eye is termed the retina. As physicians we
20 look at that a lot as sort of a cheating window on the
21 brain, the retina is continuous with the brain. If you
22 can get a good look at it it can give you a clue if there
23 is pressure or bleeding or damage going on in the brain.
24 When, particularly in children, a hemorrhage occurred when
25 the, there is bleeding into that retinal layer. It is

1 considered to be in line of an abuse situation or
2 non-accidental trauma situation.

3 Q When you use the medical term, non-accidental trauma,
4 what are you referring to?

5 A That is the medically correct term for child abuse.

6 Q When you saw the retinal hemorrhages or observed
7 presence of the retinal hemorrhage in Audrina what is the
8 next step as a physician in potentially following up to
9 see if there may be any accompanying injuries?

10 A Again, making sure the child is stabilized but
11 immediate CAT scan is certainly indicated of the head.
12 You also want to examine further for other areas of
13 injury. And it sort of depends on the state of the child
14 and where the plans are, eventually things like skeletal
15 surveys and what we call total body scans and bone scans
16 and blood work, et cetera. What all needed to be done but
17 the most immediate concerns, stabilizing the child,
18 getting a CAT scan. In our case since we don't have an
19 intensive care unit available to us then getting the child
20 to the most appropriate facility.

21 Q And following the observation of the retinal
22 hemorrhages in Audrina were CAT scans ordered?

23 A Absolutely.

24 Q And was a CAT scan actually done there on the
25 premises of Greenwood or Self Hospital?

1 A Yes, it was.

2 Q What as a physician did you learn concerning further
3 treatment based on the results of the CAT scan?

4 A The CAT scan showed something called a right subdural
5 hematoma around the brain with evidence of midline shift
6 meaning that the volume of blood around the brain was such
7 that it was pushing on the brain and pushing it across to
8 the opposite side of the skull. That is about as life
9 threatening as an injury gets. So, even as we were
10 continuing to work on her we were starting to make
11 preparations to transport her to Greenville Children's.

12 Q And what efforts did you make in order to see that
13 she was transferred to the pediatric intensive care unit
14 in Greenville?

15 A I made the necessary phone call, I spoke with Dr.
16 Seigler at the intensive care unit in Greenville. We also
17 tried to make some arrangements for transportation, air
18 transportation would have been our pick at this point.
19 However the weather that night was not cooperative as I
20 had documented. I don't remember what the weather was
21 that night but there must have been some reason they
22 weren't flying. So, we had to go by ground. Sometimes
23 Greenville Children's will send their transport team to us
24 in a specialized ambulance. Her case was such that we
25 just didn't feel we had that time to wait. So, we put her

1 in the Greenwood ambulance and sent our pediatric
2 respiratory therapist along with them to head on up the
3 road.

4 Q Dr. Curry, based on Audrina's condition was it
5 necessary to speak with family members at the emergency
6 room in order to try and determine what had caused her
7 condition?

8 A Yes, I needed a history and information, any person
9 that is unconscious as much information as we can gather
10 from whomever we can get it from.

11 Q And can you tell us whether or not she had family
12 members present?

13 A She did.

14 Q And what family members do you recall being present?

15 A I recall speaking with her mother, I recall speaking
16 with her mother's significant other. I recall speaking
17 with her, Audrina's, I guess it would be maternal
18 grandmother. I believe there were others present. I
19 don't recall specifically who those people were.

20 Q And do you have with you today any form of
21 documentation or dictation concerning the medical history
22 that you were provided concerning Audrina's medical
23 diagnosis and treatment?

24 A Yes ma'am, I do.

25 Q I am going to ask you to refer directly to your

1 dictation, what can you tell us that you learned or what
2 efforts were taken in order to learn what may have lead up
3 to the condition?

4 A I spoke with the family members in what we call a
5 family room which is a separate private area away from the
6 bustle of what the actual care is being done. I
7 documented here and I am quoting, her family members,
8 child was in her usual state of health with being placed
9 in her crib last night guesstimating the last time the
10 child had been seen was approximately 10:30 p.m.

11 Q Let me stop you right there. The information
12 provided to you that she was in her usual state of health
13 and had been placed in the crib at approximately 10:30
14 p.m., that would be 10:30 p.m.--

15 A The 12th.

16 Q The 12th. Please continue.

17 A At some point during the evening the boyfriend of the
18 child's mother stated he went to check on the child and
19 found her in the crib laying with her head pushed against
20 the flaps on her side. He went to pick her up and
21 reposition her and noticed her to be very limp and
22 unresponsive.

23 Q So, it was reported to you that she was found in the
24 crib limp and unresponsive?

25 A Yes, ma'am. Specifically quizzing all of the family

1 members present, the child has not been ill recently, no
2 cough, no cold, no nausea, no vomiting, no diarrhea, no
3 ill exposures, no accidents and no falls. They deny any
4 history of fevers or chills. Any exposure to illness they
5 state the child ate regularly yesterday, no unusual new
6 foods, no medications. They also denied the child could
7 have been exposed to any toxins and there is no history of
8 fall or hitting the head. They are unable to explain to
9 me why the child was found this way.

10 Q All right. What is the significance of you finding
11 or you observing a child in this condition with no history
12 of illness or accident or a fall?

13 A It is indicative of what we call non-accidental
14 trauma, subdural hematoma, retinal hemorrhages and bruises
15 in the pattern that we see don't just spontaneously occur.

16 Q And when it was reported to you that she had eaten
17 regularly yesterday, that would be referring to--

18 A The 12th.

19 Q October 12th. Dr. Curry, based on your education and
20 experience would a child eat regularly and appear in the
21 usual state of health after sustaining the head injuries
22 that you have described?

23 A No.

24 Q What, if anything, does that tell or from a medical
25 prospective, what, if anything, does that tell you

1 concerning whether the injury occurred after she had last
2 eaten and observed to be in her usual state of health?

3 A I would put the timing at the injury sometime after
4 she had eaten and been in her usual state of health, it
5 must have occurred at some point soon after that.

6 Q All right. What efforts were taken once you observed
7 this constellation of injuries that you mentioned
8 previously, the bruising on various parts of the body, the
9 presence of the retinal hemorrhages and the subdural
10 hematoma or bleeding inside the brain. What efforts were
11 taken on your behalf, on the behalf of medical personnel?

12 A Efforts to--

13 Q As far as notifying anyone else?

14 A I initiated, I would say within five to ten minutes
15 of the child's arrival, phone calls to the authorities and
16 DSS. I think even prior to the CAT scan based on the
17 child's presentation, just in my experience you don't have
18 a sixteen month old unresponsive child for no reason.

19 Q All right. And were any efforts undertaken from a
20 medical prospective in order to determine her ability to
21 clot blood properly or whether or not there might be a
22 presence of a bleeding disorder?

23 A That is always part of what we call non-accidental
24 trauma workup, it includes extensive laboratory tests to
25 see if there are some underlining medical illnesses that

1 might explain the injuries. We did attempt to draw blood
2 from Audrina, unfortunately the blood sample that was
3 obtained clotted before it could be evaluated and she was
4 too sick for us to try again. I don't have access to
5 Greenville Children's Hospital records but I feel sure
6 they would have done that.

7 Q And was her temperature taken once she was at the ER?

8 A Yes, it was.

9 Q What can you tell us about her temperature?

10 A I documented my record that she was, if you will give
11 me a minute I will tell you the exact number.

12 Q Okay.

13 A 96.7 degrees was the rectal core temperature.

14 Q Now, did you have the opportunity to speak directly
15 with, I think you had termed him as the boyfriend?

16 A Yes, I did.

17 Q And in connection with your conversation with him
18 what, if any, notations were made concerning the history
19 that he provided?

20 A Again I note here at some time during the evening the
21 boyfriend of the child's mother stated he went to check on
22 the child. I specifically recorded in a supplemental
23 voluntary statement that he had stated that he was up
24 watching TV, the others were in bed and he went to check
25 on the child and found the child unresponsive.

1 Q And in addition to that was there ever a time you had
2 the opportunity to speak with Mr. Lewis who you termed the
3 boyfriend and Ms. Hepburn together, was there ever a time
4 they were together when the history was discussed if you
5 recall?

6 A I recall speaking to him and I do believe she came in
7 at some point while I was speaking with him. I know I
8 spoke with her separately and individually and I know I
9 spoke with the grandmother separately and individually. I
10 don't recall at what point in my conversation with Mr.
11 Lewis that other folks entered the room.

12 Q All right. And throughout your conversations with
13 both Mr. Lewis and Ms. Hepburn was there ever any
14 explanation for her injuries such as a significant fall or
15 significant injury such as a motor vehicle accident?

16 A No, there was not. And I did question them
17 repeatedly. I recall Ms. Hepburn repeatedly saying how
18 could this happen and kind of questioning what had
19 happened. I do remember her saying that.

20 Q Now, what kind of clothing had Audrina been wearing
21 or what efforts were taken to preserve her clothing?

22 A I don't recall her arriving with clothing on but I
23 don't know, EMS sometimes cut clothing away. I am sorry,
24 I can't answer that, I don't have a recollection.

25 Q Okay. And let me ask you about some of these bruises

1 that you noted, whether you at any point gave any more
2 specific indication of what you observed. When you
3 mentioned bruising to the leg, do your notes indicate what
4 area of the leg?

5 A Let's see, small bruises over upper back, numerous
6 bruises over lower anterior chins bilaterally.

7 Q I have got to stop you right there because you used
8 the word, anterior.

9 A The front.

10 Q That would be the front chin you said?

11 A Yes, ma'am.

12 Q Then you used the term, bilaterally, what do you mean
13 by that?

14 A That means on both, on both legs.

15 Q Have you had the opportunity, Dr. Curry, to review
16 photographs concerning Audrina's condition once she
17 arrived at Greenville Memorial?

18 A Yes, I did.

19 Q Do your notes reflect approximately what time she
20 would have left Self Emergency room and gone on to the
21 pediatric care unit in Greenville?

22 A It looks like 3:45 a.m., at the time the nursing
23 notes reflect her departure from the emergency department.

24 I don't have a specific time in my notes but the nurses
25 are the ones that kind of keep the time by time by time

1 and that is what is indicated here, it is 3:45 a.m.

2 Q So, that would put her at Self at a small amount of
3 time left in two hours, approximately?

4 A Yes, ma'am.

5 Q I want to show you State's exhibit 4 and ask you
6 whether or not you recognize who is shown in the
7 photograph?

8 A Yes ma'am, that would be this patient, Audrina
9 Hepburn.

10 Q All right. And you have mentioned an abdominal
11 bruise to Audrina, can you tell us whether or not that is
12 depicted in the photograph?

13 A Yes, I recall it was a little more extensive than
14 that but I see the one depicted here, yes.

15 MS. MAYES: I beg the Court's indulgence.

16 THE COURT: Yes.

17 Q I am going to show you what is State's exhibit 5 for
18 identification and ask you whether or not you recognize
19 the person shown in that photograph?

