

19826

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 II of IV

Andrew A. Mathias
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
Telephone: 864.370.2211
Facsimile: 864.282.1177
Email: amathias@nexsenpruet.com
Attorney for Appellant
Ashley N. Hepburn

Harold M. Coombs, Jr.
Salley W. Elliott
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: 803.734.3970
Facsimile: 803.253.6283
Email: aghcoombs@scag.gov
Attorney for Respondent
State of South Carolina

RECEIVED

AUG 20 2012

SC Court of Appeals

INDEX

Trial Transcript

Lieutenant R.E. Franklin

Direct by Ms. Mayes 130

Cross by Mr. Able 135

Agent Casey Kirkland

Direct by Ms. Mayes 138

Cross by Mr. Able 147

Redirect by Ms. Mayes 152

Lieutenant Robert Plaxico

Direct by Ms. Mayes 153

Cross by Mr. Able 162

Redirect by Ms. Mayes 184

Recross by Mr. Able 185

Ben Blackmon

Direct by Ms. Mayes 193

Ashley Thompson

Direct by Ms. Mayes 242

Cross by Mr. Able 249

Calvin Duckett

Direct by Ms. Mayes 250

Cross by Mr. Able 267

Cross by Mr. Wise 267

Recross by Mr. Able 268

Dr. Michelle Curry

Direct by Ms. Mayes 270

Cross by Mr. Able 300

Cross by Mr. Wise 306

Redirect by Ms. Mayes 308

Recross by Mr. Able 310

David Crumley

Direct by Ms. Mayes	317
Cross by Mr. Able	331
Cross by Mr. Wise	334
Redirect by Ms. Mayes	336
<u>Doris Davis</u>	
Direct by Ms. Mayes	336
Cross by Mr. Able	349
Cross by Mr. Wise	358
Redirect by Ms. Mayes	360
<u>Alexander Brown</u>	
Direct by Ms. Mayes	365
Cross by Mr. Able	371
Cross by Mr. Wise	380
Redirect by Ms. Mayes	385
<u>Dr. Robert Seigler</u>	
Direct by Ms. Mayes	387
Cross by Mr. Able	418
Cross by Mr. Wise	419
<u>Dr. Mary-Fran Croswell</u>	
Direct by Ms. Mayes	422
Cross by Mr. Able	437
Cross by Mr. Wise	443
Redirect by Ms. Mayes	450
Recross by Mr. Able	456
Recross by Mr. Wise	460
Redirect by Ms. Mayes	462
Recross by Mr. Able	462
<u>Dr. Anthony Johnson</u>	
Direct by Ms. Mayes	463
Cross by Mr. Able	473
Cross by Mr. Wise	474

Dr. Christine Philpott

Direct by Ms. Mayes.....	476
Cross by Mr. Able.....	487
Cross by Mr. Wise.....	502
Redirect by Ms. Mayes.....	504

Rita Hepburn

Direct by Ms. Mayes.....	504
Cross by Mr. Able.....	514
Cross by Mr. Wise.....	518

Daniel Hepburn

Direct by Ms. Hayes.....	523
Cross by Mr. Able.....	541
Cross by Mr. Wise.....	545
Redirect by Ms. Mayes.....	555
Recross by Mr. Able.....	558
Recross by Mr. Wise.....	560

Dr. Michael Ward

Direct by Ms. Mayes.....	581
Cross by Mr. Able.....	602
Cross by Mr. Wise.....	602
Redirect by Ms. Mayes.....	604
Recross by Mr. Wise.....	606
Recross by Mr. Able.....	607

Ben Blackmon

Direct by Ms. Mayes.....	609
Cross by Mr. Able.....	629
Cross by Mr. Wise.....	630
Redirect by Ms. Mayes.....	633

Justin Moody

Direct by Ms. Mayes.....	634
Cross by Mr. Able.....	640

Melissa Skipper

Direct by Ms. Mayes 641

Cross by Mr. Wise 654

Dee Deal

Direct by Ms. Mayes 674

Cross by Mr. Able 683

Cross by Mr. Wise 683

Redirect by Ms. Mayes 684

Calvin Hill

Direct by Ms. Mayes 685

Cross by Mr. Able 693

Cross by Mr. Wise 694

Redirect by Ms. Mayes 696

Raymond Franklin

Direct by Ms. Mayes 704

Agent Casey Kirkland

Direct by Ms. Mayes 708

Cross by Mr. Able 724

Cross by Mr. Wise 727

Redirect by Ms. Mayes 730

Recross by Mr. Able 734

Janice Bryson

Direct by Ms. Mayes 735

Ila Simons

Direct by Ms. Mayes 743

Matt Fitts

Direct by Ms. Mayes 747

Cross by Mr. Wise 759

Deputy Joshua Garrison

Direct by Ms. Mayes 762

Cross by Mr. Able 765

Cross by Mr. Wise	766
<u>Lieutenant Robert Plaxico</u>	
Direct by Ms. Mayes	768
Cross by Mr. Able	772
Cross by Mr. Wise	773
Redirect by Ms. Mayes	774
Recross by Mr. Wise	775
<u>Matt Fitts</u>	
Direct by Ms. Mayes	780
Cross by Mr. Able	784
Redirect by Ms. Mayes	785
<u>Brenda Wulfekotte</u>	
Direct by Mr. Able	820
Cross by Ms. Mayes	828
Cross by Mr. Wise	833
Redirect by Mr. Able	834
Recross by Ms. Mayes	835
<u>Hazel Davenport</u>	
Direct by Mr. Able	836
Cross by Ms. Hayes	840
Cross by Mr. Wise	843
<u>Ashley Hepburn</u>	
Direct by Mr. Able	846
Cross by Ms. Mayes	942
Cross by Mr. Wise	985
Redirect by Mr. Able	1017
Recross by Ms. Mayes	1026
<u>Dee Deal</u>	
Direct by Mr. Able	1043
Cross by Ms. Mayes	1046
Cross by Mr. Wise	1048

Redirect by Mr. Able.....	1050
<u>Calvin Hill</u>	
Direct by Mr. Able.....	1052
Cross by Ms. Mayes.....	1057
Cross by Mr. Wise.....	1061
<u>Donna Lawson Prince</u>	
Direct by Mr. Wise.....	1062
Cross by Ms. Mayes.....	1065
Cross by Mr. Able.....	1067
Recross by Mr. Wise.....	1068
<u>Stephanie Womble</u>	
Direct by Ms. Wise.....	1069
Cross by Ms. Mayes.....	1072
Cross by Mr. Able.....	1072
<u>Casey Womble</u>	
Direct by Mr. Wise.....	1073
Cross by Ms. Mayes.....	1077
Cross by Mr. Able.....	1077
<u>Richard Brandon Lewis</u>	
Direct by Mr. Wise.....	1080
Cross by Ms. Mayes.....	1130
Cross by Mr. Able.....	1160
Redirect by Mr. Wise.....	1214
Recross by Ms. Mayes.....	1217
<u>Carol Starnes</u>	
Direct by Mr. Wise.....	1224
Cross by Ms. Mayes.....	1227
Cross by Mr. Able.....	1229
<u>Officer Justin Moody</u>	
Direct by Mr. Wise.....	1232
Cross by Ms. Mayes.....	1234

Lieutenant Robert Plaxico

Direct by Mr. Wise	1236
Cross by Ms. Mayes	1238
Cross by Mr. Able	1246
Redirect by Mr. Wise	1260
Recross by Ms. Mayes	1262
Recross by Mr. Able	1262
Redirect by Mr. Wise	1263

Agent Casey Kirkland

Direct by Mr. Wise	1264
Cross by Ms. Mayes	1266
Cross by Mr. Able	1273
Redirect by Mr. Wise	1279
Recross by Ms. Mayes	1280

Varnetta Hill Jacobs

Direct by Mr. Wise	1289
Cross by Ms. Mayes	1302
Cross by Mr. Able	1306
Redirect by Mr. Wise	1308
Recross by Ms. Mayes	1310
Recross by Mr. Able	1310

Ashley Hepburn

Direct by Mr. Able	1311
Cross by Ms. Mayes	1314
Cross by Mr. Wise	1315
Jury Charge	1421
Verdict of Jury	1445
Exhibit 65 (photograph)	1469
Transcript of Hearing (March 18, 2011)	1470
Certificate of Counsel	1488

1 A No.

2 Q Nothing further.

3 MR. ABLE: Nothing further.

4 THE COURT: Thank you, you may step down. Do any
5 members of the jury need a break. No response. Call your
6 next witness.

7 MS. MAYES: The State calls Alexander Brown.

8 Alexander Brown, after being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 By Ms. Mayes:

12 Q Mr. Brown, good morning.

13 A Good morning.

14 Q Can you tell us a little bit about yourself or what
15 line of work you are in?

16 A Sure. I have been in seminary at the Lutheran
17 Theological Seminary in Gettysburg, Pennsylvania. While
18 serving at the hospital I was there doing a year of
19 Chaplain residency. I had been there for, since June.
20 And prior to that had done another summer internship at a
21 hospital so have been working in that field for
22 approximately six months. While at Self I was the primary
23 Chaplain for the ER, the Emergency Care Center is what it
24 is called at Self and also the Medical Oncology Unit.

25 Q And so just to clarify you were employed at Self

1 Hospital in Greenwood?

2 A Yes, ma'am.

3 Q And your employment at the Self Hospital was as
4 Chaplin. Is that correct?

5 A Correct.

6 Q What is the role of a Chaplain at a hospital?

7 A We serve as caretakers both emotionally, spiritually
8 and mentally for patient staff and family there. In the
9 ER especially we act as liaison between the families and
10 the doctors and nurses working there letting them know
11 kind of what is going on. But there as emotional support
12 while they are waiting for their patient for word from the
13 doctors.

14 Q And does that role as Chaplain allow you to interact
15 directly with family members when they have, when they are
16 there because someone has been injured or receive
17 treatment?

18 A It does. I will be the first to go and intercept and
19 work with the family. Often times if it is a traumatic
20 case taking them to a family room where they can have
21 privacy, gather and bring their family members all in the
22 same place. It also gives them a place to allow them to
23 emotionally express themselves and a private place where
24 you don't have to worry about the rest of the bystanders
25 and patients and those waiting in the ER for treatment

1 themselves.

2 Q And were you working in that capacity as Chaplain
3 during the early morning hours of October 13th of 2009?

4 A I was. The typical hours as a Chaplain in residency
5 is 8:00 to 5:00 and we all take one evening shift per week
6 covering as the on call Chaplain for the entire hospital.
7 That happened my night in which I was there.

8 Q And how did you receive notification that a toddler,
9 Audrina Hepburn had been critically injured?

10 A One of the roles of Chaplain is to respond to all
11 traumas. We carry two beepers, one is our personal beeper
12 and the other is the on call beeper. So, all traumas and
13 all code blues are sent to us as a notice and we are to
14 report to where ever that is happening. Traumas of course
15 are going to be in the emergency care center. So, we go
16 there and report and wait for whatever incident to arrive
17 via ambulance and then we respond appropriately whether
18 family is there or the patient themselves.

19 Q What can you tell us about Audrina's situation in
20 interacting with her family?

21 A When she first arrived I knew she was a youngster and
22 the doctors will be the first to go in and work with a
23 patient, whoever they are. That is a time where I am
24 waiting for family to arrive to work with them first.
25 They want clear lines of communication with just doctors

1 and nurses and orders being done. So, my place really
2 isn't to be there. I waited for the family to arrive.
3 When they arrived shortly after I met with them and took
4 them to the first family room there in the hospital. From
5 that point I didn't know anything about the case and I
6 just began asking questions to get them comfortable with
7 me and speaking with me after introducing myself. I said,
8 hi, my name is Alex Brown, I am the Chaplain here at the
9 hospital and had them sit and just ask them to tell me
10 what they knew about the case, what was going on. So, I
11 had a clear understanding of what had happened.

12 Q And who do you recall being present in the family
13 room as you spoke with them?

14 A Initially it was Mr. Lewis with Ms. Hepburn and that
15 was it to start. Later the grandparents arrived, the
16 younger son, Owen, arrived or the older brother, Owen,
17 arrived. And later the biological father of the victim.

18 Q That would be Daniel Hepburn?

19 A Correct.

20 Q And tell us about your contact with Ashley Hepburn
21 who would be the mother of Audrina Hepburn and Brandon
22 Lewis, what was your understanding of the relationship
23 between Ashley Hepburn and Brandon Lewis?

24 A I understood their relationship to be one that they
25 were boyfriend and girlfriend. And I understand that Mr.

1 Lewis was, I am guessing residing there but I don't know
2 if he was living there permanently or anything of that
3 nature wasn't clear. But I realized that they were both
4 present at the home that night together with the
5 grandparents, the matrilineal grandparents. And they
6 began or Mr. Lewis was the first person that spoke up to
7 explain what he understood of what had happened that
8 night. He explained that he was the only one awake in the
9 home. That both Ms. Lewis and the grandparents were
10 asleep.

11 Q You said Ms. Lewis.

12 A Excuse me, Ms. Hepburn, was asleep as well as her
13 parents. That he was watching TV and it had been quite
14 some time, about an hour and a half prior to checking on
15 Audrina. And when he goes to check on her he typically
16 goes to the door, knocks on it and that causes her to stir
17 just to check in on her to see if she is okay for the
18 night. That didn't happen and he said that caused him
19 some concern so he went in to check on her. When he went
20 to find the child he found the child laying horizontally
21 in her bed or crib, he didn't really give an explanation
22 of that. But as opposed to laying from head to foot, was
23 laying sideways with her face careened up against the side
24 of the crib. And this caused him to go and grab mother
25 and grandparents to wake them up because she wasn't

1 responsive.

2 Q All right. And when he was relaying this information
3 to you was Ms. Hepburn present?

4 A Correct, she was.

5 Q And at any point did she dispute this history or add
6 any more information to it?

7 A No, ma'am.

8 Q What was the general demeanor or behavior of both of
9 them as you were obtaining this information?

10 A They both seemed concerned but they appeared united
11 in their story and understanding of what was going on at
12 the time. There wasn't any dispute about Mr. Lewis'
13 description. And, let's see, let me find my words here.
14 They didn't seem any more like outrageously concerned like
15 something was very, very seriously wrong. They weren't
16 over emotional, they seemed collected as it were, just
17 really concerned.

18 Q And did Mr. Lewis have anything else to say to you
19 that night as he was providing information about Audrina
20 and what may have occurred on that night leading up to
21 finding her in the crib?

22 A Sure. He said one statement in the middle of his
23 explanation of how he found Audrina. It concerned me and
24 it seemed odd. In the middle of his statement he
25 explained that Audrina, "didn't like him but he loved

1 her."

2 Q And when he stated that she didn't like him he was
3 referring to who?

4 A Audrina.

5 Q The baby?

6 A The baby, correct.

7 Q And did you relay that information to anyone else?

8 A I did. I relayed it to Dr. Curry who is the
9 attending physician because it did seem odd to me. If
10 nothing was particularly wrong I didn't understand why a
11 piece of information like that was necessary. If he is
12 just checking on her, this happened, she was unconscious,
13 he brought him here, why would that have been an
14 appropriate piece of information.

15 Q Nothing further.

16 THE COURT: Mr. Able.

17 CROSS-EXAMINATION

18 By Mr. Able:

19 Q Mr. Brown, I want to make sure I understand. My
20 client was emotional about the child's condition?

21 A Correct.

22 Q Now, in talking with both of them, you talked with
23 them both at the same time but Mr. Lewis was the talker,
24 he was the one relaying this history?

25 A Yes, sir.

1 Q You said they seemed united in their, in one story
2 Mr. Lewis was telling you what had happened and she, my
3 client, was nodding her head in agreement?

4 A Yes, sir.

5 Q Now Mr. Lewis told you that night that Ashley Hepburn
6 was asleep?

7 A Yes, sir.

8 Q That Mr. Lewis told you also that he was the only one
9 awake in that house?

10 A Correct.

11 Q That he was watching TV?

12 A Yes, sir.

13 Q And that he had checked on Audrina twice that night?

14 A Yes sir, approximately an hour and a half prior to
15 finding her unconscious and then when he found her.

16 Q And he said he would go to a sixteen month old's door
17 and knock on it before he went in to check on her?

18 A Yes sir, he would crack it and knock on it to see if
19 she would startle or arouse for a response.

20 Q And he said when he went in he found her laying in
21 this position that you described?

22 A Yes, sir.

23 Q And in the middle of this conversation, in the middle
24 of your interview with him he told you and I assume this
25 was, he described it, "the baby, she doesn't like me but I

1 love her," and that was a quote?

2 A Yes, sir. During that conversation I had just opened
3 the door and asked an open ended question, can you tell me
4 what had happened tonight. And this was in the middle of
5 the response.

6 Q And that caused you a lot of concern?

7 A Yes, sir.

8 Q And you reported that to Dr. Curry?

9 A Yes, sir.

10 Q That this statement had been made by Mr. Lewis?

11 A Yes, sir.

12 Q Why did it cause you concern.

13 MR. WISE: Your Honor, I object to that question. He
14 is not an expert, it is speculative.

15 MR. ABLE: Asking him why a statement caused him
16 concern, I don't know how it is speculative.

17 MR. WISE: I think it is very speculative.

18 MR. ABLE: How is it speculative?

19 MR. WISE: It is not based upon his senses as to what
20 he saw, heard.

21 THE COURT: So far it relates to his experience and
22 then if you want to lay a foundation a little bit more
23 about how long he worked there or something like that, Mr.
24 Able. Why don't you do that.

25 Q Going back, how long had you been employed there?

1 A I had been employed there since June working in a
2 year long contract position after two years of seminary
3 education which is a Masters program. And during the
4 course of work there we are required clinical hours and
5 further academic hours led by a supervisor who is
6 certified by the American Clinical Pastoral Education,
7 ACPE, it is an association of instructors. And every week
8 we are required to write what we call a verbatim and
9 verbatim as I have explained to you before is a written
10 account of our conversations with one patient, as close to
11 verbatim as possible. And then we are to analyze that
12 spiritually, emotionally and look at why we ask what we
13 ask and what flags might have been drawn by things that
14 they have said. So, we are constantly not only analyzing
15 in the middle of our working with folks but also
16 internally afterwards trying to figure why someone said
17 what they said or why did we ask the questions that we ask
18 in order to make our work with the patients staff and
19 family better. In the middle of our conversation when
20 this was said it appeared as a strange flag for me because
21 I didn't ask anything that would provoke such an answer.

22 Q And you have been making these weekly analysis of
23 conversations with different patients while you have been
24 employed?

25 A Yes, sir.

1 Q And this stuck out in your mind when it was said that
2 it was something unusual?

3 A Correct.

4 Q Why did it cause you concern?

5 MR. WISE: Same objection, Your Honor, I don't think
6 he is qualified, speculation.

7 THE COURT: Overruled, you can cross him on that.
8 This is being received just on the question of how this
9 witness reacted to that comment and obviously you can
10 cross-examine him on his training. So, I will allow the
11 question.

12 Q Why did it cause you concern?

13 A It caused me concern because I had asked nothing,
14 there had been no understanding of any sort of foul play
15 or anything that might have happened to the child. I had
16 no understanding of the history of the child, I didn't
17 realize why she was even there other than she was in fact
18 a trauma victim. And it appeared to be a statement that
19 had the possibility of having guilt behind it.

20 MR. WISE: I object, Your Honor.

21 THE COURT: I sustain.

22 MR. WISE: I have a matter for the Court.

23 THE COURT: Ladies and gentlemen of the jury, there
24 is a issue of law that we need to take up. If you will
25 adjourn to the jury room for a few moments and don't

1 discuss the case and we will have you back out here in a
2 few minutes.

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

4 THE COURT: The record should reflect the jury is
5 out. Mr. Wise.

6 MR. WISE: Your Honor, I do move for a mistrial.
7 This witness has testified in his opinion my client is
8 guilty. I think that is well beyond anything that is ever
9 admissible in this court, period. And to tell this jury,
10 a pastor at Self Memorial Hospital can testify that he
11 thinks this evidence is guilty knowledge of my client,
12 that bell can't be unrung. And I would move for a
13 mistrial on behalf of Brandon Lewis.

14 THE COURT: Ms. Mayes, I assume you would oppose for
15 the motion for a mistrial at this point.

16 MS. MAYES: Yes sir, Your Honor.

17 MR. WISE: I have raised the objection. I had a
18 feeling something was coming like this and that is why I
19 raised my objection.

20 THE COURT: I understand.

21 MR. BROWN: Is there room for me to speak.

22 THE COURT: No. Mr. Able, you want to weigh in on
23 this?

24 MR. ABLE: No, sir.

25 THE COURT: It is quite clear that the statement was

1 perhaps unintentionally elicited by Mr. Able. Obviously
2 there is a level of prejudice to Mr. Lewis in this case.
3 I will give the jury a curative instruction. I
4 understand, Mr. Wise, that you feel that that would not be
5 sufficient due to the prejudice with respect to your
6 client. But I feel that this is a very professional jury
7 and are very attentive of my instructions as well as to
8 the testimony. I have a very high degree of confidence
9 and I am certain that they will not give it undue
10 consideration in their deliberations. And so, what
11 exactly was the verbatim, do you have the verbatim
12 statement that you made.

13 MR. WISE: It was basically the fact that that was,
14 to him that was a consciousness of guilt.

15 THE COURT: Madam Court Reporter, can you look at the
16 sentence.

17 COURT REPORTER: Yes sir, if we can take a break.

18 THE COURT: We will be at ease for a few moments and
19 we will take a quick break ourselves. Mr. Brown, you can
20 take a break yourself but don't talk to anyone.

21 MR. BROWN: Sure.

22 (Whereupon, a short break was taken.)

23 THE COURT: We are back on the record. Madam Court
24 Reporter, did you find the sentence.

25 COURT REPORTER: Yes sir, the last sentence was, I

1 did not understand why she was there but it appeared to
2 have been a statement having guilt behind it.

3 THE COURT: I will instruct the jury to disregard
4 that. Mr. Wise, I really appreciate your indication that
5 there is no jury instruction which would successfully
6 undue the prejudice. However, I am more than happy to
7 give any curative instruction despite your objection, any
8 curative instruction that you would like for me to give to
9 the jury in an effort--

10 MR. WISE: It is in an area in which he is
11 unqualified to give an opinion.

12 THE COURT: Would you care, Mr. Wise, for me to
13 reiterate this is an area solely or an area solely for the
14 jurys province or just leave that alone.

15 MR. WISE: I think that is the only way you can do in
16 the scenario which he is unqualified to give an opinion.

17 THE COURT: You do or do not want me to say something
18 to the effect that this is solely for you the jury.

19 MR. WISE: I do want you to say that. I still think
20 that even with that it is not, it can't be cured.

21 THE COURT: I understand that.

22 MR. WISE: I don't know what else you can say beyond
23 that.

24 THE COURT: I appreciate your position. Your motion
25 for a mistrial is denied. We will get the jury back in.

1 (Whereupon, the jury came into open court at
2 approximately 11:00 a.m.)