20 A Yes, that is Audrina.

21 Q And you had mentioned before that the bruises around
22 the left jaw and chin area, can you tell us whether or not
23 those bruises are noted in that particular photograph?

24 A Yes, I do see the one there.

25 MS. MAYES: Your Honor, at this time the State would

1 offer exhibit 5 from the stack without objection as
2 evidence.

3 THE COURT: If you will show that to Mr. Wise and Mr.
4 Able and make sure they agree. Without objection State's
5 5 is in evidence.

6 (Whereupon, State's Exhibit 5 was admitted into
7 evidence.)

8 MS. MAYES: Your Honor, if I can state for the record
9 that exhibits, State's 9, 10, 6, 7 and 8 are without
10 objection. State's 16, 15, 14, 13, 12 and 11 are subject
11 to objection. At this time I would like for the witness
12 to review the photographs for purposes of identification.

13 THE COURT: Okay. You may have the witness review
14 all photographs just for ID purposes. And you can cross
15 on the admission issues when we cross that bridge on
16 admissibility issues.

17 MS. MAYES: Yes sir, Your Honor.

18 Q If you could take a moment, Dr. Curry, and review
19 those photographs for yourself.

20 A Okay.

21 Q In those photographs is there anything concerning
22 bruises to Audrina which would have been the result of
23 your medical care or treatment?

24 A I am not sure how to best answer this to make it easy
25 for you. These are all bruises that would not come from

1 any type of medical care or treatment in this stack.

2 Q And I will address those individually before we move
3 on, before we move onto these. First in terms of the
4 abdominal bruise and the, this is State's exhibit 4 in
5 evidence that I am showing you. Where in the photograph
6 is the abdominal bruise?

7 A It is right next, you can see the belly button
8 umbilicus right next to that just towards me.

9 Q And then the, State's exhibit 5?

10 A If you look under the chin and the jaw there is a
11 dark smudge you can see just to the patient's left and
12 that is the lower part of that angle bruise.

13 Q And just to clarify, these are the bruises that you
14 noted that were present upon her arrival in the ER, is
15 that correct?

16 A Yes, ma'am.

17 Q Are there any other photographs that you have that
18 are reflected as being present upon her arrival?

19 A Yes.

20 Q And if you could tell us the numbers on the back.

21 A Some of these are photos of the bruises that you have
22 already shown. Let's see, I have 12, 13, 15, 6, 7 and 8.

23 Q And what part or parts of the body are noted on those
24 particular photographs.

25 A I have one of the back of her head and the upper left

1 shoulder. Another one of the abdominal area or stomach
2 area, another one of the upper back left shoulder, one of
3 the side lower back area. And this one is almost
4 identical to that and then one of the entire back.

5 Q And you mentioned previously that you have or can
6 establish which photographs where medical treatment would
7 not have resulted in the bruises. Will you tell us which
8 photographs you are referring to?

9 A Well all of these would not be coming from medical
10 treatment.

11 Q And those are the ones that you just mentioned
12 previously?

13 A Yes, ma'am.

14 Q And let me ask you this, go ahead.

15 A These others I don't recall documenting but are
16 likely not the result of medical treatment. I do not
17 specifically recall seeing these on her when I saw her.

18 Q And you would be referring to State's exhibit 14,
19 State's exhibit 11?

20 A And then these are ones which could or could not.
21 Basically these are photos of her legs and one photo of
22 her arm and sometimes when we are trying to draw blood or
23 initiate IV lines in children we use the foot and we use
24 the arm and so it is conceivable we are holding or pushing
25 or putting a tourniquet around an arm or a leg to get an

1 IV started. And so in those photos I can't tell you
2 whether that was from us or not.

3 Q And just to clarify, State's exhibit 16 shows the
4 middle of the arm around the elbow?

5 A The inside of the elbow, yes.

6 Q And State's exhibit 10 and 9 show the toes?

7 A Yes, ma'am.

8 Q Now, referring to the other photographs, State's 11
9 and 14 that you said were not specifically noted in your
10 medical records. Do all bruises necessarily show up and
11 appear right away within an hour or two of the injury?

12 A No, ma'am.

13 Q Can you tell us why or why not?

14 A It has to do with a lot of different factors, skin
15 temperature, blood pressure, preexisting conditions,
16 anemia, the amount of pressure from a bruise and depending
17 on sometimes you can hit yourself and see a bruise
18 immediately. Sometimes it takes several hours to a day or
19 two for the bruise to appear. It is variable and some
20 times quite honestly we are taking care of the patient, we
21 don't see them all.

22 Q And in this particular situation did her condition or
23 the severity of her condition have any impact in that
24 regard?

25 A Oh, absolutely.

1 Q Now, looking at the photograph that is before you,
2 that would be State's exhibit 5 showing the bruising
3 around the chin and the jaw that you have noted. Was
4 Audrina what we call intubated while she was in the
5 emergency room?

6 A Yes ma'am, I did intubate her in the emergency
7 department.

8 Q And tell us what you mean by intubation.

9 A Intubation is a procedure where we insert a tube
10 through the mouth into the trachea to breathe for the
11 patient to protect their airway so that lava and saliva
12 and stuff doesn't go down into their lungs since they are
13 unconscious and it allows us to control their breathing,
14 control their oxygen and in the case of head wounds most
15 especially the carbon dioxide concentrations.

16 Q Did Audrina being intubated, would that have resulted
17 in the bruises that are noted?

18 A No.

19 Q And I think you testified previously that in this
20 stack of photographs, these injuries were apparent during
21 her examination conducted by you?

22 A Yes, ma'am.

23 MS. MAYES: Your Honor, at this time the State would
24 offer 14, 11, 8, 7, 6, 15, 13 and 12 as evidence.

25 MR. WISE: Your Honor, this may take a minute.

1 THE COURT: I think we have them separated, 5 through
2 10.

3 MR. WISE: We have got to separate them again.

4 THE COURT: Ladies and gentlemen of the jury, if you
5 will, let's adjourn for a few moments, don't discuss the
6 case and we will have you back in five minutes.

7 (Whereupon, the jury was excused from open court.)

8 THE COURT: We are back on the record. Mr. Able, Mr.
9 Wise, have you had an opportunity to review again and
10 separate.

11 MR. WISE: I think we can agree to that 4 and 5 are
12 in, 4 through 8 are okay. 11, 12, 13, 14 and 15 are okay
13 except 13 and 15 are basically the same picture, they show
14 the same injuries.

15 THE COURT: Okay. Can I see 13 and 15.

16 MS. MAYES: We have no objection to one of those
17 coming in, Your Honor, in lieu of the other.

18 THE COURT: 15 seems to give a better picture of the,
19 what looks like a dime shaped bruise next to the naval.
20 13 seems to give a better picture of, it looks like a
21 small red mark on the back of some kind.

22 MS. MAYES: Yes sir Your Honor, that particular
23 photograph is being offered for the back mark.

24 THE COURT: Now, about 9 and 10 my notes reflect that
25 both 16, 9, I am sorry, 16, 9 and 10 the witness had

1 testified that those could have been from medical
2 treatment.

3 MS. MAYES: Yes sir, Your Honor, they are not being
4 offered at this time. Neither is 11 or 12 at this time.
5 What the State had asked her to identify and she did were
6 6, 7, 8, 14 and then the two that Your Honor had and those
7 are the ones we have offered into evidence at this time.

8 THE COURT: I thought you were offering 11 and 12.

9 MR. WISE: She was.

10 THE COURT: You were moving into evidence 6, 7, 8,
11 11, 12, 13, 14 and 15 by my notes.

12 MS. MAYES: Okay.

13 THE COURT: Are you moving all of those in, you said,
14 which one?

15 MR. WISE: 13 and 15 are the duplicates.

16 THE COURT: Right.

17 MS. MAYES: Yes sir, Your Honor, I believe 11 and 12
18 will be offered through a later witness.

19 THE COURT: All right. 4 through 8, you don't have
20 any objection for 11, 12, 13, 14 and 15 except 13 and 15
21 are similar.

22 MR. ABLE: No sir, we have an objection to 11 and 12
23 too.

24 THE COURT: You have an objection. 11 and 12 are
25 out.

1 MR. ABLE: And then you said either 13 or 15.

2 THE COURT: You have any preference, Ms. Mayes, or
3 would you like for both 13 and 15 to be in. They are
4 essentially the same photograph, the same kind, it makes
5 it cumulative evidence. I don't see the harm in both
6 coming in.

7 MS. MAYES: Yes sir, Your Honor. 13 is the
8 photograph that would be offered.

9 THE COURT: So 15, not at this time.

10 MS. MAYES: Not at this time, Your Honor.

11 THE COURT: I have got 4 through 8 and 13 and 14 and
12 11 and 12 out. Were you moving 9 and 10?

13 MR. ABLE: No.

14 MR. WISE: No.

15 THE COURT: 9 and 10 not in. Do you have that.

16 COURT REPORTER: I have got 4, 5, 6, 7, 8 and 13 and
17 14 in evidence. 9, 10, 11, 12, 15 and 16 are ID.

18 THE COURT: That is what I have. Is that correct,
19 Mr. Able and Mr. Wise?

20 MR. ABLE: Yes, sir.

21 MR. WISE: Yes.

22 (Whereupon, State's Exhibit no's 4, 5, 6, 7, 8, 13,
23 and 14 were admitted into evidence.)

24 (Whereupon, State's Exhibit no 16 was marked for
25 identification only.)

1 THE COURT: Let's have the jury back.

2 (Whereupon, the jury came into open court at
3 approximately 4:40 p.m.)

4 THE COURT: Ms. Mayes, you may continue with direct
5 examination on Dr. Curry. You may continue.

6 CONTINUE DIRECT EXAMINATION

7 By Ms. Mayes:

8 Q Dr. Curry, prior to the break you had examined
9 certain photographs and what, if anything, if you could
10 review them to yourself, what if anything can you tell us
11 regarding State's 6, 7, 8, 13 and 14 in connection with
12 your own dictation or observation during the early morning
13 hours of October 13th.

14 A With the exception of 14 the other photos reflect
15 bruises that I had mentioned in my dictation.

16 Q And I am going to ask you to tell us what you are
17 referring to at this time? Let's start with State's
18 exhibit 6.

19 A There are marks noted to the back of the child's left
20 shoulder.

21 Q State's exhibit 7?

22 A Again there is bruising near the umbilical area and
23 extending down towards the child's left, there is also
24 some bruising near the neck on the left.

25 Q And when you had noted in your dictation that there

1 was bruising or multiple bruising noted to the abdomen, is
2 that what you were referring to?

3 A Yes, ma'am.

4 Q State's exhibit 13.

5 A On 13 you see some of the abdomen bruising, bruising
6 to the lower back area and you can also see the upper back
7 of the left shoulder area.