3 THE COURT: Thank you very much. Let the record
4 reflect that the jury has returned. Ladies and gentlemen
5 of the jury, the last comment that was made by Mr. Brown,
6 the current witness, wherein Mr. Brown stated that the
7 statement by Mr. Lewis appeared to have been a statement
8 having guilt behind it. Ladies and gentlemen, I have
9 determined that this is not proper evidence in any way
10 shape or form and therefore you should not and cannot
11 consider it for any purpose during your deliberation.
12 This is an area in which the witness is simply unqualified
13 to give any sort of an opinion and the issue of the guilt
14 or innocence of any defendant in this case is an issue
15 solely for you to determine therefore the comment is being
16 ordered struck from the record in this case and must be
17 removed from your mind. You may not consider it in any
18 way, shape or form in your deliberations because that last
19 answer of the witness was improper. This is an area in
20 which the witness is simply unqualified to give any
21 opinion and therefore you must disregard it in its
22 entirety. Mr. Able, you may continue.

23 CONTINUE CROSS-EXAMINATION

24 By Mr. Able:

25 Q Mr. Brown, my client, Ms. Hepburn, didn't say

1 anything to cause you any concern that day?

2 A Repeat that, please.

3 Q I said my client, Ms. Hepburn, didn't say anything
4 during your interview with her to cause you concern that
5 night?

6 A No, sir.

7 Q And Ms. Hepburn agreed with the statement of Mr.
8 Lewis that she was in bed asleep that night?

9 A Yes, sir.

10 Q And Mr. Lewis never said anything but that Ashley was
11 in the bed asleep that night and he was the only one
12 awake?

13 A Correct.

14 Q That is all I have.

15 THE COURT: Mr. Wise.

16 CROSS-EXAMINATION

17 By Mr. Wise:

18 Q Mr. Brown, you were not there as a criminal
19 investigator were you?

20 A No, sir.

21 Q You were there to console these people?

22 A Yes, sir.

23 Q You were there to console these people who obviously
24 both of whom are very upset?

25 A Yes, sir.

1 Q And both of them were very concerned?

2 A They were.

3 Q And Mr. Lewis just happened to be the one doing the
4 talking?

5 A Correct.

6 Q Ms. Hepburn never said anything?

7 A Not anything of--

8 Q That you deem to be of substance?

9 A Correct.

10 Q So, you don't recall what she said that wasn't of
11 substance?

12 A Outside of stating who she was, that she was
13 concerned. Mr. Lewis was the main speaker during the
14 conversation.

15 Q Okay. And she never disagreed with what he said?

16 A Correct.

17 Q She never said you are wrong or something like that?

18 A Correct.

19 Q She never accused him of anything?

20 A No, sir.

21 Q And she never accused him of any wrongdoing?

22 A No, sir.

23 Q She never, when you made the statement about he loved
24 her, she never disputed, he loved the child and she never
25 disputed that?

1 A No, sir.

2 Q Now, did you make any written notes of this
3 conversation?

4 A Outside of the written report that was asked for me
5 by SLED I do not believe so.

6 Q That was done about a week later, eight days later,
7 correct?

8 A Correct.

9 Q You didn't make any contemporaneous notes?

10 A There might have been a doctors notes in the charts.

11 Q I am talking about did you make any contemporaneous
12 notes of your conversation with Mr. Lewis? Did you make
13 any contemporaneous notes with your conversation with Mr.
14 Lewis?

15 A No, sir.

16 Q So, when you, a week or eight days later say he said
17 this it is what you recall he said which may not be
18 one-hundred percent accurate?

19 A Well, sir, it may not be one-hundred percent
20 accurate.

21 Q That is correct, isn't it?

22 A Correct.

23 Q And it is just your interpretation of something he
24 said?

25 A Aside from the one comment that I wrote, yes. It was

1 a general description of our conversation, yes.

2 Q And even that one comment you wrote you wouldn't sit
3 here and say that is verbatim what he said?

4 A I would.

5 Q You would.

6 A Because that is the one that stuck out in my mind
7 because that is the one that I had the conversation with
8 Dr. Curry about.

9 Q But you did nothing to memorialize that comment that
10 stuck in your mind that night?

11 A Outside of the written report for SLED I do not
12 believe so.

13 Q You did not. So wasn't concerned enough for you to
14 write it down that night and saying this is strange?

15 A I didn't realize the severe nature of the case, no
16 sir.

17 Q So, you didn't realize at the time comments were made
18 whether or not it was significant then?

19 A Repeat that again.

20 Q Well, when did you learn the severe nature of the
21 case?

22 A I learned it later that night, I realized or I heard
23 that it was severe.

24 Q Okay. Some hours after this?

25 A Some hours after that. But I had no idea that this

1 was a case in which the child passed away until I was
2 contacted here for the case.

3 Q So, some hours later when you realized it was a
4 severe case did you then memorialize anything that was
5 said that night?

6 A No, sir.

7 Q So the only time you ever memorialized anything that
8 was said was eight days later?

9 A Correct.

10 Q Now, would it be fair to say as a practical matter no
11 one on that particular night knew at the time you were
12 interviewing everybody, knew the seriousness of the
13 injuries?

14 A It appeared that way.

15 Q They didn't know, no one was saying anything about
16 what caused it or what happened, just that the child was
17 ill and in the hospital?

18 A Correct. The explanation of the state in which she
19 was found unconscious and that she was there in the
20 hospital.

21 Q Right. So nobody, neither Mr. Lewis or Ms. Hepburn
22 understood ultimately what was going to happen in this
23 case?

24 A That is the way they described it to me, yes sir.

25 Q Okay. Thank you. And you didn't know how long Mr.

1 Hepburn, (sic), had known Audrina, had you?

2 A No, sir.

3 Q And you didn't know how long he had been dating the
4 mother either?

5 A No, sir.

6 Q You didn't find that out that night?

7 A No, sir. My standard protocol for questioning and
8 speaking with the family is just a simple introductory
9 question of, can you tell me what happened tonight and why
10 are you here.

11 Q And is it important for you to ask what happened to
12 do your job?

13 A I believe so.

14 Q But Ms. Hepburn never said anything about what
15 happened?

16 A No, sir. It was Mr. Lewis giving the description.

17 Q Thank you.

18 THE COURT: Ms. Mayes.

19 MS. MAYES: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 By Ms. Mayes:

22 Q Mr. Able was asking you about the statement that
23 Brandon Lewis made about checking on Audrina?

24 A Yes, ma'am.

25 Q What exactly do you recall him saying in that regard?

1 A That after roughly an hour and a half of watching TV
2 that he went to her door and knocked on it, after opening
3 it to see if she would wake up or acknowledge his presence
4 there at the door.

5 Q Did he indicate whether he had checked on her at any
6 other point in the night?

7 A Yes ma'am, an hour and a half prior to that he said
8 he had checked on her before this check.

9 Q There were at least two occasions he was stating that
10 he had checked on Audrina in her room?

11 A Correct. There was the one in which he found her
12 unconscious and the one prior to that.

13 Q And according to him at the one prior to that she
14 seemed okay?

15 A Yes, ma'am. He did not give any cause for alarm,
16 like everything was okay.

17 Q And then on his second check he reported that he
18 found her unconscious?

19 A Correct.

20 Q Nothing further.

21 MR. WISE: Nothing further.

22 MR. ABLE: No, sir.

23 THE COURT: Thank you very much, you are free to go.

24 No objection to excusing Mr. Brown.

25 MS. MAYES: No objection.

1 MR. ABLE: No objection.

2 MR. WISE: No objection.

3 THE COURT: You are free to go.

4 MS. MAYES: May we approach on a matter, Your Honor.

5 THE COURT: Yes.

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury.)

9 MS. MAYES: The State calls Dr. Robert Seigler.

10 Dr. Robert Seigler, after being duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Mayes

14 Q Good morning, Dr. Seigler. Can you tell us where you
15 are employed and in what regard?

16 A I am the medical director of the pediatric intensive
17 care unit at Greenville Memorial Hospital.

18 Q And when you say you are the medical director at
19 Greenville Memorial Hospital can you give the jury some
20 information concerning your educational background and
21 training that led to you, led to your current position.

22 A I graduated from Medical School in Charleston in
23 1982, internship and residency in pediatrics. And then a
24 fellowship in pediatric intensive care which I finished in
25 '86 and I practiced general pediatrics in pediatrics

1 intensive care since then.

2 Q All right. And give us some information about how
3 you develop a specialty such as pediatric intensive care?

4 A After finishing medical school, the standard courses
5 to complete an internship and a residence in pediatrics,
6 general pediatrics, that is three years and then what is
7 called a Fellowship in pediatrics intensive care. That is
8 another three year Fellowship, for me it was only one year
9 but these days it is another three years. And there is a
10 board exam in general pediatrics and then there is a
11 separate board exam in pediatric intensive care.

12 Q All right. So I want to ask you a little bit about
13 that. Where did you do your residency in pediatrics?

14 A In Greenville.

15 Q And ultimately what is the difference between the
16 certification in general pediatrics and pediatric
17 intensive care?

18 A Those are two different exams. The general
19 pediatrics exam is given to people who qualify after
20 having finished a residency in pediatrics. To qualify to
21 take the exam in intensive care a physician has to
22 complete a Fellowship in pediatric intensive care.

23 Q And what is the difference in terms of the field of
24 study between general pediatric and pediatric intensive
25 care?

1 A General pediatrics is a three year program that is
2 broad based, exposes the resident to a little bit of
3 everything within pediatrics and usually when people
4 finish the residency in pediatrics they practice general
5 pediatrics or they go on to do specialty training.

6 Pediatric intensive care is one of the many specialty
7 areas available to a physician after they have finished
8 their general pediatric training.

9 Q And have you testified perviously in a court of law
10 concerning practice, the medical practice of pediatric?

11 A I have testified concerning pediatric intensive care.

12 Q Pediatric intensive care. You have testified
13 previously in that regard?

14 A Yes.

15 MS. MAYES: Your Honor, at this time the State would
16 offer Dr. Robert Seigler as an expert in the field of
17 pediatric intensive care.

18 MR. WISE: No objection.

19 MR. ABLE: No objection.

20 THE COURT: Ladies and gentlemen of the jury, this
21 witness, Dr. Seigler, has been, it has been stipulated
22 that he is an expert in the field of pediatric intensive
23 care. And as I stated yesterday with regard to the other
24 physician, Dr. Curry, was certified and was an expert in
25 emergency medicine. Normally a person can't give opinion

1 testimony, usually when a witness testifies they have to
2 testify about something that they saw or heard or smelled
3 or felt as one of their senses. Obviously there is an
4 exception and when someone is qualified because of
5 experience or expertise they can give opinions in certain
6 areas when they are qualified to do so. And the Court
7 finds them qualified. This witness has been qualified by
8 the Court in the field of pediatric intensive care and
9 therefore he may give opinion testimony in that area. Of
10 course that does not mean that you must accept his opinion
11 but it is evidence for you to use in any way or manner
12 that you see fit and give it the weight and credibility
13 you feel it deserves. Ms. Mayes, you may continue.

14 Q Dr. Seigler, can you tell us what type of services
15 are offered at Greenville Memorial Pediatric Intensive
16 Care Unit?

17 A Well, it is known as a multidisciplinary intensive
18 care unit. So, we take care of children from a few days
19 of age through the late teenage years. And we see a
20 variety of illnesses and injuries, many or most of which
21 are serious and life threatening.

22 Q During your career have you had the opportunity to
23 treat and access cases of abusive head trauma?

24 A Yes.

25 Q Have you had the opportunity to study abusive head

1 trauma in medical literature as well as the clinical
2 setting?

3 A Yes.

4 Q Can you tell us what is meant of the term of abusive
5 head trauma?

6 A It is a term that describes an injury to the head
7 which is inflicted upon the patient in what we call a
8 non-accidental manner. In other words, as opposed to,
9 accidental head trauma would be something like a car wreck
10 for example. Non-accidental trauma or abusive trauma is
11 an injury that results from it being inflicted upon the
12 child in a non-accidental nature.

13 Q All right. Would it be fair to say child abuse?

14 A Child abuse.

15 Q When Audrina arrived, do you have with you any
16 records indicating the time in which she arrived at
17 Greenville Memorial from Self Emergency Room?

18 A I do have my admission notes. In the admission note
19 it is timed 6:00 a.m. October 13th of 2009. I don't think
20 I dictated the exact time of arrival. That is going to be
21 the approximate time of arrival.

22 Q And is that the approximate time in which you would
23 have had contact with Audrina and conducted an initial
24 exam?

25 A Yes, I probably would have seen her shortly before

1 that and collected the information that I needed to then
2 dictate to this note.

3 Q And we are talking about in the early morning hours
4 of October 13th, is that correct?

5 A That is correct.

6 Q Can you kind of take us through what happens when a
7 critical care patient such as Audrina arrives there at the
8 what we call PICU?

9 A There are a variety of ways that a child can arrive.
10 Sometimes these children come to us from our emergency
11 room. In this case she came to us from another emergency
12 room in Greenwood. She was seen and stabilized in the ER
13 in Greenwood and then transported by ground and admitted
14 directly to our intensive care unit. She did not need to
15 stop in our emergency room, she came straight upstairs to
16 the ICU. And then at that time the nurses and physicians
17 are, usually they are waiting on the patient to arrive and
18 began our assessment and evaluation in the emergency
19 stabilization which is required. And then develop a plan
20 as to what tests needs to be done and what treatment needs
21 to be started.

22 Q What happened with Audrina once she arrived and is it
23 time for you to conduct an initial examination or
24 assessment?

25 A Well, she had already been stabilized in the

1 emergency room in Greenwood. And so we reviewed the test
2 that they had done, blood test, CAT scans, those type of
3 things. And then examined her and the nurses do an exam
4 as well and evaluate the necessity of her further
5 resuscitation. And then we begin the caregiving process.
6 We write orders which instruct the nurses and respiratory
7 therapist and pharmacy and other ancillary services as to
8 what we want to do in terms for the testing, treatment,
9 those type of things.

10 Q And do you have with you today the records relating
11 to your examination of Audrina?

12 A Yes.

13 Q All right. You have mentioned before that part of
14 the assessment is to review CT's. What can you tell us
15 about the information that you had gathered at the time of
16 her admission about her CT scans and any possible head
17 injuries.

18 A Well, I had talked to Dr. Curry on the telephone.

19 Q That would be Dr. Curry from Self Hospital in
20 Greenwood?

21 A That is correct. She is the emergency room physician
22 in Greenwood and she had indicated to me verbally the
23 results of the CAT scan which showed bleeding around the
24 brain that is called subdural hemorrhage. And the
25 physical findings that she had noted which included

1 bruising and such. She had looked at the eyes and felt
2 like the eye exam was abnormal. Most of that information
3 at the time was transferred verbally over the telephone
4 with my conversations with her.

5 Q All right. And what happened next?

6 A Well we admitted her to an intensive care unit bed.
7 She was on what is commonly known as life support. She
8 had a breathing tube through her mouth and to her lungs
9 and we continued to do that and make adjustments to that.
10 Typically we get an X-ray, chest X-ray to make sure the
11 breathing tubes are where we want it to be. We ordered a
12 new set of blood work. We will typically repeat blood
13 work that has already been done in the referring emergency
14 room.

15 Q Why is blood work done?

16 A Well, primarily to, I guess for two reasons. Number
17 one, to make an accurate diagnosis. You need to know what
18 is going on. And number two, to access various organ
19 systems and how they are functioning, livers, liver,
20 kidneys, those kind of things. Whether there had been a
21 lot of blood loss, a wide variety of blood test and urine
22 test to help us, want to make a diagnosis and number two,
23 to take care of the patient.

24 Q And what can you tell us about the blood screening
25 and labs that was done with Audrina?

1 A Her, well we do a wide variety of test. The basic
2 test, the one that is called a complete blood count and
3 that is to, that helps us to decide if there may be some
4 infection, if her hemoglobin is low enough to need a blood
5 transfusion. There are other blood test that help us
6 decide if her blood is clotting normally and then we do
7 some more extensive in depth blood test that we, that are
8 not, I guess I would say not routine but we do it in cases
9 where we suspect that there is non-accidental trauma to
10 make sure there are no unusual or rare conditions going on
11 that would cause the bleeding that we are seeing. We do a
12 test that is called complete metabolic panel that screens
13 for liver function to kidney function, the electrolytes in
14 the blood stream like sodium and sugar and it is a long
15 panel of things that help us decide if there are any
16 warning systems that might need to be further
17 necessitated. Do urine test, do blood gasses that help us
18 to decide how we need to adjust the breathing machine,
19 ventilator and then in some cases the blood gasses will
20 help us to decide if there has been a prolong period prior
21 to the patient in medical care. We look at a test called
22 PH which measures the acid in the blood stream. It is a
23 wide variety of tests, it is a broad screening process.
24 Q And can you tell us whether or not the blood screen
25 test done for Audrina were normal?

1 A I don't recall that there were any gross
2 abnormalities. The blood clotting system appeared to be
3 intact. We look at that particularly when we have
4 somebody who was bleeding, bruises because if they have,
5 for example, a problem that they are born with that would
6 make them bleed easily we need to know that and that did
7 not appear to be the case here. My recollection, I think
8 her liver and her kidneys were working well, her lungs
9 were working well with the assistance. She wasn't
10 breathing alone but the lungs themselves were okay and her
11 heart was working okay.

12 Q Now, you mentioned the CT scans that you were already
13 aware of. Were new CT scans ordered once she arrived at
14 Greenville?

15 A Yes. I think she had a total of three and I think
16 that includes the, with the first one being the one that
17 was done in Greenwood. And again that is a typical thing
18 for us to do whether we suspect that this is an accidental
19 injury or non-accidental injury is to repeat the CAT scan
20 for purpose for seeing if the bleeding is expanding or
21 extending and to see if there is, if brain swelling is
22 going to develop. That is the thing we worry about the
23 most in an injury like this.

24 Q And what, if anything, did the CT or CAT scan results
25 suggest concerning the severity of Audrina's injuries?

1 A Well, we put the pieces of the puzzle together. The
2 results of the CAT scan showed some bleeding. It is
3 called a subdural hemorrhage. It is bleeding between the
4 brain and the skull. There are layers of tissue to
5 separate the brain and the skull, one of those layers is
6 called the dura. And this bleeding is taking place
7 underneath the dura so it is called a subdural hemorrhage.
8 And it was on the right side of her brain. It was pushing
9 on the brain to some degree. And the appearance on the
10 CAT scan is, it was white. And when we see blood on the
11 CAT scan that looks white then we know it is fairly recent
12 blood, not old blood. As we repeated the CAT scans the
13 bleeding remained about the same but the swelling got
14 worse. And that is typically what we see after a serious
15 head injury as opposed to a little bump on the head. The
16 swelling continues to get worse and then over the next few
17 days as it deteriorated the brain swells to the point
18 where it basically cuts off its own blood supply. So then
19 that part of the brain just doesn't get any blood to it.
20 And that is what we were seeing by the time we got the
21 third CAT scan.

22 Q All right. So, the swelling of the brain or the
23 edema is secondary to the head injury such as the subdural
24 hematoma?

25 A The swelling of the brain comes from two things. One

1 is from the direct injury itself. And again, this is a
2 severe injury, this is not a little bump on the head. The
3 swelling comes from injury itself and the swelling can
4 also come if you have a period where you don't have
5 adequate oxygen delivered to your brain. So, often what
6 we will see in situations like this is a child will be
7 injured and will not immediately receive any resuscitation
8 efforts, will not be immediately recused and they don't
9 breathe well. And when they don't breathe well their
10 oxygen level is low which then causes brain damage. So,
11 typically in these children we will see a combination of
12 brain swelling from the injury itself and from a low level
13 of oxygen.

14 Q Dr. Seigler, when we talk about a subdural hematoma
15 of this nature without an explanation such as a high speed
16 motor vehicle accident, what type of mechanism is involved
17 in abusive head trauma?

18 A Subdural hemorrhages are the result of injury. We
19 see subdural hemorrhages after high speed motor vehicle
20 accidents, bicycle accidents. But we, what we look for is
21 not just the subdural. We look for a pattern of injury.
22 And what we see in this child is a pattern of number one,
23 the acute subdural hemorrhage. Acute meaning it is not
24 old. Number two, we see the bleeding in the eyes, that is
25 called retinal hemorrhages. Number three, we see the

1 severe brain--

2 Q If you can hold on for just a second. The Court
3 Reporter needs to catch up. What is the second
4 significant finding?

5 A The second finding is the bleeding in the eyes. That
6 is called retinal hemorrhages, it is bleeding, bleeding
7 within the eye, inside of the back of the eye. That is
8 where the retina is. And then the third thing we see a
9 severe brain injury. This baby came into the emergency
10 room in a coma. She is not a child who bumped their head
11 and was a little fussy for the next day or two. This was
12 a child who came into the emergency room in a coma. So,
13 it is the severe brain injury and then we might or might
14 not see bruises. We might or might not see broken bones.
15 But those are the three things that we see that make us,
16 in a young child, that make us suspicious for
17 non-accidental trauma. And if there is no history of some
18 serious injury like a car wreck then that is the typical
19 pattern that we see for children who are victims of
20 non-accidental trauma.

21 Q All right. So, the combination of these factors, the
22 acute subdural hemorrhage, the retinal hemorrhage or
23 bleeding within the eyes and the severe brain injury. Can
24 you tell us whether or not that is consistent with a child
25 abuse injury?

1 A That is consistent with a child abuse injury and in
2 the absence of an explanation of a traumatic event it is
3 diagnostic of non-accidental traumatic brain injury.

4 Q So, in this case Audrina Hepburn was diagnosed with a
5 child abuse incident being abusive head trauma?

6 A Yes.

7 Q In addition to these particular findings, was a
8 physical examination done of Audrina?

9 A Yes.

10 Q And you mentioned the retinal hemorrhages, is that
11 something that you were able to ascertain yourself?

12 A I do a screening exam, it is not my specialty, I do a
13 screening exam and felt that I did see retinal hemorrhages
14 and then consulted with a pediatric ophthalmologist to,
15 who is the expert in that area to perform a more detailed
16 exam which falls outside of my area of expertise.

17 Q And who is the pediatric ophthalmologist that came in
18 to do the retinal hemorrhage eye exam on Audrina?

19 A Dr. Johnson, Anthony Johnson.

20 Q And that was at your request or the request of the
21 PICU?

22 A That's correct.

23 Q You mentioned that a physical exam was done or
24 physical assessment was done on Audrina in addition to the
25 diagnosis of the abusive head trauma. Do you have with

1 you your notes concerning that physical examination?

2 A Yes, I have those here.

3 Q And who actually conducted that initial examination
4 or physical assessment once she arrived?

5 A I did along with the pediatric resident who was on
6 call at the time.

7 Q And do your notes reflect the time in which that
8 physical exam or assessment was done?

9 A It was the same note that was timed 6:00 a.m.,
10 October 13th.

11 Q All right. If we could I would like for you to
12 describe any significant notation that you made concerning
13 that physical exam at 6:00 a.m.