8 Q And State's exhibit 8?

9 A This is the mark near what we call the occiput, the
10 back of the head.

11 Q Dr. Curry, what steps were taken once you were
12 transferring to the pediatric intensive care unit in
13 Greenville to notify the attending physician there of not
14 only her current condition but as well as the history or
15 lack of history to explain her injuries?

16 A That history is communicated directly by me to Dr.
17 Seigler, any information I have, any thoughts I have, any
18 opinions I have. I also always share when we are doing a
19 transfer to another facility if authorities are involved
20 and for what reasons. I also share any past medical
21 history, family medical history, other pertinent data in
22 addition to what steps I have done, what process, what
23 medications and procedures that I have done.

24 Q And who is Dr. Seigler?

25 A Dr. Bob Seigler is one of the attending physicians,

1 he is a pediatric intensive specialist at the Greenville
2 PICU.

3 Q And did you share with Dr. Seigler your overall
4 impression or diagnosis concerning Audrina Hepburn?

5 A Yes, I did.

6 Q And what was that diagnosis or overall impression?

7 A My overall impression in which I shared with him and
8 also faxed to him upon completion of this transcription of
9 my dictation, the three clinical impressions, number one,
10 subdural hematoma, right sided with midline shift. Number
11 two, probable seizure activity resulting in tongue
12 lacerations secondary to number one above. Number three,
13 non-accidental trauma currently under investigation.

14 Q So the third impression of non-accidental trauma
15 refers to the possibility of child abuse?

16 A Yes, ma'am.

17 Q Or your impression of child abuse?

18 A Yes.

19 Q And you mentioned seizure activity. Why might a
20 seizure follow a severe head injury?

21 A Anything that can affect the head or the brain can
22 result in seizure activity. The clue that there had
23 probably been seizure activity here was the fact that the
24 child's mouth was so tightly clinched that there had been
25 a bite or laceration to the tongue that had occurred.

1 Q And can that bite or laceration also occur with blunt
2 force trauma or an impact type injury?

3 A Rarely. Your tongue usually protects your airway and
4 things.

5 Q What can you tell us about, to a reasonable degree of
6 medical certainty, what can you tell us about the
7 timeframe on which there would be symptoms such as seizure
8 activities and unresponsiveness and being limp following
9 the head injury?

10 A It would be a fairly short timeframe. I would say
11 with reasonable medical opinion within two hours of the
12 initial injury sometimes maybe sooner.

13 Q It may be immediate as well?

14 A Yes.

15 Q Nothing further.

16 THE COURT: Mr. Able.

17 CROSS-EXAMINATION

18 By Mr. Able:

19 Q Dr. Curry, when you spoke to Ms. Hepburn that morning
20 at Self Regional Hospital she had told you that she had
21 put Audrina to bed about 10:30 that night, correct?

22 A Yes, sir.

23 Q That would have been the night of October the 12th of
24 2009?

25 A Yes, sir.

1 Q She had put the child to bed at 10:30?

2 A That is what she indicated to me, yes sir.

3 Q And you had talked with, you mentioned you had talked
4 to the family there at the hospital?

5 A Yes, sir.

6 Q Now, after she told you that, she said after she had
7 put Audrina down to bed that she had gone to bed herself?

8 A Yes sir, she did say that.

9 Q And Mr. Lewis confirmed and verified that Ms. Hepburn
10 had put Audrina down and then she and the other child had
11 gone to bed and went to sleep?

12 A Yes, sir.

13 Q In your record you noted that Ms. Hepburn related to
14 you that Audrina had been of normal health and a healthy
15 child up until the time that she laid her down at 10:30
16 that night?

17 A As to her recent health history, yes sir.

18 Q She told you that Audrina had been a little fussy
19 early in the evening but nothing out of the ordinary?

20 A Yes sir, she indicated Audrina was a fussier child
21 but nothing out of the ordinary.

22 Q Did she indicate she was teething?

23 A I do not recall her stating that.

24 Q Okay. Now, when you were talking with the family you
25 asked who found the child?

1 A Yes sir, I did.

2 Q And Mr. Lewis indicated that he was the one who found
3 the child?

4 A Yes.

5 Q And he stated that he had gone to check on Audrina
6 about 1:30 that morning on the morning of October the 13th
7 of 2009?

8 A Yes, sir.

9 Q And he stated that he had gone to check on Audrina at
10 that time because he was up watching a movie?

11 A Right.

12 Q And he told you he found the baby laying in the crib
13 in the condition it was in?

14 A Yes.

15 Q He told you he carried her from her room where Ashley
16 was sleeping in her bedroom to wake her up?

17 A I am going to review my notes here because I don't
18 recall him stating that specifically. Let me read here.

19 Q If you will look at page two it says he then carried
20 the child and woke the mother up. I am sorry, then
21 carried the child and woke the mother.

22 A Let's see, went to check on the child, found in the
23 crib, laying, he went to pick her up and repositioned her
24 and noticed her to be limp and unresponsive and that is
25 when EMS was initiated. So I did not specifically comment

1 whether he picked the child up or not.

2 Q Well, I am referring to your voluntary statement that
3 was referred to on direct examination.

4 A Oh, okay. I am sorry. Yes, it does say that, yes
5 sir.

6 Q You had written down he then carried the child and
7 woke her up.

8 A Yes, sir.

9 Q And Ms. Hepburn I believe told you in your statement
10 that she verified the fact that he had brought the child,
11 Mr. Lewis had brought the child to her and woke her up?

12 A Yes, sir.

13 Q And it was verified by Mr. Lewis that he was the only
14 one awake at that time?

15 A Yes, sir.

16 Q Now, Doctor, you mentioned in your description of
17 these bruises that Audrina had a, I think you said a
18 mid-forehead to the mid-forehead region?

19 A Yes, I have that written in my notes.

20 Q That would be in the middle of the forehead?

21 A Yes.

22 Q Okay. Audrina was sixteen months old, correct?

23 A Correct.

24 Q And would you know that that child was at an age
25 learning to walk?

1 A Oh, yes sir.

2 Q A bruise to a child's, the middle of the child's
3 forehead, that would be something that you might expect to
4 see in a child that is learning to walk?

5 A Certainly.

6 Q Babies fall down when they are learning to walk?

7 A Yes, sir.

8 Q And when you were asking in your questioning of the
9 family about any recent falls, you weren't talking about
10 the type of fall a child might have when she falls over
11 from taking a few steps and falls and hits her head. You
12 are talking about something a lot more traumatic?

13 A Yes sir, although purposefully keep the question
14 vague to see if there is anything that I can get
15 historically from the family that might help me.

16 Q But that is not the kind of bruise to the middle of a
17 sixteen month old that you describe as non-accidental
18 trauma?

19 A No, sir. It could easily be accidental trauma.

20 Q It could. And then in a sixteen month old learning
21 to walk they get bruised a lot on the front of their legs
22 too, don't they?

23 A That is correct.

24 Q And that would not be something these bruises to the
25 front of the leg, that would not be something that would

1 be indicative of non-accidental trauma of a sixteen month
2 old baby?

3 A No sir, we allow for shin bruises and forehead
4 bruises.

5 Q Now, you had mentioned earlier that when you spoke to
6 Ms. Hepburn that morning she kept repeating to you what
7 had happened to her baby?

8 A Yes, sir.

9 Q She asked you what was going on?

10 A Yes, sir.

11 Q She asked you how this could have happened?

12 A Yes, sir.

13 Q This was all that morning when the baby had arrived
14 at Self Regional?

15 A Right.

16 Q Now, you are the one who called law enforcement?

17 A Yes sir, I told the nurses to call law enforcement
18 and spoke with them on the phone.

19 Q And your instructions to one of the nurses to call
20 law enforcement, that was because under State law's
21 position, if you suspect--

22 A If you have any suspicion whatsoever you are required
23 under State law to immediately report it.

24 Q Okay. So, in compliance with that law and as a
25 physician you reported your call that this child had been

1 abused?

2 A Yes, sir.

3 Q That is all I have. Thank you.

4 THE COURT: Mr. Wise.

5 CROSS-EXAMINATION

6 By Mr. Wise:

7 Q You refer to these, the right subdural hematoma was
8 located where?

9 A A subdural hematoma is bleeding underneath the skull
10 and on top of the layers that cover the brain so it is a
11 large, it is what we call a potential space that fills
12 with blood that is not visible to the outside.

13 Q Where would this be on this child?

14 A It would be on the right side of the brain.

15 Q Go ahead, where would it be?

16 A Right underneath here.

17 Q About midway in the brain?

18 A Right. And hers was fairly extensive, extended front
19 to back.

20 Q And could that be caused by someone hitting the child
21 up side the head with a hand or a fist?

22 A Not generally, generally the result of an
23 acceleration-deceleration type injury. Sometimes in a
24 high speed car accident, high altitude fall, with a sudden
25 stop of shaken baby syndrome.

1 Q Did you notice any deformity or problems with the
2 neck and vertebra, neck muscles?

3 A I did not and I did specifically see a CAT scan
4 through the neck.

5 Q And didn't notice anything on that?

6 A No, sir.

7 Q Now, if a child were injured in such a matter would
8 it be a high probability the child would cry out or cry?

9 A It would depend on their level of consciousness at
10 the time of injury.

11 Q If they were not unconscious, something that normally
12 you would expect a child to cry out from, correct?

13 A Yes.

14 Q And the, while you can't tell the age of the bruises,
15 the bruises were over a period of time. Let me rephrase
16 that question. Did the bruises appear to be at various
17 degrees of age?

18 A To the best of my recollection I would say yes.

19 Q And but you are not able to give a range of age, you
20 just noticed that bruises were a different coloration?

21 A Right.

22 Q And to have occurred over a period of time?

23 A I would believe that the abdominal bruise was older
24 than the bruises that I saw to the neck and other area.

25 Q That was because of?

1 A Coloration and appearance.

2 Q The abdominal bruise, could that be a non-accidental
3 type bruise or would that be one, how would you classify
4 that one?

5 A That one would be considered suspicious. Abdominal
6 area bruising is tough to do without a significant amount
7 of force. It is not typically an area you can bruise when
8 you fall or trip or do something accidental.

9 Q It would come from pinching type of thing?

10 A Pinching, hitting, punching.

11 Q And the bruise in the abdominal area was how big?

12 A It was fairly small.

13 Q And so it would be inconsistent with hitting but more
14 consistent with pinching?

15 A I would say it would be more consistent with
16 pinching.

17 Q And the, while you can't give a specific age on these
18 bruises, would they have been inflicted over a period of
19 days, weeks?