14 A Maybe I will do the bruises last. Her heart exam was
15 normal. The, what we call the profusion to the tissues
16 meaning her extremities, her fingers and toes were not
17 pink and warm, they didn't have a normal blood flow. It
18 is called capillary refill and that was somewhat delayed
19 and her pulses in her wrist and the pulses in her feet
20 were difficult to palpate and her extremities were cool.
21 Her lungs sounded normal, her abdominal exam other than
22 the bruises was normal. The examination of her genital
23 was normal except for one petechiae which I will mention
24 when I go over the bruising. And then as I said, I looked
25 in her eyes. So, that was her general exam. Neurological

1 component of the exam, her pupils were equal and reactive
2 which is normal. She was moving all four extremities.

3 And I noted that I did not see any abnormal activity like
4 seizures or posturing. And then I noted 28 bruises.

5 Q I want to start with your first notation concerning
6 any bruise. I want to ask you first, why is that
7 important to note whether a child with a diagnosis of
8 abusive head injury might have accompanying bruises?

9 A Well, first of all, it is just part of the routine
10 physical exam. This is something that we would note on
11 the physical exam. But a child of this age who has
12 multiple bruising like this certainly raises a degree of
13 suspicion that some or all of these might not be from
14 accidental purposes.

15 Q All right. Let's start with your first notation
16 concerning bruising.

17 A Number 1 is on the right tibia, that is the shin,
18 right tibia bruise that measures 1.5, 0.5 centimeters.

19 Q And next.

20 A Number 2, again in the same location. The right
21 tibia, a bruise that was more proximal than the first.
22 That means it was a little bit closer to the knee, it
23 measures a half of a centimeter by a half of centimeter.

24 Q And next.

25 A On the left tibia, the left shin, this bruise

1 measured a half centimeter by a half centimeter.

2 Q And next?

3 A I noted that there were numerous petechiae,
4 approximately 20 between the right big toe and the second
5 toe which is obviously the toe next to it. So between the
6 big toe and the next toe there were 20 petechiae.
7 Petechiae are pinpoint bruises, they look like little
8 dots, little purple dots.

9 Q And what might be the source or cause of petechiae?

10 A Well, it is basically a bruise. So anything that
11 could cause a bruise could cause petechiae. It could be
12 anything from being slapped or hit or stomped or squeezed.
13 Anything that could produce a bruise could produce
14 petechiae.

15 Q And next?

16 A There were numerous petechiae between the right
17 second toe and right third toe.

18 Q And next?

19 A On the lateral aspect, that is the outer part of the
20 right plantar surface. So, that is going to be the outer
21 part of the bottom of her right foot. There was a bruise
22 that measured 3 centimeters by a half of centimeter with
23 petechiae scattered throughout the bruise.

24 Q And that would be a bruise and petechiae?

25 A That's correct.

1 Q And what if anything might that suggest?

2 A Pretty much the same thing. Anything that, petechiae
3 are basically teeny broken blood vessels. The microscopic
4 blood vessels that are broken and they bleed a little bit.
5 So what you see looks like a pinpoint purple dot. So, it
6 was, whatever caused that bruise most likely also caused
7 the petechiae.

8 Q All right. And next?

9 A On the posterior aspect of the right calf, so that is
10 the back of the right calf that was a 2 centimeter by 1
11 centimeter bruise.

12 Q What do you mean by 2 centimeters, when we are
13 talking about the metric system. What would the size of a
14 centimeter be in comparison with an inch for example?

15 A Approximately 2 and a half centimeters is one inch.
16 So this will be slightly less than an inch by slightly
17 less than half of an inch.

18 Q All right. And next?

19 A There was a small petechiae hemorrhage which is
20 another way of saying a petechiae on the medial aspect of
21 the right labial fold. So, this is on her genitalia, on
22 the, kind of the inside of the right side of her genitalia
23 there was a small petechial hemorrhage, a small petechiae.

24 Q All right, next.

25 A Scattered petechiae over the left anterior superior

1 iliac crest. So that is kind of the upper part of your
2 hip girdle where your belt usually sits, on the left side
3 on the front.

4 Q You said hip girdle. Can you be a little bit more
5 descriptive?

6 A It is the upper part of the pelvic bone. It is about
7 where your belt would ride on the left side on the front.

8 Q Next?

9 A A bruise in the left perineum umbilical area. That
10 is to the left of your belly button with a few petechiae
11 below it. And the bruise measured one and a half by a
12 half centimeter.

13 Q And that bruise to the left of the belly button and
14 then below, it was scattered petechiae?

15 A That is correct.

16 Q And next?

17 A A bruise that was just above that one that measured
18 one centimeter by one and a half centimeters. In other
19 words, closer, closer to the chest.

20 Q Would that also be part of the front torso?

21 A It would be, the first one was to the left of the
22 belly button, this one would have been just above that a
23 little bit, still on the abdomen.

24 Q Okay. Next?

25 A There was a bruise to the right upper quadrant of the

1 abdomen that would be to the right and above the belly
2 button that measured a half centimeter by a half
3 centimeter.

4 Q And next?

5 A Next is what I describe as a compression injury which
6 appears to be possibly from a fingernail or a bite mark
7 just inferior to the left area. So that is just below the
8 left nipple. And it was, I just noted it being a half
9 centimeter.

10 Q All right. And when you mentioned compression injury
11 consistent with a bite mark or a fingernail, what do you
12 mean by that?

13 A Well, it was different than the other bruises. It
14 wasn't, I did not describe it as being a bruise. It
15 looked more like something that had just barely begun to
16 break the skin but it didn't have the appearance of all of
17 the other bruises. It was more like a line than a smudge.

18 Q And next?

19 A What I describe next is linear petechiae so that is
20 going to be petechiae running in a line over the right mid
21 chest that measures four centimeters in length.

22 Q So four centimeters would be, that would be well over
23 an inch?

24 A That would be about an inch and a half.

25 Q And then next?

1 A A bruise over the left clavicle, that is the left
2 collar bone that measured a half centimeter by a half
3 centimeter.

4 Q And next?

5 A A bruise over the right clavicle, the right collar
6 bone that measured one centimeter by a half centimeter.

7 Q And next?

8 A A bruise over the mandible and the midline, that is
9 the chin that measured two centimeters by one and a half
10 centimeters.

11 Q And next?

12 A A bruise over the left mandible, that is the left
13 side of the jaw that measured one by one centimeter.

14 Q And next?

15 A A bruise over the angle of the left mandible. So
16 that is kind of the angle of the jaw just below the left
17 ear that measured one by one centimeter.

18 Q And next?

19 A A submandibular bruise on the left, so that is going
20 to be a bruise underneath the chin on the left side that
21 measured a half by a half centimeter.

22 Q That would be the left jaw as well?

23 A The left side.

24 Q And next?

25 A And then another bruise, a separate bruise in the

1 same general location, the left submandibular area that
2 measured one and a half by one centimeters.

3 Q And next?

4 A A bruise on the right submandibular area. So now we
5 have moved over to the right side kind of underneath the
6 chin, a half centimeter by a half centimeter.

7 Q Would that be underneath the jaw or underneath the
8 chin?

9 A Underneath the right, underneath the right side of
10 the jaw.

11 Q And next?

12 A Scattered petechiae over the right flank with a
13 bruise that measured a half of a centimeter by a half of a
14 centimeter.

15 Q What is the flank?

16 A The flank would be the right side, not on the front
17 abdominal side and not on the back but on the side, the
18 side of your chest and abdomen.

19 Q All right. So that petechiae also had a bruise?

20 A Yes, the bruise is a half centimeter by a half of a
21 centimeter and then there were scattered petechiae around
22 it.

23 Q And next?

24 A A bruise with scattered petechiae on the left
25 paralumbar area that measured a half centimeter by a half

1 centimeter. The paralumbar area, the lumbar area is the
2 lower part of your back and so this would have been to
3 the, the lower part of the, on the lower part of the back
4 to the left side of the spine.

5 Q And next?

6 A Scattered petechiae over the posterior aspect, that
7 is the back of both of the right and left shoulders.

8 Q And next?

9 A A linear bruise in the scalp in the right parietal
10 area. So that is the area above the ear, maybe slightly
11 above and behind the ear and it measured two centimeters
12 by a half of a centimeter.

13 Q And that would be on the right side?

14 A That is on the right side.

15 Q And next?

16 A A small bruise to the inside of the pinna on the
17 left. The pinna is the ear and so this is a bruise within
18 the folds of the ear on the left.

19 Q That would be inside of the ear?

20 A Well, it would not be inside the ear canal but it
21 would be visible if you looked at her ear. You wouldn't
22 need a special instrument to see it.

23 Q All right. And next?

24 A And the last one is a very small left parietal
25 abrasion. So this is the area above and behind the left

1 ear and the abrasion would be a superficial scrape.

2 Q And that would be in the area of the left ear?

3 A That is right.

4 Q Dr. Seigler, do you know if whether or not Audrina
5 was photographed while she was in the care of the
6 pediatric intensive care unit?

7 A I know she was photographed, to the best of my
8 knowledge it was while she was in the pediatric ICU.

9 Q I am going to ask you to take a look, Dr. Seigler, to
10 some photographs which are in evidence. If you could
11 just, for purposes of review take a look at these

12 photographs to yourself. This would be State's exhibit
13 13, State's exhibit 14, State's exhibit 4, State's exhibit
14 5, State's exhibit 6, State's exhibit 7 and then State's
15 exhibit 8. If you could review these and take your time.

16 A Okay.

17 Q Do those photographs appear to be a fair and accurate
18 representation of Audrina Hepburn as you recall her
19 physical exam?

20 A Yes, to the best of my recollection.

21 Q I am going to ask you to take a look at this
22 photograph, Dr. Seigler, and tell us what we are looking
23 at.

24 MR. WISE: Can you refer to the exhibit number.

25 MS. MAYES: This is State's exhibit 13.

1 MR. ABLE: What number, I am sorry.

2 MR. WISE: 13.

3 A Do you want me to point to them?

4 Q Yes, that would be fine or I can.

5 A That bruise there is number 9 that I described as the
6 scattered petechiae over the left anterior superior iliac
7 crest.

8 That is going to be number 24. That is the bruise
9 that was a half of centimeter by a half of a centimeter
10 with scattered petechiae in the left lumbar area. And the
11 bruises on top of the shoulders, scattered petechiae over
12 the posterior aspect of both the right and left shoulders
13 and that is the left shoulder.

14 MR. ABLE: What is the number on that?

15 MS. MAYES: That is State's number 14.

16 A That is number 10, the bruise to the left perium
17 umbilical area with petechiae underneath it. That is one
18 and a half by a half centimeter.

19 This is the posterior part of her right leg. This is
20 number 7, the right calf, two centimeters by one
21 centimeter.

22 Q Dr. Seigler what, if anything, is the significance of
23 the abdominal bruising that was noted here in State's
24 exhibit 14 and previously in State's exhibit 13 to the
25 lower abdomen, if any.

1 A It reflects an injury. That is an unusual place for
2 a child to have a bruise. There are typical sites that we
3 see accidental bruising. Things like over the eyebrow and
4 around the elbows and forearms. Those are typical places
5 that babies, children this age will run and fall and get
6 bruises. Normal, accidental bruises. There are other
7 locations that we see bruises that make us suspicious and
8 the abdomen is one of those.

9 Q This is State's exhibit 5?

10 A This is the bruising under the chin and you can see
11 on her chin was the two centimeter by one and a half
12 centimeter bruise. That is the right, up a little bit
13 farther and then to the left a little bit. Right there on
14 her chin. And then the other one you were pointing at
15 earlier is the submandibular bruise on the left and there
16 were actually were two. I think only one of those
17 photographs, that is the bruise right there. There are
18 actually two bruises there that were under the angle of
19 the jaw.