20 A Probably days.

21 Q Okay. Thank you, that is all I have.

22 THE COURT: Redirect?

23 MS. MAYES: Yes sir, Your Honor.

24 REDIRECT EXAMINATION

25 By Ms. Mayes:

1 Q So to clarify, Dr. Curry, the subdural hematoma that
2 was observed following her CAT scans, I believe your
3 testimony was that that requires acceleration-deceleration
4 or great degree of force. What do you mean by that?

5 A A subdural hematoma is not something that happens
6 spontaneously. There are types of bleeding in the brain
7 that can happen spontaneously. Subdural hematomas are the
8 result of trauma because it involves a tearing of veins
9 between layers. There is some amount of, we call it
10 acceleration-deceleration of shaking or wiggling that
11 happens. If you think of the brain as jello inside of a
12 very hard mold and if you shake the mold hard enough the
13 jello separates from the side. When that happens in the
14 brain the little veins that are in between the mold and
15 the jello tear and you get the bleeding around the brain
16 or the jello which then eventually compresses it.

17 Q You mentioned in response to cross-examination, you
18 mentioned what you term as shaken baby syndrome as one of
19 the potential causes of a subdural hematoma. What do you
20 mean by shaken baby or shaken impact syndrome?

21 A Again, it is kind of a shaking of the child. It is a
22 well described entity in the pediatric and emergency
23 medicine literature. Shaken baby or shaken baby syndrome,
24 when a child is being disciplined or is so aggravating
25 they are shaken like this and it can result in both the

1 retinal hemorrhages and the subdural hematomas.

2 Q Was there evidence of impact concerning Audrina as
3 well?

4 A Impact, I am sorry, I don't know what you mean.
5 Like, did she hit her head?

6 Q Evidence of some type of blunt force in addition to
7 shaking event?

8 A She did have the small bruise on her forehead and a
9 bruise on the back. So, there could well have been
10 impact.

11 Q And I believe Mr. Wise had asked you, would you
12 expect a child to cry out. Is it also possible that the
13 child would be immediately unconscious?

14 A It is possible. It is also possible that the child
15 was already unconscious when the bleeding started. I
16 guess all three are possible.

17 Q Nothing further.

18 THE COURT: Mr. Wise?

19 MR. ABLE: No, sir.

20 RECROSS-EXAMINATION

21 By Mr. Wise:

22 Q Is it also possible that the child would be
23 unconscious when the bleeding started from another injury?

24 A Right. If the head injury had been such as to make
25 the child lose consciousness and then the bleeding started

1 after the child lost consciousness, that can also happen.

2 Q The bruise to the forehead wasn't sufficient to make
3 a child unconscious?

4 A It is impossible to say at the time I saw the bruise.
5 If it had just happened, I don't know what it looked like
6 days later.

7 Q But if it had been days earlier the child, the child
8 obviously hadn't been unconscious for days?

9 A No.

10 Q So, the information was that at 10:30 at night the
11 child was conscious?

12 A That is the information provided to me, yes sir.

13 Q So, the child, from the information that you have is
14 not unconscious when this subdural hematoma occurred?

15 A Presumably not.

16 Q Presumably then the child, reaction to it?

17 A Presumably.

18 Q Thank you.

19 MS. MAYES: Nothing further, Your Honor. We would
20 ask that Dr. Curry be excused.

21 THE COURT: No objection to excusing the Doctor?

22 MR. ABLE: No, sir.

23 MR. WISE: No, sir.

24 THE COURT: Counsel, let's step over here for a
25 second, Ms. Mayes.

1 (Whereupon, a bench conference was held in the
2 presence of the jury but out of the hearing of the
3 jury.)

4 THE COURT: Ladies and gentlemen of the jury, we have
5 finished testimony for today and after conferring with
6 counsel for the State and the defendants we will be in a
7 position to resume tomorrow morning at 9:00 o'clock. So,
8 we will resume at that particular point and time. I am
9 not going to repeat ad nauseam my admonitions to you of
10 yesterday. And quite honestly I don't recognize any
11 reporters in the audience here. I feel like I know who
12 most of the reporters are. Again, if you happen to come
13 across any media reports whatsoever on television or radio
14 or the newspaper you disregard them, not to look at them,
15 not to read them, not to hear them. Again, no internet
16 searches. It would be a violation of your oath and a big
17 problem if that takes place. Don't discuss the case with
18 any family members, friends or anyone else tonight. I
19 trust you will have a pleasant night and I will see you
20 back here tomorrow morning around 9:00 o'clock. You are
21 excused for the evening. Thank you very much.

22 (Whereupon, the jury was excused from open court for
23 the day.)

24 THE COURT: The jury is out, anything before we
25 adjourn for the evening. Ms. Mayes?

1 MS. MAYES: Nothing from the State, Your Honor.

2 THE COURT: Anyone else?

3 MR. ABLE: Just briefly, Judge. As a matter, when we
4 were discussing these photographs. I believe it would be
5 more appropriate that when a question has been answered
6 about a particular photograph, the photographs are taken
7 down and it is not left to just sit there throughout
8 testimony. I would ask that those photographs come down
9 unless they are being asked specific questions about those
10 photographs.

11 THE COURT: Okay. Well, I anticipate that we will
12 have a good bit of testimony from physicians tomorrow who
13 are perhaps in a better position to explain the
14 photographs and maybe it will necessary to be up perhaps
15 longer than we normally would be in the case. But, of
16 course, Ms. Mayes if you will make every effort, just so
17 that the jury is properly focused on the witness I feel it
18 would be appropriate to remove the photographs. By and
19 large they are not inflammatory, they are not easy to look
20 at but certainly I don't want the jury to be distracted
21 from any testimony.

22 MR. WISE: I do have one matter that I need to put on
23 the record. I meant to put it on the record before
24 opening statements but it really hit me during opening
25 statements. Again, it is our position that a joint trial

1 is acting to prejudice my client. I noticed that in
2 opening statements that everybody got their theory of the
3 case in but me. Everybody was able to say pretty well
4 what their theory was. But my theory is that he told the
5 police that night what happened and that is why he wasn't
6 arrested. I wasn't able to tell that to the jury. And so
7 it is another way I think I am prejudiced by having to go
8 to trial with the codefendant and further example of the
9 fact that it is to my prejudice that I am not able to
10 really explain to the jury, you know, what he said to the
11 jury, what he said to the police when he was questioned.
12 Everybody else was able to but I wasn't. Just note that
13 continuing problem.

14 THE COURT: As I said, Mr. Wise earlier, you can make
15 whatever argument you choose to make. I did not seek and
16 hope you didn't take anything that I said as any
17 limitation on any argument that you are able to make. I
18 realize based upon the evidentiary rulings what is going
19 to be able to be offered at the, during the State's
20 case-in-chief could be less than you would ideally desire.
21 I am making every effort to make sure that everyone's
22 right's are protected in this matter. Her right of
23 confrontation, your client's right to confrontation and we
24 will discuss this at a later point and time.

25 MR. WISE: We will discuss Mr. Plaxico's testimony

1 before Mr. Plaxico testifies.

2 THE COURT: Exactly and we will, you are going to do
3 some additional research I believe.

4 MR. WISE: Right.

5 THE COURT: I have had a chance to review Holmes and
6 what it is worth category I don't read Holmes to stand for
7 the proposition that a defendant has an absolute
8 constitutional right to provide third party culpability.
9 If that were the case then Holmes and Bruton would be
10 inherently contradictory.

11 MR. WISE: Actually, after Crawford I am not sure how
12 much validity Bruton has anyway. That is another issue
13 entirely. But I don't think they are consistent at all.
14 Frequently interlocking confessions don't necessarily have
15 that third party guilt element in it. This one just
16 happens to be one where somebody looked at my client's
17 statement and said it is true. I will continue to do the
18 research.

19 THE COURT: I just can't find, Mr. Wise, where it
20 would be proper for you to use an argument, a confession
21 by a codefendant through third party culpability. I don't
22 think that is arbitrary or disproportioned. And we have
23 got the sixth amendment right of confrontation.

24 MR. WISE: I just request don't fall into what I call
25 Alexander's theory of the law. When he says it is the

1 only profession to refuse to reward original thought
2 because no Judge will do it unless another Judge has done
3 it first.

4 THE COURT: And I will make every effort to give you
5 any due consideration. We are at ease until 9:00.

6 (Whereupon, the trial will resume the next morning at
7 9:00 a.m.)

8 THE COURT: Good morning. Anything before the jury
9 comes in, Ms. Mayes?

10 MS. MAYES: No, Your Honor.

11 THE COURT: Mr. Able?

12 MR. ABLE: No, sir.

13 THE COURT: Mr. Wise?

14 MR. WISE: No, sir.

15 THE COURT: Let's bring the jury in, please.

16 (Whereupon, the jury came into open court at
17 approximately 9:12 a.m.)

18 THE COURT: The record should reflect that all jurors
19 are present. Ladies and gentlemen of the jury, I trust
20 y'all enjoyed the evening last night. We are still in the
21 State's case-in-chief. At this point, Ms. Mayes, call
22 your next witness, please.

23 MS. MAYES: The State calls Doris Davis, I am sorry,
24 David Crumley.

25 David Crumley, after being duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 By Ms. Mayes:

4 Q Mr. Crumley, I want to start by asking you where do
5 you currently reside?

6 A 11563 Highway 72 West, Cross Hill.

7 Q So, that is the residence of the incident location?

8 A Correct.

9 Q And how long have you lived there?

10 A Since July of 2009.

11 Q How is it that you are living in the residence or
12 connected to the family of the defendant, Ashley Hepburn?

13 A I am the boyfriend of Doris Davis.

14 Q And Doris Davis is connected to Ashley Hepburn how?

15 A It is her mother.

16 Q Can you tell us a little bit about where you
17 currently are employed?

18 A I am currently employed in Newberry.

19 Q And where do you work in Newberry?

20 A Caterpillar.

21 Q And where were you employed or what were you
22 affiliated prior to that?

23 A I was in the United States Marine Corp.

24 Q And Doris Davis is employed where?

25 A The same place, Caterpillar.

1 Q That is Caterpillar in Newberry?

2 A Yes, correct.

3 Q What shifts do you and Doris Davis normally work at
4 Caterpillar?

5 A First.

6 Q What do you mean by first shift?

7 A From 7:00 to 3:30, Monday through Friday.

8 Q All right. I just want to clarify a few things, Mr.
9 Crumley, to try to get a picture of who all is in the
10 home. And we are going to go back to the time period of
11 October 13th of 2009. Okay. So, we are going to have
12 your name here, David Crumley. The name of Ashley's
13 mother, Doris Davis. Now, was Ashley living in the home
14 as well?

15 A Yes.

16 Q And who else lived in the home along with Ashley?

17 A Her two kids.

18 Q And in October 13th of 2009 who were her children?

19 A Owen Hepburn and Audrina Hepburn.

20 Q And in October of 2009 Audrina was sixteen months, is
21 that correct?

22 A Correct.

23 Q And Owen was two?

24 A Correct.

25 Q Now, I want to take a look at the home or diagram of

1 the home. And I have it up here on the screen but it is
2 also an enlarged version, if that may help you. Taking a
3 look at this diagram how many bedrooms are in the home,
4 Mr. Crumley?