20 Q All right. And you mentioned about photographing,
21 are you able to see things with your naked eye during
22 examination that may or may not translate in a photograph?

23 A Yes, definitely. Sometimes things are subtle and
24 just don't photograph well.

25 Q And you have previously noted a bruise to the chin, a

1 bruise to the left jaw, a bruise to the angle of the left
2 jaw, a bruise under the left jaw, another bruise under the
3 left jaw and a bruise under the right jaw. What, if
4 anything, is significant about this pattern of bruising
5 and underneath the jaw?

6 A Again, it is not a typical location for an accidental
7 of a bruise. It would make me suspicious of an inflicted
8 injury, whether it would be, her being struck or squeezed
9 very tightly, something along those lines.

10 Q This is State's exhibit 6. And in this particular
11 photograph, we will start with the back.

12 A If you look at the upper part of the back, the upper
13 shoulders, those are the scattered petechiae over the
14 right and left shoulders. You are looking at her left
15 shoulder there. That is another view of that left bruise
16 that we saw and then the flank but I don't think this is a
17 good angle for it.

18 Q This would be State's exhibit 7?

19 A That is the bruising of the left clavicle, the left
20 collar bone. And you can just barely make out some
21 bruising over the right collar bone as well. She has an
22 IV right there, the bandage from the IV might be obscuring
23 part of that, the bruise you are pointing to. And then if
24 you go down you can see the, to the left of the belly
25 button. And then there is some flank petechiae and again,

1 the one you are pointing to there. That is the one to the
2 left anterior superior iliac crest. That was number 9,
3 scattered petechiae over the left anterior superior iliac
4 crest. And then the flank petechiae on the left again, I
5 don't think that is photographed well in this particular
6 picture.

7 Q All right. Dr. Seigler, what if anything is
8 significant about a pattern bruising along the left collar
9 bone and the right collar bone?

10 A Again it is an unusual area to see a bruise.
11 Children typically break their collar bones but the
12 mechanism is that they fall on their shoulder. And so the
13 bruise that we are seeing here would reflect an injury to
14 that spot. So, again, whether it is being squeezed or
15 struck or slapped, something along those lines.

16 Q And this is State's exhibit 8. We will start here at
17 the head and ask you what, if any, notations?

18 A This is number 28 which I described as being a very
19 small left parietal abrasion. So, more of a scrape type
20 of an injury than a bruise type of an injury.

21 Q This same type of photograph again, along here, what
22 would we be looking at right here along the shoulder?

23 A Number 25 I described as being scattered petechiae
24 over the posterior aspect, it is going to be the back side
25 above the right and left shoulders. And you are looking

1 at the left shoulder here.

2 Q All right. And then State's exhibit 12 for
3 identification, take a look at this here.

4 A I think that is a different view of the same
5 description, the scattered petechiae over the back of the
6 left shoulder.

7 Q Is there anything else significant in this
8 photograph?

9 A If you come further down to what would be about her
10 waste line, that would be number 24. The scattered
11 petechiae to the left, just to the left of the midline,
12 that is it.

13 MS. MAYES: Your Honor, at this time State's exhibit
14 12 will be offered as evidence.

15 THE COURT: Any objection, Mr. Able, Mr. Wise?

16 MR. WISE: I don't have any objection.

17 MR. ABLE: No, sir.

18 THE COURT: State's 12 is in evidence without
19 objection.

20 (Whereupon, State's Exhibit 12 was admitted into
21 evidence.)

22 Q Dr. Seigler, following this medical assessment, what
23 if anything further was done in order to attempt to save
24 Audrina's life?

25 A Well, many things. We bring out treatment down by

1 organ systems and so we left her on the breathing machine,
2 the ventilator which breathed for her because she was not
3 breathing effectively. As the next few days went by she
4 required the addition of blood pressure medication to keep
5 her blood pressure up in the normal range. The main focus
6 of her treatment was to address the brain injury.
7 Although with this particular type of brain injury it can
8 be very difficult to treat. And so some of the things
9 that we do are to try to prevent her from having a seizure
10 or a convulsion when she is at very high risk for because
11 of the bleeding and so we put her on a seizure medication
12 to control that. Even though she didn't have seizures we
13 put her on seizure medicine. We put her on a cooling
14 blanket to protect the brain. We controlled her blood
15 sugar. We repeat the CAT scans. I think she got a total
16 of three CAT scans and we ordered an MRI which will often
17 give us a little bit more information than a CAT scan. We
18 did an MRI of her brain and an MRI of her neck. We did an
19 ultrasound looking at the major blood vessels, primarily
20 the arteries in her neck to make sure there was no damage
21 there.

22 Q And is part of your medical diagnosis and treatment
23 to obtain a history to try and determine the sequence of
24 events that led up to the child being discovered in this
25 condition?

1 A Yes.

2 Q And did that history in Audrina's case include
3 information that she was reported by all family members to
4 be fine and in her usual state of health up to being put
5 in her crib that night?

6 A That is my understanding although the history that I
7 relied on in this case was from Dr. Curry in the emergency
8 room and from other physicians involved. I had very
9 little direct interaction with the family.

10 Q Was there another pediatric intensive care specialist
11 who was also working on Audrina's case that did have
12 contact with the family?

13 A There was. I took care of her from Tuesday morning
14 until about Wednesday evening. And then one of my
15 colleagues took care of her from Wednesday evening until
16 Friday evening. And then another colleague from Friday
17 evening until she died, I think it was on Saturday.

18 Q All right. And when we talk about a history of a
19 child who appeared normal and behaved normal and ate
20 dinner as normal and was walking and crawling and
21 interacting, in your opinion and to a reasonable degree of
22 medical certainty would she have at that point had
23 sustained a subdural hemorrhage, the retinal hemorrhage
24 and the severe brain injury?

25 A No. These are, she would of had symptoms virtually

1 immediately after an injury this severe and she would have
2 at the least been in a coma and likely have had more
3 severe symptoms than that. After sustaining an injury
4 like this she would not have been a normal appearing
5 child.

6 Q Nothing further.

7 THE COURT: Mr. Able.

8 CROSS-EXAMINATION

9 By Mr. Able:

10 Q Doctor, based upon your examine of Audrina it would
11 be your opinion that all of her injuries including all of
12 the bruising and the petechiae that was shown in the
13 photographs that they could all have happened at the same
14 time?

15 A I think it is possible that they all could have
16 happened at the same time, yes.

17 Q And you say that this child would have been
18 immediately symptomatic with the injuries that she
19 sustained?

20 A Well, with the injury to her head she would have been
21 immediately symptomatic, yes.

22 Q You are talking about the acute subdural?

23 A The acute subdural hemorrhage, the head injury that
24 is severe enough to cause acute subdural hemorrhage and
25 retinal hemorrhage is going to produce immediate symptoms.

1 Q And I think you said as far as the CT scans and the
2 subdural hemorrhages, they looked white when you looked at
3 the scan?

4 A The appearance on the scan is of fresh blood, it is
5 white on a CAT scan.

6 Q And I believe you said that the CT scan of Audrina
7 showed a fairly recent injury?

8 A That is correct.

9 Q That is all I have.

10 THE COURT: Mr. Wise.

11 CROSS-EXAMINATION

12 By Mr. Wise:

13 Q Dr. Seigler, were some of the bruises that appeared
14 to have an appearance of being older than some of the
15 others?

16 A I can't say.

17 Q You can't say one way or the other?

18 A I can't say.

19 Q Petechiae, why does that show up differently from
20 another bruise?

21 A Petechiae is a rupture of a microscopic blood vessel
22 close to the surface of the skin, bruising tends to be
23 ruptured blood vessels a little bit deeper in the skin.

24 Q And the same type of injury would cause either one?

25 A The same type of mechanism.

1 Q Now, what you saw of the abdomen of the child, is
2 that consistent with a pinching type of bruise?

3 A I don't think I can say.

4 Q You can't say one way or the other?

5 A I can't say the specific mechanism of a particular
6 bruise, no.

7 Q Did you note the bruise to the forehead?

8 A I don't think I recorded that.

9 Q Excuse me, you did not?

10 A I did not record that.

11 Q And if there had been testimony that that bruise had
12 been there for several days, there is nothing in your
13 finding to dispute that fact?

14 A I am sorry, say that again.

15 Q If there was testimony, if there were testimony that
16 the bruise on the forehead had been there for several days
17 would there be anything to dispute that fact in your
18 findings?

19 A I am not sure I understand your question.

20 Q All right.

21 A I did not note the forehead bruise. I can't
22 remember, it has been a year and a half. There could have
23 been a forehead bruise that I just didn't write down. But
24 I am not, I am just not sure I understand exactly what you
25 are asking me.

1 Q I hand you exhibit 17, that forehead bruise.

2 A Well, this is dated October 6th of 2009. Again, I
3 don't, I don't remember whether or not she had a bruise on
4 her forehead. I didn't write it down. That is all I can
5 say about it.

6 Q And by the same token you can't say whether these
7 happened the same night, over a period over three or four
8 days?

9 A It is hard to say on bruises. It is hard to put
10 timing to bruises.

11 Q So, it is possible that it happened the same night,
12 it is possible that it happened over three or four days or
13 maybe a week?

14 A I think that is a possibility.

15 Q Would you go as far as a week?

16 A I don't think I would venture, I am not a bruise
17 expert and I don't know.

18 Q You don't know?

19 A No.

20 Q But they are readily noticeable to someone who
21 regularly cares for this child?

22 A That forehead bruise that you just showed me is
23 readily apparent, yes.

24 Q And so the other bruises that you saw are also
25 readily apparent?

1 A Some of them, yes. It would depend on whether she
2 had clothes on.

3 Q If someone bathed the child they would be readily
4 apparent if they were bathing, correct?

5 A Right, yes.

6 Q Thank you.

7 MS. MAYES: Nothing further, Your Honor, we would ask
8 that Dr. Seigler be released.

9 THE COURT: You are released. Any objection?

10 MR. WISE: No, sir.

11 MR. ABLE: No objection.

12 THE COURT: Thank you for coming and you are excused.
13 Ms. Mayes, you go ahead and call your next witness and
14 then you three come up here.

15 MS. MAYES: The State calls Dr. Mary-Fran Croswell.

16 (Whereupon, a bench conference was held in the
17 presence of the jury but out of the hearing of the
18 jury.)

19 Dr. Mary-Fran Croswell, after being duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 By Ms. Mayes:

23 Q Dr. Croswell, where are you employed?

24 A I am employed at the Greenville Hospital System.

25 Q And what is your job there at Greenville Hospital?

1 A I am a pediatrician in the division of forensic
2 pediatrics child abuse and neglect.

3 Q I am going to ask you some questions specifically
4 about that. At Greenville Hospital what different
5 positions are in the pediatrics?

6 A There are multiple subspeciality divisions,
7 endocrinology, respiratory, hematology, oncology and
8 forensic pediatrics is a separate subspecialty of ...
9 pediatrics.

10 Q All right. Can you take us through some information
11 concerning your educational background that led to you
12 becoming not only a doctor but a doctor who specializes in
13 intensive care pediatrics?

14 A I graduated from Wake Forest University with a
15 Bachelors Degree, went on to medical school and graduated
16 from the University of Louisville School of Medicine. I
17 did a pediatric residency program at the Greenville
18 Hospital System and then after residency have done
19 multiple course work in medical programs to become a
20 specialist in the field of child abuse and neglect.

21 Q And specifically what educational training and
22 clinical training have you received to become a
23 pediatrician who specializes in child abuse and neglect?