5 A Three.

6 Q And can you see the monitor behind you?

7 A Yes.

8 Q If you can keep up your voice so that the Court
9 Reporter can hear you. What area of the home would this
10 be?

11 A That is the living room.

12 Q All right. And what area of the home would this
13 bedroom be?

14 A That is the master bedroom.

15 Q And who normally sleeps in that bedroom?

16 A Myself and Doris.

17 Q And this area of the home?

18 A Master bathroom.

19 Q And this being the living room, what area of the home
20 would this be?

21 A The kitchen.

22 Q And looking here at this room?

23 A Ashley's bedroom.

24 Q And this room?

25 A The spare bathroom.

1 Q And then this room here?

2 A That is the kids.

3 Q And when you are saying kids you are referring to
4 Owen and Audrina?

5 A That is correct.

6 Q And did Audrina have a bed or did she have a crib?

7 A She had a crib.

8 Q Now, you mentioned that you worked at Caterpillar,
9 you still do?

10 A Yes.

11 Q And you are working at Caterpillar at the time, what
12 time would you normally leave the home in order to go to
13 your shift at Caterpillar?

14 A Normally around 5:00 or 5:12 in the morning.

15 Q Okay. And what about Doris?

16 A The same time.

17 Q So, with you leaving or needing to leave the home
18 around 5:00 in the morning what time would you normally go
19 to bed?

20 A 8:00 or 8:30.

21 Q And what about Doris?

22 A The same time.

23 Q I want to take you back to the time period of, the
24 night of October the 12th onto the early morning hours of
25 October 13th. Earlier in the day on October 12th how

1 would you describe Audrina's behavior?

2 A Perfectly fine.

3 Q What do you mean by that when you say she was
4 perfectly fine?

5 A Smiling, happy, normal.

6 Q Okay. Did she appear to be injured in any way?

7 A No.

8 Q And how is it that you know the defendant or
9 acquainted with the defendant in this case, Brandon Lewis?

10 A At the time was Ashley's boyfriend.

11 Q With him being Ashley's boyfriend had he been over to
12 the residence in Cross Hill before?

13 A Yes.

14 Q Can you tell us if it was usual or unusual for him to
15 be at the residence?

16 A It was off and on. He didn't stay there all the time
17 but he was there off and on.

18 Q Were there occasions when he would stay over during
19 the night?

20 A Some, yes.

21 Q Had he had contact with Audrina prior to October 12th
22 of 2009?

23 A Very limited. Never had anything to do with him.

24 Q Well, would he see her at the residence?

25 A Yes.

1 Q Now, Ashley, was she working during this time period
2 of October of 2009?

3 A I can't recall.

4 Q What was the normal plan for the children when you
5 were at work during the day shift and Doris, the
6 grandmother was at work during the day period?

7 A Ashley had them.

8 Q So, Ashley would normally be home with both Owen and
9 Audrina during the day?

10 A Yes.

11 Q And what about in the evening?

12 A She was there as well, Ashley.

13 Q All right. On October 12th on into the evening what
14 plans did your family make for dinner?

15 A Dinner we had, I grilled steaks outside and Ashley
16 cooked green beans and I think macaroni and cheese on the
17 stove.

18 Q And do you recall Audrina being there for dinner?

19 A Correct.

20 Q And where did she normally eat dinner?

21 A In her highchair.

22 Q And did that happen on this particular day as normal?

23 A Yes, it did.

24 Q And she appeared to be eating as normal?

25 A Yes.

1 Q And what time would you estimate y'all had dinner?

2 A Around 8:00, 8:30.

3 Q And at that point and time was Brandon Lewis at the
4 residence?

5 A No.

6 Q Who would have been at the residence at that point
7 and time?

8 A Myself, Doris, Ashley, Owen and Audrina.

9 Q And what happened next after dinner?

10 A We cleaned up and got ready to go to bed.

11 Q And when you say, we cleaned up, who all are you
12 referring to?

13 A Myself, Doris, Ashley was running bath water.

14 Q And why would she have been running a bath water?

15 A To give the kids a bath to go to bed.

16 Q Okay. And when you say that we got ready to go to
17 bed, who are you referring to?

18 A Myself and Doris.

19 Q All right. And after that what happened?

20 A Around 9:00 or 9:15 Doris went to lock the backdoor
21 and we were told, no, well Doris was told no, that Brandon
22 was coming over.

23 Q So, the door was left open for Brandon?

24 A Yes.

25 Q And that is because, can you tell us whether or not

1 that is because he was to be coming to the residence
2 later?

3 A Yes.

4 Q And where did you or Doris go?

5 A Doris gave Audrina to Ashley to take a bath and then
6 we went to the, our bedroom.

7 Q And that would be the bedroom that we previously
8 discussed was on this end of the home?

9 A That is correct.

10 Q After you and Doris went to bed in this bedroom did
11 either of you come out during the night prior to being
12 awoken later?

13 A No, we did not.

14 Q And did you have the opportunity to go to sleep that
15 night?

16 A Yes.

17 Q And to the best of your knowledge was Doris asleep?

18 A Yes.

19 Q What happened next?

20 A We were awoken around 1:15, 1:20 to Ashley screaming
21 mama.

22 Q And what happened next?

23 A Doris jumped up, ran out of the room and then I got
24 up, ran out and met Ashley in the living room down on her
25 hands and knees holding Audrina, bawling, crying.

1 Q And was anyone else in the home?

2 A Yes, Brandon Lewis.

3 Q Where was Brandon Lewis at this time?

4 A Standing just in front of us.

5 Q So, we are talking about in the living room?

6 A Yes.

7 Q So you came out of the bedroom and Ashley Hepburn is
8 located in this room, the living room with Audrina?

9 A Yes.

10 Q And Brandon Lewis was in that room as well?

11 A That's correct.

12 Q And where was the two-year-old, Owen?

13 A He was in Ashley's bed asleep.

14 Q That would be this room here?

15 A Yes.

16 Q What happened?

17 A At around 1:28, 1:30, well, sorry. Just before that
18 I sat there and I looked to check Audrina's pupils to see
19 if they were dilated. As former military I have had some
20 training and I took and put my finger under her nose to
21 check for breathing. Because I tried to find a little
22 pulse but I couldn't so I checked her breathing. I
23 noticed that she was breathing so I knew she must have had
24 a pulse so I ran into the room and grabbed my cell phone
25 and dialed 911.

1 Q And at this point and time as you were checking her
2 breathing and her pulse was Audrina responding in any way?

3 A There was no response, just breathing.

4 Q And the 911 call in this case, you mentioned you
5 called 911. Who is the person actually calling 911?

6 A I called 911.

7 Q Now, also on the tape there is a male voice, who is
8 the male voice on the tape in the background?

9 A That would be Brandon Lewis.

10 Q And then there was a female voice on the tape in the
11 background, who would that be?

12 A That would be Ashley.

13 Q When the dispatcher was asking her information about
14 Audrina and what may have happened when she last went to
15 bed. You are asking people for information. Who are the
16 people that you are asking?

17 A Ashley and Brandon.

18 Q All right. And, Mr. Crumley, at one point on the
19 tape you said they went in to check on her and her head
20 was up against the crib and she had been shaking. What
21 did you mean by that?

22 A I meant that, I asked the question, how did they find
23 her. I think that was the question that was asked by the
24 911 agent. And Brandon Lewis told me how she was laying
25 so I told them how that was. And I told them that she was

1 shaking because she was in their arms with a blanket and
2 she was not really jerking but she was shaking as if she
3 was cold or having a seizure.

4 Q And who gave you the information about finding her in
5 the crib?

6 A Brandon Lewis.

7 Q What did he say about that?

8 A Just said that she was laying face down.

9 Q All right. Now, what happened next?

10 A After I hung up with 911 I cut all the lights on on
11 the outside, we have a chain link fence yard. The dogs
12 was in the yard so I put them in the pen so I could open
13 up the gate to let the paramedics in.

14 Q And did you follow on to the hospital as well?

15 A Yes, after they took Audrina in the ambulance myself
16 and Doris got Owen dressed because he couldn't go in the
17 ambulance, so we got him and put him in the car and
18 followed to Greenwood Memorial.

19 Q All right. Did you and Doris drive separately or
20 together?

21 A Yes, we drove separately because I had to go to work.

22 Q All right. And did Owen go to the hospital with all
23 of you as well?

24 A He rode with Doris.

25 Q And what happened once you got to the hospital?

1 A One of the doctors came in and took him to examine
2 him.

3 Q You are referring to Owen?

4 A Yes, that is correct.

5 Q Prior to that did you have contact with Ashley and
6 with Brandon in the hospital?

7 A Yes, we were sitting in the waiting room.

8 Q All right. Were you ever able to obtain any more
9 information about what had happened to Audrina?

10 A We were sitting there, actually we had no information
11 on Audrina but Ashley was sitting to my left on another
12 bench and she was like in shock. And Brandon was sitting
13 there beside her and I noticed he was frantic and moving
14 and stuff like that. And the only thing I knew at that
15 time is seizures. He supposedly had seizures and I asked
16 if he was okay and Ashley asked if he was about to have a
17 seizure.

18 Q And you are referring to who as having a problem with
19 seizures?

20 A Brandon Lewis.

21 Q All right. Now, after you were at the Greenwood
22 Hospital emergency room where did your family end up going
23 next?

24 A They took Audrina to Greenville and I left to go to
25 work.

1 Q And who went to Greenville Hospital with Audrina?

2 A I think Doris drove her car and Ashley also rode with
3 Doris or with, I think Audrina had already left and she
4 rode with Doris I believe.

5 Q So, Ashley would have gone with Doris?

6 A I believe so.

7 Q And once y'all arrived or the family arrived at
8 Greenville Hospital into the morning hours of the 13th did
9 you have the opportunity to go up there to Greenville as
10 well?

11 A Yes, I went to work and I talked to my boss and I did
12 a half day so I left around 11:00 o'clock and I drove to
13 Greenville.

14 Q And at Greenville was Doris Davis there?

15 A Yes.

16 Q And was Ashley Hepburn there for at least part of the
17 day?

18 A Yes.

19 Q Did you or Doris or Ashley return to Laurens County
20 that night?

21 A No.

22 Q Where did your family stay?

23 A We slept at the hospital.

24 Q When did you next return to the residence in Cross
25 Hill?

1 A It was Thursday night.

2 Q Thursday the 16th or 15th?

3 A Yes, around that timeframe.

4 Q Looking at October of 2009 and that would be Thursday
5 the 15th you returned from Greenville?

6 A That is correct.

7 Q Who returned Thursday night?

8 A Myself and Doris.

9 Q And where was Ashley, if you know?

10 A I don't remember.

11 Q Did you or Doris alter the scene in any way prior to
12 law enforcement getting there on Friday the 16th?

13 A No, we did not.

14 Q Did you or Doris put anything into the crib?

15 A No, we did not.

16 Q Did you or Doris remove anything out of the crib?

17 A No, we did not.

18 Q Prior to eating dinner around the time y'all were
19 eating dinner on Monday night, that would be the night of
20 the 12th how were, were the kids doing anything other than
21 eating dinner at any point during the night?

22 A After we went to bed or before?

23 Q Before.

24 A Before we went to bed, they were playing like usual
25 in the living room and then we ate dinner. And after

1 dinner is when they went to take a bath.

2 Q Nothing further.

3 THE COURT: Mr. Able.

4 CROSS-EXAMINATION

5 By Mr. Able:

6 Q Mr. Crumley, you say it was Brandon Lewis, he told
7 you when you were on the phone with 911 that he had found
8 the child in the crib?

9 A Yes, sir.

10 Q And Ashley rode to Self Regional Hospital in one of
11 the emergency vehicles, correct?

12 A Well, when she left I thought she was riding in the
13 ambulance but later on I found out that, yes, she rode in
14 with one of the emergency or paramedics.

15 Q She didn't ride with you?

16 A No, sir.

17 Q She didn't ride with Ms. Davis?

18 A No, sir.

19 Q Now, how long have you lived in that home?

20 A Since July of 2009.

21 Q And you describe Ashley as a good mother?

22 A For what I know, yes sir.

23 Q From your observations?

24 A Yes, sir.

25 Q She is very attentive to her children?

1 A Very.

2 Q Always took them to the doctor?

3 A Yes, sir.

4 Q If they were sick she would tend to them and take
5 care of them?

6 A Yes, sir.

7 Q Now that night of October 12th, 2009 you say after
8 y'all got home before dinner, what did you do then, watch
9 television, prior to you going out and charcoaling the
10 steaks?

11 A Yes sir, we had the TV on watching TV.

12 Q Where were Owen and Audrina during that time?

13 A In the living room with us.

14 Q It is a big room?

15 A Yes, sir.

16 Q Kind of the living area and then I believe kind of an
17 adjoining dining area?

18 A Yes sir, it is the dining room and living room. They
19 are joined together.

20 Q And you, Doris, Ashley, Owen and Audrina would have
21 all been there in that same room?

22 A Yes, sir.

23 Q Audrina was acting normally then?

24 A Yes, sir.

25 Q Playing with her brother?

- 1 A Yes.
- 2 Q Interacting with everybody?
- 3 A Yes.
- 4 Q And then during dinner she ate?
- 5 A Yes.
- 6 Q Sat in her highchair?
- 7 A Yes.
- 8 Q Where she sat next to her mother?
- 9 A Yes.
- 10 Q Was she eating by herself or did her mother have to
- 11 help feed her?
- 12 A Both.
- 13 Q So, Ashley would have helped make sure she got a meal
- 14 in her that night?
- 15 A Yes, sir.
- 16 Q Audrina was acting normally during dinner?
- 17 A Yes.
- 18 Q You don't see anything that you thought unusual or
- 19 out of character for her?
- 20 A No.
- 21 Q Was she able to ingest all of her food?
- 22 A Yes.
- 23 Q Didn't throw up or anything that you know of?
- 24 A No.
- 25 Q Okay. And then after dinner y'all cleaned up and

1 said Ashley was running bath water?

2 A Yes.

3 Q And I believe you say it was Doris who took Audrina
4 into the bathroom for Ashley?

5 A Yes.

6 Q You saw that?

7 A Yes.

8 Q Did you see any marks or bruises or contusions or
9 anything on Audrina that night?

10 A It was only one on her forehead.

11 Q In the middle of her forehead?

12 A Yes.

13 Q Anything else that you saw?

14 A No.

15 Q That is all I have.

16 CROSS-EXAMINATION

17 By Mr. Wise:

18 Q You said that Brandon Lewis had very limited contact
19 with Audrina?

20 A Yes.

21 Q He would come after she had gone to bed usually?

22 A I don't know if it was after Audrina went to bed but
23 after we went to bed, yes.

24 Q Did you ever see her have contact with him on the
25 weekends?

1 A Some.

2 Q Some. All right. Were you awake when Mr. Lewis got
3 there that night?

4 A No.

5 Q Now, Ashley, Owen was asleep in Ashley's bed that
6 night?

7 A Yes.

8 Q Is that unusual?

9 A No.

10 Q So, Owen slept with Ashley a good bit?

11 A Yes.

12 Q And Owen also had a separate, this is the room Ashley
13 slept, no, is this Ashley's room or Owen's, or the
14 childrens?

15 A The childrens.

16 Q And Ashley's is back here?

17 A Yes.

18 Q Is there two beds in there, one for him and one for
19 Audrina?

20 A It is a small bed for Owen and a crib for Audrina.

21 Q Okay. But withstanding the fact that Owen's bed is
22 there, Owen frequently slept with Ashley in her bed?

23 A Yes.

24 Q Okay. Did you know Mr. Lewis before he started
25 dating Ashley?

1 A No, I do not.

2 Q And you moved in there about the time he and Ashley
3 started dating?

4 A I don't know how long they had been dating.

5 Q Okay. Thank you.

6 REDIRECT EXAMINATION

7 By Ms. Mayes:

8 Q Mr. Crumley, you testified that you would normally
9 work during the day, what time would you normally get off
10 of work?

11 A I normally get off of work anywhere between 3:30 and
12 4:00 o'clock.

13 Q And is that the same shift as Ms. Davis?

14 A Correct.

15 Q And if you were working during the day do you know
16 how often or how frequently Brandon Lewis would come over
17 during the day if you and Ms. Davis were at work?

18 A I do not.

19 Q Nothing further.

20 THE COURT: You are free to go, Mr. Crumley. Ms.
21 Mayes, call your next witness.

22 MS. MAYES: The State calls Doris Davis.

23 Doris Davis, after being duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

1 By Ms. Mayes:

2 Q Ms. Davis, where are you currently employed?

3 A Yes.

4 Q I am sorry?

5 A Yes.

6 Q Where are you currently employed?

7 A I work for Caterpillar in Newberry.

8 Q And how long have you been with Caterpillar?

9 A It will be five years in July.

10 Q All right. How is it that you are related to the
11 defendant in this case, one of the defendants in this
12 case, Ashley Hepburn.

13 A She is my daughter.

14 Q And where were you residing in October of 2009?

15 A Cross Hill, at my house.

16 Q All right. In October of 2009 if you could just tell
17 us who was residing in the home?

18 A Ashley, myself, David Crumley and Audrina and Owen.

19 Q And what shift were you working at Caterpillar?

20 A First. My shift is 7:00 to 3:30 but I always get
21 there at 6:00.

22 Q What time would you normally leave your residence in
23 the morning?

24 A 5:00 a.m. in the morning.

25 Q And what about Mr. Crumley, if you know?

1 A He is right behind me.

2 Q With you and Mr. Crumley working the first shift what
3 hours do you normally, would be normal for you to go to
4 bed?

5 A Between 8:00 and 8:30.

6 Q What about on the night of October 12th which would
7 be Monday night in 2009?

8 A That night we went to bed at 9:00.

9 Q All right. When you were working during the day and
10 Mr. Crumley is working during the day who is normally
11 watching the children?

12 A Ashley.

13 Q And what about Mr. Lewis, Brandon Lewis. How did you
14 first come into contact with him?

15 A They were dating.

16 Q Can you estimate how long they had been dating or had
17 been a couple prior to October of 2009?

18 A Three or four months, I am thinking, I am not
19 certain.

20 Q All right. How common or uncommon was it for Mr.
21 Lewis to come to your residence?

22 A Probably two or three days a week.

23 Q While you were there?

24 A Most of the time he would leave when we come home or
25 before we got home and then come back after we went to

1 bed.

2 Q Well, when you say he would come back after you went
3 to bed, what do you mean by that?

4 A He would come back and sleep over.

5 Q All right. And were there ever occasions when you
6 would go to work in the morning and Mr. Lewis' vehicle
7 would be there?

8 A Yes.

9 Q Was that common or uncommon?

10 A Like a few days a week.

11 Q Now, on October the 12th of 2009 would you and Mr.
12 Crumley had worked that day?

13 A The 12th, yes.

14 Q Upon arriving home from work, what do you remember?

15 A I remember him being there for a few minutes and
16 leaving and then we were working on making supper, thawing
17 out steaks.

18 Q When you say I remember him being there who are you
19 referring to?

20 A He as in Brandon.

21 Q So, you were talking during the day of October 12th?

22 A Yes.

23 Q Monday. And tell us about your granddaughter,
24 Audrina, how was she behaving that day?

25 A She was in a good mood, Owen was in a good mood,

1 Ashley was in a good mood. Everyone was in a good mood.

2 Q When you say that Audrina was in a good mood what do
3 you mean by that?

4 A She was just really happy, she was always really
5 happy.

6 Q Did your granddaughter appear to be injured in any
7 way?

8 A No.

9 Q Was she able to look at you and interact with you and
10 other family members?

11 A Yes.

12 Q Was she able to walk and crawl normally?

13 A Yes.

14 Q At this point and time Audrina was sixteen months,
15 correct?

16 A Correct.

17 Q Can you tell us whether or not Audrina had been born
18 prematurely?

19 A Yes, she was born, I believe three months early.

20 Q And with her being born prematurely were there some
21 delays in her learning to walk?

22 A Yes, she got there faster if she crawled.

23 Q Okay. Was she still crawling from time to time at
24 sixteen months?

25 A Yes.

1 Q Now, what did y'all do for dinner that night?

2 A Like I said, the reason we went to bed so late was
3 because we had waited on the steaks to thaw. We cooked
4 steaks and green beans and macaroni and corn on the cob.
5 And we watched TV in the living room, me and Ashley and
6 Audrina and Owen and David.

7 Q Okay. And as you were eating dinner was Audrina
8 present?

9 A Yes.

10 Q And was she eating dinner as well?

11 A Yes.

12 Q Where would she normally eat dinner?

13 A She was sitting in her highchair in the living room.

14 Q And after dinner what happened?

15 A We all got ready for bed and Ashley was in the
16 bathroom running a bath, Audrina heard it, she was going
17 that way. I flicked off the lights and I picked her up
18 and carried her back to the hallway and stood her up so
19 she could walk in there but she decided to crawl to get
20 there faster.