24 A On an annual basis I go to multiple conferences and
25 continuing medical education course work to not only

1 review and update any new current knowledge in the field
2 of child abuse and neglect. And I am also part of a state
3 wide network of child abuse pediatric providers and we do
4 peer review with each other three times a year.

5 Q And have you testified previously in court as an
6 expert in the field of pediatrics involving child abuse
7 and neglect?

8 A Yes, I have.

9 MS. MAYES: Your Honor, at this time the State would
10 offer Dr. Mary-Fran Croswell as an expert in the field of
11 pediatric child abuse and neglect.

12 THE COURT: Any objection, Mr. Able?

13 MR. ABLE: No objection.

14 MR. WISE: No objection.

15 THE COURT: Again, ladies and gentlemen, again
16 normally a person is not able to give opinion testimony
17 when they testify. There is an exception for this that I
18 have explained to you previously with the other physicians
19 who have testified. Dr. Croswell has been acknowledged as
20 an expert by all concern in the field of pediatric child
21 abuse and neglect therefore she is able to give opinion
22 testimony in that area. That doesn't mean you have to
23 accept it, you may give the weight and credibility that
24 you feel is appropriate for that testimony. Ms. Mayes,
25 you may continue.

1 MS. MAYES: Yes sir, Your Honor.

2 Q Now, Dr. Croswell, where are you normally working
3 with your practice?

4 A I work in multiple locations. I see patients in the
5 outpatient setting at formerly known as the Greenville
6 Rape Crises and Child Abuse Center. I see patients at the
7 Children's Shelter where we do foster care assessments on
8 children that have been removed from the home for abuse or
9 neglect issues. And then serve as a consultant in the
10 hospital for patients who are admitted with concerning
11 injuries.

12 Q And in this particular case were you involved as a
13 consultant at the request of Dr. Robert Seigler with the
14 Pediatric Intensive Care Unit?

15 A Yes, I was.

16 Q And what happened when you became involved. What is
17 the first step along the way?

18 A When I become involved?

19 Q Yes.

20 A The first thing I do is review all information that
21 is available in the charts. So do extensive review, any
22 type of documentation that has led to the child being
23 admitted to the hospital.

24 Q All right. And on what date were you involved as a
25 consultant or did you get involved in the case involving

1 Audrina Hepburn?

2 A I was consulted and evaluated her on October 13th,
3 2009.

4 Q So October 13th would be right, the day she got
5 there, the day she was admitted after being transferred
6 from Self Hospital. Is that correct?

7 A That is correct.

8 Q And in obtaining a history from family members
9 necessary for medical diagnosis and treatment?

10 A It is a very important component, evaluation.

11 Q What efforts did you undertake in order to obtain a
12 history or try and learn a sequence of events that led to
13 Audrina being discovered in this condition?

14 A I spoke to the family members who were present in the
15 room which included the mother, the father and maternal
16 grandmother as a patient.

17 Q And just to clarify, the mother would be Ashley
18 Hepburn?

19 A Yes.

20 Q And the father was Daniel Hepburn, you are referring
21 to the biological father?

22 A The biological father.

23 Q And so at that point he had been notified and had
24 arrived in Greenville as well?

25 A That's correct.

1 Q And then you mentioned the grandmother, who are you
2 referring to?

3 A I don't know her by name, I just documented as the
4 maternal grandmother.

5 Q So that would be Ashley's mother?

6 A Correct.

7 Q The mother of Ashley Hepburn. What, Dr. Croswell,
8 were you able to ascertain concerning Audrina's condition
9 or state of health leading up to being discovered in this
10 condition?

11 A Can you repeat that question.

12 Q What history were you provided by Ashley Hepburn?

13 A Okay. The history that she provided me was that
14 Audrina had been well the day prior to coming to the
15 hospital. She had had a little bit of decreased appetite
16 but nothing really out of the ordinary. She had given her
17 a bath that evening and laid her down to bed at
18 approximately 8:30 p.m. After she laid her down she
19 became fussy and the mother said she picked her up. She
20 gave her some Orajel and the patient seemed to show some
21 improvement. And then she went to go put the baby back to
22 bed around 10:30 p.m.

23 Q And if I can stop you right there. So, your
24 understanding from Ms. Hepburn is that the child had been
25 given a bath and initially put to bed around 8:30?

1 A That is correct.

2 Q And then at some point Ms. Hepburn took her out of
3 the bed or crib and gave her Orajel?

4 A That's correct.

5 Q And what was reported to have happened next?

6 A That the baby went back to bed around 10:30 p.m.

7 Q And what, if anything, was reported to have happened
8 next?

9 A She said the next thing she remembers, the next time
10 she saw her was when the, her boyfriend brought her into
11 the room where she was sleeping.

12 Q Anything else reported?

13 A By the mother regarding those events?

14 Q Correct.

15 A No.

16 Q All right. When she talked about seeing the child or
17 the child being brought to her did she describe the
18 condition she was in at that point?

19 A She said that she noted that there was some blood on
20 her mouth and tongue. And that she began screaming and
21 sought help as soon as she saw her.

22 Q So, it was also noted at that point when she observed
23 the child she had blood on the mouth and tongue?

24 A That's correct.

25 Q And your understanding services or 911 was called

1 following that event?

2 A That is correct.

3 Q Was there anything additional provided in the history
4 to explain Audrina being found in this condition?

5 A No, there was not.

6 Q All right. What was the next step you took in order
7 to provide an assessment and treatment for Audrina?

8 A I reviewed any of the radiologic studies that were
9 done prior to me coming in.

10 Q And having reviewed the radiological studies, you are
11 talking about CT scans?

12 A That is correct.

13 Q What did you learn having reviewed the CT scan and
14 reports and findings?

15 A The CT scan showed that she had a significant brain
16 injury. Specifically she had a right subdural hematoma
17 which is a bleeding within the skull, on top of the brain.
18 Also bleeding in between the two lobes of the brain and
19 swelling of the brain. In addition the swelling was
20 significant enough that it was pushing normal brain
21 structures aside.

22 Q What happens when that occurs, when there is a bleed
23 and then there is swelling that causes the brain to shift?

24 A What happens clinically?

25 Q Yes.

1 A These findings are significant of, significant brain
2 injury. When, typically when patients have this type of
3 brain injury there can be a wide range of clinical
4 responses, they can have trouble breathing, they can have
5 loss of consciousness, they can have seizures. There is a
6 wide range of what can happen when we see these types of
7 findings on their CT scan.

8 Q Did you have the opportunity to also do an assessment
9 of her eyes or look for what we call retinal hemorrhages?

10 A The next step was to do my physical exam and that
11 included assessment of her eyes.

12 Q And when you did the eye assessment what did you
13 observe?

14 A So, as not being an eye specialist I use a typical
15 ophthalmoscope which most doctors have in their doctors
16 offices, very simple, just a magnification tool. I look
17 in the back of her eyes through her pupils. At this point
18 they had not been dilated with medicine so you have a
19 limited view of what you can see in the back of the eye but
20 I was able to view some retinal hemorrhage in one of her
21 eyes at that point and time.

22 Q Dr. Croswell, when you have the combination or the
23 constellation of injuries such as acute subdural
24 hemorrhage, the retinal hemorrhage with bleeding in the
25 eyes and a severe brain injury in a child who has not

1 suffered significant trauma such as a motor vehicle
2 accident what, if anything, does that suggest?

3 A Without a history of a significant accidental injury
4 such as you mentioned, a motor vehicle crash or a fall
5 from several stories, this constellation of findings is
6 most consistent with abusive head trauma.

7 Q All right. And in Audrina's case were you able to
8 reach an overall impression or diagnosis?

9 A Yes.

10 Q And what was that?

11 A She suffered from abusive head trauma.

12 Q Were you also able to conduct a physical exam to look
13 for any other external findings?

14 A Yes, I was.

15 Q What, if anything, did you note?

16 A In addition to, she had multiple skin findings,
17 bruising and a little bit of swelling around her scalp
18 that were able to be seen.

19 Q All right. What, if anything, did you note
20 concerning bruising around the chin or jaw area? You can
21 refer to your notes.

22 A She had multiple bruises on her face including the
23 area around her jaw bone, on both sides of her jaw bone.

24 Q I am going to show you what is State's exhibit 5 and
25 ask you to take a look at this. Are you able in this

1 photograph to visualize any of the bruising that you
2 noted?

3 A Where you had your fingertip was one of the bruises.
4 In addition around the tape were several bruises where
5 both above and below the tape which are not able to
6 distinguish I think on this projection.

7 Q What, if anything, Dr. Croswell is significant about
8 the pattern of bruising as is presented in your
9 examination?

10 A I am not understanding your question.

11 Q Do you have any notations specifically concerning
12 those bruises, concerning the shape or size?

13 A Certainly the shape and the size are consistent with
14 what you would expect with fingertip marks.

15 Q All right. What about the pattern of number of
16 bruises along the jawline and underneath the chin. Can
17 you tell us whether or not that would be consistent with a
18 grabbing or choking?

19 A It is difficult, specific mechanism of those
20 injuries. However that location of bruising patterns is
21 rarely seen, if at all seen reported to have occurred from
22 any type of accidental trauma.

23 Q Now, I want to ask you a little bit more about the
24 information or history you were able to obtain from the
25 mother, Ashley Hepburn. Did she report to you concerning

1 whether or not the boyfriend, Brandon Lewis, resided in
2 the home?

3 A As part of the history that we take, one portion of
4 that is a social history. And at that time the mom said
5 that Audrina lived with her, her maternal grandmother,
6 grandmother's boyfriend and the two-year-old sibling. She
7 said that her mother's boyfriend did not live in the home
8 at that time.

9 Q What about the boyfriend, did she report how long
10 they had been dating?

11 A She said that she had known him for two and a half
12 years and that they had begun dating about six months
13 previously.

14 Q So, according to her information the relationship had
15 been going on approximately six months?

16 A Correct.

17 Q Now, when we talk about the injuries that you
18 previously mentioned, the acute subdural hemorrhage, the
19 retinal hemorrhage, severe brain injury, at what point
20 once a child has sustained that combination of injuries or
21 abusive head trauma, at what point would a child, would
22 you expect a child to become symptomatic?

23 A With this severe head injury I would expect that the
24 child would have been symptomatic immediately after the
25 injury occurred.

1 Q Would her caregivers be able to notice, would you
2 expect that a caregiver or caregivers would notice her
3 symptoms following such an injury?

4 A Yes, I would expect that there would be a dramatic
5 change in her demeanor.

6 Q And you were given the history that Audrina had
7 appeared normal that evening and had been in her highchair
8 eating dinner. Do you have an opinion as to whether or
9 not that brain injury would have been sustained at that
10 point and time?

11 A I would not expect that she would have been able to
12 do such things as described.

13 Q Would you expect her to appear happy and normal and
14 be walking and crawling?

15 A No, I would not.

16 Q The bruising that you noted what, if anything, can
17 you tell us in a study of child abuse and neglect in the
18 medical field, about when bruising occurs by accident in
19 toddlers and when bruising in a toddler might not be an
20 accident.

21 A When we are asked to evaluate bruising in children
22 there are multiple things that we have to consider. First
23 is the age and development level or abilities of the
24 child. And then both the location and numbers of the
25 bruising that we see. In a child of Audrina's age she is

1 a toddler and that age group accidental injuries are
2 commonly associated with bruising on the lower legs, like
3 on the knees and the shins. Also in this age group,
4 specifically you can commonly see bruising in the forehead
5 from accidental injuries. We also know that there are
6 certain sites on the body that are rarely ever seen in
7 accidental injuries. Those include bruising of the ears,
8 the face, outside of the forehead, the arms, hands and
9 feet, the stomach and back are just not sites that we
10 typically see toddlers getting bruising from normal
11 activity or even accidental injury that they seek medical
12 care for.