21 Q All right. And what do you mean when you say Audrina
22 heard it?

23 A She heard the bath water.

24 Q All right. And how was she when it came to taking a
25 bath?

1 A She loved a bath.

2 Q So, when you put her down to take a bath did she
3 appear to be okay?

4 A She was fine.

5 Q Did you see her moving, crawling normally?

6 A Yes.

7 Q And what about her level of alertness and ability to
8 interact with other people?

9 A She was normal, happy.

10 Q And what happened next?

11 A Next I went to lock the kitchen door and Ashley said,
12 no mom, Brandon is coming over. So, I unlocked it back
13 and I gave her a kiss and I went to bed.

14 Q When you say you unlocked the door you are referring
15 to what?

16 A The kitchen door.

17 Q And did that door go on the outside?

18 A Yes, that door goes to the kitchen where we park.

19 Q And for what reason did you leave it unlocked?

20 A Ashley told me Brandon was coming over.

21 Q And was it usual or unusual for Mr. Lewis to come
22 over once you and Mr. Crumley had gone to bed?

23 A It was usual.

24 Q If you could, Ms. Davis, look behind you at the
25 monitor and I want you to keep your voice up so that the

1 Court Reporter can hear you. If you could identify what
2 area of the home this would be?

3 A That is the living room.

4 Q And what about this bedroom?

5 A That is my bedroom.

6 Q And who else would normally stay in this bedroom with
7 you?

8 A That would be me and David Crumley.

9 Q And were you and Mr. Crumley sleeping in this room on
10 the night of October the 12th into the early morning hours
11 of the 13th?

12 A Yes.

13 Q After going to bed did you at any point wake up or
14 leave the room?

15 A No.

16 Q Now, what area of the home would this be?

17 A That is my bathroom.

18 Q And what about this area?

19 A That is the kitchen.

20 Q And this bedroom?

21 A That is Ashley's room.

22 Q This room?

23 A That is Ashley's and the kids bathroom.

24 Q And this room?

25 A That is the baby's room.

1 Q By baby's room you are referring to Audrina?

2 A Audrina and Owen.

3 Q If you could, Ms. Davis, take a look at this
4 photograph and tell us what we are looking at?

5 A This is my living room, on the left side is my
6 bookshelf, on the right side is the entertainment center.
7 And Owen and Audrina's toys and the kitchen table and a
8 partial of the couch and the living room table.

9 Q All right. Looking at this door right here, what
10 would this door be?

11 A That is the front door.

12 Q What is located here, what type of furniture?

13 A It is a sectional sofa.

14 Q And when you say a sectional sofa what do you mean by
15 that?

16 A It is like L shaped, it starts right there at the
17 door and it goes and curves and comes out to the end of
18 the other wall.

19 Q All right. And looking at the living room there is a
20 doorway here, what is that doorway?

21 A That is my bedroom.

22 Q And looking at the doorway here, what area of the
23 home would this be?

24 A That is my bed.

25 Q So, that would be the master bedroom on that end of

1 the living room, is that correct?

2 A Yes.

3 Q Now, what are we looking at with this photograph?

4 A That is Ashley's bedroom.

5 Q Meaning this room here would be Ashley's bedroom?

6 A Correct.

7 Q And then this doorway here where the photograph is
8 being taken from would be what room?

9 A That is Owen's and Audrina's room.

10 Q Okay. So, Audrina's room is directly across the hall
11 from Ashley's room, is that correct?

12 A Yes.

13 Q If you could tell us what is shown in this
14 photograph, just take your time to review it?

15 A It looks like Audrina and Owen's bedroom from
16 Ashley's bedroom.

17 Q So that would be standing inside of Ashley's bedroom
18 looking into Audrina's room?

19 A Yes.

20 Q Now, you mentioned before that there was a sectional
21 couch, you recognize this photograph?

22 A Yes.

23 Q What is shown in this photograph?

24 A Entertainment center to the left and then my
25 sectional sofa and the living room table and the kids

1 toys.

2 Q What is shown in this photograph?

3 A That is Audrina's crib.

4 Q All right. What is shown in this particular
5 photograph?

6 A That is the kids and Ashley's bathroom.

7 Q All right. Where is that bathroom located in
8 relation to Ashley's room and Audrina's room?

9 A It is right between both of their rooms.

10 Q Now on this particular night you testified that you
11 and Mr. Crumley went to bed, correct?

12 A Yes.

13 Q What happened next?

14 A The next thing I remember I woke up and Ashley was
15 screaming, mama, mama. Jumped out of bed and wrapped the
16 covers around me and ran to the living room, pulled the
17 light switch and she was carrying Audrina limp.

18 Q And when you say that she was carrying Audrina limp,
19 did you get a chance to look at Audrina?

20 A Yes, I looked at her.

21 Q And did she, how did she appear?

22 A Nonresponsive.

23 Q Was she able to hold her head up or look at you?

24 A No.

25 Q Did she appear to be moving at all?

1 A No.

2 Q What happened next?

3 A Well, I held her a few minutes. I couldn't tell if
4 she was breathing or not. I breathed in her mouth. And
5 there was nothing and David called 911.

6 Q Was anyone else in the living room with you and Mr.
7 Crumley and Ashley at this point and time?

8 A Brandon was somewhere in there.

9 Q You are referring to Brandon Lewis?

10 A Brandon Lewis.

11 Q Where was your grandson, Owen?

12 A He was in bed asleep.

13 Q And when you say he was in bed asleep, do you know
14 what room he was in?

15 A He was in Ashley's room.

16 Q And after Audrina was taken to the hospital when did
17 you next see your daughter and Mr. Lewis?

18 A At the hospital.

19 Q That would be Self?

20 A Self Memorial.

21 Q In Greenwood?

22 A Yes.

23 Q And as you were there were you able to get any
24 information from Mr. Lewis or Ms. Hepburn about your
25 granddaughter?

1 A No.

2 Q How did Owen get to the hospital?

3 A He rode with me and David.

4 Q Now, once y'all left Greenwood Hospital and Audrina
5 was transferred to Greenville Memorial did you have the
6 opportunity to go to Greenville Memorial Hospital also?

7 A Yes, I went straight there and took Ashley home to
8 get some shoes and socks and we went straight there.

9 Q All right. And how long would you estimate you were
10 at Greenville Hospital?

11 A I believe we left Thursday night.

12 Q And you left Thursday night to go where?

13 A Home.

14 Q You are referring to the Cross Hill residence?

15 A Yes.

16 Q You and Mr. Crumley came back to Laurens County on
17 Thursday night?

18 A Yes.

19 Q Where was Ashley at this point and time?

20 A I think they had arrested her.

21 Q Now, that night that you were at the residence did
22 you or Mr. Crumley alter the scene in any way?

23 A No.

24 Q Did you alter Audrina's crib in any way?

25 A No.

1 Q Did you at any point place anything into the crib?

2 A No.

3 Q Did you remove anything out of the crib?

4 A No.

5 MS. MAYES: I beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. MAYES: Nothing further.

8 THE COURT: Mr. Able.

9 CROSS-EXAMINATION

10 By Mr. Able:

11 Q Now, Ms. Davis, you say that you had gotten home
12 about 4:00 o'clock that afternoon?

13 A About 4:30 because we get off at 3:30.

14 Q And Ashley was there with Audrina and Owen?

15 A Yes.

16 Q At that point in the day you had a chance to observe
17 Audrina and how she was acting?

18 A Yes.

19 Q She was fine?

20 A Yes.

21 Q Crawling?

22 A Yes.

23 Q Walking?

24 A Yes.

25 Q Interacting with you?

1 A Yes.

2 Q Interacting with her mother?

3 A Yes.

4 Q Playing with her brother?

5 A Yes.

6 Q Playing with the toys that we saw in the pictures in
7 the living area?

8 A Yes.

9 Q Didn't notice anything unusual about her actions or
10 anything she was doing that day?

11 A No.

12 Q Just as she always has been?

13 A Yes.

14 Q And that would have been up to the time that you ate
15 dinner?

16 A Yes.

17 Q And Audrina, during the time dinner was being
18 prepared, Ashley cooked the macaroni and the green beans
19 that night while Mr. Crumley cooked the steaks?

20 A Yes.

21 Q And where was Audrina during that time?

22 A Playing with me.

23 Q Ma'am?

24 A Probably playing with me.

25 Q Okay. And again, you didn't see anything unusual

1 about the way she was acting, she was alert, awake, being
2 a sixteen month old toddler?

3 A Yes.

4 Q She ate dinner with y'all?

5 A Yes.

6 Q And the five of you, Mr. Crumley, you, Ashley and the
7 kids?

8 A That is correct.

9 Q Audrina would have sat in her highchair?

10 A She did sit in her highchair.

11 Q Did she have any trouble sitting up?

12 A No.

13 Q Did she have any trouble staying awake?

14 A No.

15 Q Did she eat dinner?

16 A Yes.

17 Q Ashley helped her eat dinner?

18 A Yes.

19 Q Audrina would have sat in her highchair next to
20 Ashley?

21 A She was, I think she was in front of us, yes.

22 Q At the table?

23 A Yes.

24 Q And Owen would have been where?

25 A Probably sitting on the couch.

1 Q Eating?

2 A Yes.

3 Q Got through with dinner, clean up after dinner.

4 Ashley is running a bath?

5 A Yes.

6 Q And you say that Audrina liked to get into the bath
7 tub?

8 A Yes, she loved a bath.

9 Q And she heard the bath water running and she went
10 toward that bath water?

11 A Yes.

12 Q And still no problems that you could see with this
13 child?

14 A No.

15 Q You picked her up?

16 A I did.

17 Q Carried her from where, the living area to the
18 bathroom?

19 A To the hall.

20 Q So the living area to the hall?

21 A Yes. I sat her down to walk and she couldn't get
22 there fast enough so she took off crawling.

23 Q Fell over and started crawling?

24 A Yes.

25 Q You didn't notice anything wrong with her?

1 A No.

2 Q Did you see them in the bathtub?

3 A No.

4 Q That afternoon, those evening hours up until the time
5 you carried Audrina into the hallway there at the bathroom
6 to get her bath did you notice any injuries or bruises or
7 abrasions or marks or anything on that child?

8 A She had a bruise on her head from a couple of days
9 before, I think. Ashley and I searched the room, we
10 couldn't find anything where she got it.

11 Q Where was the bruise located?

12 A It was on her forehead.

13 Q On her forehead. And had Ashley, when that bruise
14 occurred had Ashley brought Audrina to you and said, mom,
15 she has got a bruise on her head?

16 A Yes. She showed me that when I come home.

17 Q It wasn't that day?

18 A No.

19 Q It was sometime earlier she had gotten a bruise,
20 Audrina had gotten a bruise?

21 A Had to be.

22 Q It wasn't that day when you got home that she showed
23 you the bruise on her forehead?

24 A What?

25 Q I am saying it wasn't that day, you said when you got

1 home?

2 A Oh, no.

3 Q It wasn't that day when you got home from work that
4 she showed you the bruise on her forehead?

5 A No.

6 Q It had been earlier, not on the 12th of October?

7 A Correct.

8 Q So some day earlier when you got home Ashley said,
9 mom, Audrina has got a bruise on her forehead?

10 A Yes.

11 Q And she brought that to your attention?

12 A Yes.

13 Q And what did y'all do in response to that?

14 A We just watched and we checked in the bedroom,
15 checked the crib, trying to figure out where she got the
16 bruise.

17 Q She was learning to walk?

18 A Yes.

19 Q She wasn't walking fully yet?

20 A No.

21 Q And like you said, when you took her into the hallway
22 and sat her down to walk she fell over and crawled?

23 A Yes.

24 Q She wasn't too sure of herself yet as far as walking?

25 A No.

1 Q Now, so you said, I am going to make sure I
2 understand you. You said you went and you sat the baby
3 down in the hallway and she crawled into the bathroom, you
4 went to lock the door?

5 A Yes.

6 Q And Ashley asked you not to?

7 A I unlocked it.

8 Q You unlocked it and then you say you kissed her, who
9 did you kiss?

10 A I kissed Ashley.

11 Q Okay. She was in the bathroom with the children?

12 A Yes.

13 Q Now, from that point on the next thing you remember
14 is hearing Ashley screaming, mama, mama?

15 A Yes.

16 Q And you came into the living room?

17 A Yes.

18 Q You heard Ashley screaming, mama, mama?

19 A Yes.

20 Q And you came into the living room where she was?

21 A Yes.

22 Q She was holding Audrina?

23 A Yes.

24 Q She was frantic?

25 A Yes.

1 Q She was distraught?

2 A Yes.

3 Q Panicking?

4 A Yes.

5 Q Telling you that something is wrong with my baby?

6 A Yes.

7 Q Now, it was during that time that Brandon Lewis said
8 he was the one who had found the child?

9 A Yes, he kept repeating he found her face down
10 horizontal in the crib.

11 Q And while David, Mr. Crumley was calling 911 Brandon
12 said let's just drive her to the hospital?

13 A Yes, he wanted to drive her.

14 Q And Ashley, EMS arrived and Ashley rode with one of
15 the emergency vehicles to the hospital?

16 A Yes.

17 Q She didn't ride with you?

18 A No.

19 Q She didn't ride with David?

20 A No.

21 Q She ran out of the house without any shoes or socks
22 on?

23 A Correct.

24 Q To ride with the baby to the hospital?

25 A Right.

1 Q Now, prior to her leaving the house she had actually,
2 when they had taken Audrina outside to the emergency, to
3 the ambulance she went to go get Owen, didn't she?

4 A Yes, she ran and grabbed Owen out of the bed.

5 Q She thought she was going to take Owen with her in
6 the emergency vehicle?

7 A Right. And I told her I would come and bring Owen.

8 Q You told her, so she gave Owen to you?

9 A Yes.

10 Q And she ran out without shoes or socks to get, to be
11 with the child?

12 A Yes.

13 Q Now, when you got to the hospital would it be a fair
14 thing to say that Ashley was basically in shock?

15 A Yes.

16 Q Still distraught?

17 A Yes.

18 Q Still very upset?

19 A Yes.

20 Q Crying?

21 A Yes.

22 Q Kept asking the doctor what happened to my baby?

23 A Yes, she kept asking.

24 Q Ma'am?

25 A We both kept asking.

1 Q Now, as Ashley's mother would it be a fair statement
2 to say that you believe Ashley is a good mother?

3 A I do.

4 Q She is very attentive to her children?

5 A Yes.

6 Q Very loving?

7 A Yes.

8 Q Very caring?

9 A Yes.

10 Q Did you ever see her resort to as far as correction
11 or sorts of corporal punishment with a belt, a paddle or
12 anything?

13 A Never.

14 Q When the children were sick she took them to the
15 doctor?

16 A Yes, if they had a runny nose they were at the
17 doctor.

18 Q She took them to the doctor a good bit, didn't she?

19 A Yes.

20 Q That is all I have.

21 CROSS-EXAMINATION

22 By Mr. Wise:

23 Q Ms. Davis, had you seen marks around Audrina's neck?

24 A I saw them when Ashley showed them to me.

25 Q And that, and they had been there how long?

1 A I don't know.

2 Q A week or two weeks?

3 A I don't know.

4 Q Before this incident?

5 A A week maybe.

6 Q So, when you say Ashley showed them to you she showed
7 them to you several days prior to this incident?

8 A Yes.

9 Q And did you ever bathe Audrina?

10 A I did.

11 Q Did you ever notice the bruise on her abdomen?

12 A No.

13 Q Do you know when the last time you bathed them before
14 this incident was?

15 A No.

16 Q Did you ever notice any bruises on her, the back of
17 the baby?

18 A No.

19 Q Did you, were you up when Owen was refusing to brush
20 his teeth that night?

21 A No.

22 Q You had already gone to bed?

23 A Yes.

24 Q You don't know anything about any discipline problems
25 brushing his teeth?

1 A No.

2 Q Thank you.

3 REDIRECT EXAMINATION

4 By Ms. Mayes:

5 Q Just to clarify some of these questions that you have
6 gotten about bruises on Audrina. I want to also ask you a
7 few questions about that. Mr. Able was asking you about
8 the bruise on Audrina's forehead. Let me show you a
9 picture and ask if you recognize who is in this
10 photograph?

11 A That is Audrina.

12 Q And if you could keep your voice up so that the Court
13 Reporter can hear you.

14 A That is Audrina.

15 Q That is your granddaughter, Audrina?

16 A Yes.

17 Q All right. The bruise that you have mentioned
18 previously, is it shown in that photograph or are you
19 referring to a different bruise?

20 A That is it.

21 Q That is the bruise you are referring to?

22 A Yes.

23 Q And this is the bruise that you said that when you
24 came home you were not able to determine where it had come
25 from?

1 A Yes.

2 MS. MAYES: Your Honor, the state would offer this
3 photograph and I believe it is State's 17.

4 THE COURT: Any objection, Mr. Able, Mr. Wise. Y'all
5 take a look at the photograph.

6 MR. WISE: No objection.

7 MR. ABLE: No objection.

8 THE COURT: In evidence without objection, State's
9 17.

10 (Whereupon, State's Exhibit 17 was admitted into
11 evidence.)

12 Q Ms. Davis, looking at the photograph where is the
13 bruise that you are referring to?

14 A On Audrina's forehead.

15 Q That would be this area here?

16 A Yes.

17 Q And that bruise had been there for about a week or a
18 little longer than that prior to the night of the 12th?

19 A I am not sure, I didn't write down the date.

20 Q All right. Now, I believe that Mr. Wise was asking
21 you about marks on her neck. Do you know whether or not
22 Audrina was taken to the doctor at any point because of
23 the marks on her neck?

24 A I believe Ashley took her twice and she took Audrina
25 over to Daniel's and Daniel took her one time.

1 Q And just to followup a little bit more. When we talk
2 about Daniel, who?

3 A Daniel Hepburn, Audrina's daddy.

4 Q So, Audrina's daddy, would he sometimes see Audrina?

5 A Yes.

6 Q And was he involved in her care as well as taking her
7 to the doctor and things of that nature?

8 A Yes.

9 Q So, the marks you are referring to she was taken to
10 the doctor by both Ashley and then her biological father,
11 Daniel Hepburn. Is that correct?

12 A That is correct.

13 Q I am going to show you two photographs and ask you if
14 you recognize the person in the photographs?

15 A Yes, it looks like Audrina.

16 Q And this photograph?

17 A Audrina.

18 Q All right. And you mentioned before that there were
19 marks on her neck that you were shown. Is that visible in
20 these photographs?

21 A Yes.

22 MS. MAYES: Your Honor, this would be State's 18 and
23 19 as evidence.

24 THE COURT: Any objection, Mr. Wise?

25 MR. WISE: No objection. The pictures have dates on

1 them and we understand that later that is when those dates
2 will be confirmed.

3 MR. ABLE: With that understanding no objection.

4 THE COURT: Very good, State's 18 and 19 are in
5 evidence, without objection.

6 (Whereupon, State's Exhibit 18 AND 19 were admitted
7 into evidence.)

8 Q Ms. Davis, where in the photograph is the neck mark
9 that you are referring to?

10 A It will be on her right side.

11 Q In this location?

12 A Yes.

13 Q Now, I am going to show you State's exhibit 19. Does
14 that appear to be a fair and accurate representation of
15 the neck marks that you observed?

16 A Yes.

17 Q Now, was Audrina able to stand up in her crib?

18 A Yes.

19 Q I am going to show you a photograph and ask you
20 whether or not you recognize this photograph?

21 A Yes, that is Audrina in her crib.

22 Q And do you know who took that photograph?

23 A I think Faith took that photograph.

24 Q All right. And who is Faith?

25 A Faith, she is my daughter.

1 Q So that would be the aunt of Audrina?

2 A Yes.

3 Q And where would that photograph had been taken?

4 A In Audrina's bedroom.

5 Q And the crib that she is standing in, is that the
6 same crib that was shown earlier in the photographs?

7 A That is her crib, yes.

8 MS. MAYES: Your Honor, at this time this would be
9 State's exhibit 20.

10 THE COURT: Any objection.

11 MR. ABLE: No objection.

12 MR. WISE: No objection.

13 THE COURT: 20 will be in evidence without objection.

14 (Whereupon, State's Exhibit 20 was admitted into
15 evidence.)

16 Q Now, you mentioned that you would sometimes bathe
17 Audrina yourself?

18 A Yes.

19 Q Were there occasions where you would help dress her?

20 A Yes.

21 Q Were you aware of the abdominal bruise that she had
22 prior to the night of October 12th?

23 A No.

24 Q Do you recall the last time you would have bathed
25 her?

Andrew A. Mathias
Attorney

August 17, 2012

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *State of South Carolina v. Ashley N. Hepburn*
Case No. 2010-GS-30-1773 and 1774

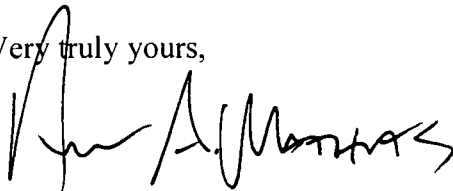
Dear Ms. Kitchings:

Enclosed for filing please find the original and fifteen copies of the Record on Appeal in connection with the above-referenced matter. Also enclosed are the originals and one copy of a Certificate of Compliance and Proof of Service. Please file the originals and fourteen copies of the Record, and return a filed, stamped copy of each in the enclosed self-addressed, stamped envelope.

By way of a copy of this letter, and as further evidenced by the Proof of Service, opposing counsel is being served.

Thank you for your assistance in this matter.

Very truly yours,



Andrew A. Mathias
AAM/bmj
Enclosures

cc: Salley W. Elliott, Esquire
Harold M. Coombs, Jr., Esquire

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AUG 20 2012

SC Court of Appeals