13 Q And specifically when we talk about something such as
14 retinal hemorrhage. Are retinal hemorrhages common
15 injuries to children?

16 A No.

17 Q Why or why not?

18 A There can be a wide reason of causes for retinal
19 hemorrhage both medical, accidental and non-accidental.
20 Specifically in Audrina's case there was a pattern there
21 that is not reported to be seen outside the setting of
22 abusive head trauma. And these results from significant
23 forces applied to the brain and as the part of that, the
24 eyes also suffered those same forces causing the bleeds
25 that we saw and described.

1 Q And you mentioned this combination of injuries, I
2 think you said before would require significant force.
3 When we talk about falls, what kind of fall would you
4 expect it would require to produce that type of injury?

5 A It would be from several stories, more than a story
6 high. Not a simple childhood fall or a toddler fall or
7 even being dropped from a caregivers arms or fall from a
8 bed or any of those types of falls.

9 Q And you had mentioned injuries which are considered
10 non-accidental. I want to show you some photographs here
11 that would be State's exhibit 4, did you have the
12 opportunity to observe the abdominal bruise?

13 A Yes. There was a bruise there that you pointed to
14 and also one in the lower left corner of the stomach.

15 Q All right. This is State's exhibit 13. Can you tell
16 us whether these types of injuries are consistent or not
17 consistent with an accident?

18 A When we see bruising on the stomach, it is very rare.
19 to see bruising on the stomach in the first place because
20 there is not really any bony prominences for the skin to
21 be compressed against to cause the bruises. So bruises on
22 the stomach require a significant force to that area to be
23 able to cause contusions in that location. So they are
24 very concerning for abusive injuries.

25 Q And you mentioned also bruising inside the ear.

1 What, if anything, can you tell us about that type of
2 bruising?

3 A Bruising on the earlobe, it is not reported in
4 accidental injury. Usually it is some type of direct blow
5 or compression force that causes that, the ear to be
6 compressed against the skull resulting in the bruising to
7 the ear. So any time we see bruising to the ear in and of
8 itself it is concerning for abusive injury.

9 Q Nothing further.

10 THE COURT: Mr. Able.

11 CROSS-EXAMINATION

12 By Mr. Able:

13 Q Dr. Cross, when you said it was part of your
14 constellation that you reviewed all the medical records
15 and obtained the family history from the family members
16 present at the hospital, correct?

17 A That is correct.

18 Q And you also did a physical exam of Audrina?

19 A Yes, sir.

20 Q Now, as part of your, the history you obtained. I
21 want to make sure I understand. Ms. Hepburn told you that
22 morning or that day that Audrina had been in good health
23 the day before?

24 A Yes.

25 Q And she told you that she appeared normal and had a

1 little decreased appetite?

2 A Correct.

3 Q Decreased appetite would have been something that you
4 would have associated with these type injuries?

5 A She described it as not atypical from her normal
6 behavior of eating and I would not associate just that
7 finding with this degree of head injuries.

8 Q She just didn't eat as much that day as she normally
9 did?

10 A Right.

11 Q Ms. Hepburn didn't report anything to you out of the
12 ordinary about her health the day before?

13 A No. The only thing she mentioned was that she was a
14 little fussy but that got better once she put the Orajel
15 on.

16 Q Told you she gave Audrina and her brother a bath
17 about 8:30 that evening the night before?

18 A Correct. She told me that she gave Audrina a bath.

19 Q And gave her a bath and laid her down and at
20 approximately 8:30 she became fussy and Ms. Hepburn picked
21 her back up out of the crib?

22 A Correct.

23 Q She was teething and put some Orajel on her gums and
24 she showed some improvement and she put the baby back to
25 bed around 10:30?

1 A That's correct.

2 Q Ms. Hepburn then reported she went to read some
3 stories to the patient's, two and a half year old sibling
4 in the bedroom and fell asleep while putting him to bed?

5 A Correct.

6 Q And this was the morning of October 13th she was
7 telling you this?

8 A I am not sure what time on the 13th but it was
9 sometime during the day on the 13th.

10 Q And this was all taking place, when you were
11 interviewing her was taken place at Greenville Memorial?

12 A Correct.

13 Q She said that she and the sibling had fallen asleep,
14 gone to bed and fallen asleep. Ms. Hepburn then reported
15 she was awoke at some point and asked by her boyfriend if
16 she wanted to watch a movie which she declined?

17 A That is correct.

18 Q The next thing she remembers waking up to her
19 boyfriend holding the patient in his arms saying she would
20 not wake up and he found her face down in the crib with
21 her head pushed up against the side rail?

22 A That is correct.

23 Q And Ms. Hepburn reported to you there was blood on
24 Audrina's mouth and tongue?

25 A Yes, she did.

1 Q And that after being awoke by Mr. Lewis she screamed
2 for her mother to come help her?

3 A That's correct.

4 Q And I want to make sure I understood, did you say in
5 response to your direct examination, did you say my client
6 reported to you or that her boyfriend did not live in the
7 home or that she reported that her mother's boyfriend did
8 not live in the home?

9 A Mother reported that her boyfriend.

10 Q Okay. I thought that is what you said. Okay. Now,
11 you also obtained the history that morning from Mr.
12 Hepburn, the father?

13 A That's correct.

14 Q And he told you that he had cared for Audrina for a
15 period of about three days, five days prior to admission?

16 A Audrina had left his care five days prior to
17 admission.

18 Q And Mr. Hepburn reported that during his visit with
19 Audrina she had had a subjected fever and was a little
20 fussy?

21 A Correct.

22 Q And that he noted for you the bruise to the forehead?

23 A That is correct.

24 Q He said that there was no other bruising except for
25 the bruise to the forehead while he had her in his custody

1 or visitation?

2 A That is correct.

3 Q And he also observed the diaper rash and didn't note
4 any other bruising or rashes on the patient?

5 A Correct.

6 Q Now, you didn't speak to Richard Brandon Lewis at the
7 hospital, did you?

8 A No sir, I did not.

9 Q Did you ever see him there while you were talking to
10 the parents?

11 A No, I did not.

12 Q Now, talking about the bruising on Audrina, you
13 mentioned there are medical studies that look at patterns
14 of normal bruising in children this age?

15 A That is correct.

16 Q And Audrina would have been in a toddler age group?

17 A Yes.

18 Q And she was how old, sixteen months old?

19 A Yes.

20 Q And she would have been the correct age learning to
21 walk?

22 A Yes. And the parents had described that she could
23 walk independently in the medical history.

24 Q Now, the bruise to the forehead, did you note the
25 bruise on your examination?

1 A I did.

2 Q Okay. And for a toddler Audrina's age just learning
3 to walk, that wouldn't have been something unusual for a
4 toddler that age to have a bruise on its forehead?

5 A If the toddler had an isolated bruise to their
6 forehead that would not be atypical.

7 Q Okay. And you would expect that, babies learning to
8 walk they fall over?

9 A Correct.

10 Q And when they fall they fall and bump their heads?

11 A That is correct.

12 Q And the studies also show that in a child that age
13 learning to walk you can expect some accidental bruising
14 to the lower leg, the shin?

15 A Yes.

16 Q You said earlier that you described, Ms. Hepburn
17 described Audrina that day before as very normal?

18 A Yes.

19 Q And that with these injuries and the acute subdural
20 hemorrhage, the retinal hemorrhage and the severe brain
21 injury, you would expect her to be symptomatic instantly?

22 A Yes, I would.

23 Q All right. Now, as far as the bruises on Audrina, it
24 is very difficult to date a bruise?

25 A It is very difficult to date a bruise.

1 Q A very hard thing to do?

2 A It is.

3 Q The bruises on Audrina all appear to be the same
4 color?

5 A There were different colors but that still doesn't
6 give us any information about dating bruises.

7 Q And the injury to Audrina's brain would not be
8 something you would expect from a fist or a hand?

9 A I would expect that it would require a significant
10 force, it can be a direct impact force, it can be
11 acceleration-deceleration forces or a combination of the
12 two. I don't think that I can exclude a severe blow to
13 her head, I can't exclude that as a possibility.

14 Q As an expert in the field of pediatrics, Doctor,
15 would you know what sound a baby makes when if it is being
16 shaken?

17 A No, I would not.

18 Q There is no studies to indicate?

19 A I have not seen any studies indicating--

20 Q That would indicate what a baby sounds like if it is
21 being shaken?

22 A Right, I would have no knowledge of that.

23 Q That is all I have of this witness. Thank you.

24 THE COURT: Mr. Wise.

25 CROSS-EXAMINATION

1 By Mr. Wise:

2 Q Dr. Croswell, babies being shaken as in pain you
3 would expect that baby to cry?

4 A Can I, I am sorry, I didn't understand.

5 Q If a baby is being shaken and is in pain you would
6 expect that baby to cry or holler out of some sort?

7 A I don't think I can really comment, I don't have a
8 mechanism of cause to this baby's injuries.

9 Q Let me ask you this. When babies are in pain do they
10 tend to cry?

11 A When they are in pain crying can be exhibited, yes.

12 Q So, if a baby is being shaken and is in pain then you
13 would expect again some form of outcry?

14 A I don't really know because the forces required,
15 don't know if they are trying to breathe, I don't know
16 what is going on during that time period.

17 Q Now, if the bruise on the forehead had been there for
18 a number of days that would tell you the other bruises
19 could have also been there for a number of days?

20 A Again, the medical literature doesn't support any
21 type of reliability in trying to date bruises. So they
22 could have been present hours, they could have been
23 present days.

24 Q Now, when you talk about abusive head injury, well
25 let me back up one second. If this child had fallen from

1 several stories you would expect to find a fractured
2 skull?

3 A Correct.

4 Q And it wasn't in this case?

5 A I did not find a fractured skull.

6 Q There is no fractured skull?

7 A No.

8 Q So, we know that is out of the realm of possibility.

9 So, what you are looking at here then is some sort of
10 mechanism that the internal brain moved inside the cranial
11 cavity?

12 A That is correct.

13 Q And if someone had been hit up side the head you
14 would have thought, you would expect to find a bruise
15 where that blow took place?

16 A I would expect, if there was an impact, that you
17 would see some type of finding either swelling or on
18 autopsy bleeding within the scalp to signify.

19 Q If it is severe enough to cause the injury?

20 A Correct.

21 Q So, if someone is hit up side the head with a hand
22 you would expect that to be severe enough to have left a
23 bruise on the outside of the head of some manner?

24 A Or on autopsy on the internal scalp. Sometimes you
25 don't see those on the outside.

1 Q It would depend somewhat on how long death was after
2 the blow was inflicted?

3 A There are multiple factors.

4 Q There would have been some objective signs of that?

5 A There would be objective signs to?

6 Q To a blow to the head?

7 A Yes.

8 Q So what you are looking at here is basically what is
9 commonly called as shaken baby?

10 A No. Because she did have some evidence of bleeding
11 in the scalp so I don't know if it was
12 acceleration-deceleration forces that you see in shaking
13 or if it was an impact injury or a combination of the two.

14 Q So, you don't know?

15 A I don't know.

16 Q Now, the, did you notice the small bruises around the
17 neck of the child they call petechiae?

18 A Let's see. I don't think those--

19 Q Did you see that on the child when you examined?

20 A Let me just review my notes. I commented on bruises
21 on the neck but I didn't comment on any petechiae on the
22 neck at that time.

23 Q Let me hand you State's exhibit 18 and ask you about
24 that. Is that petechiae on the neck?

25 A It does appear from the photograph that there are

1 petechiae on the neck.

2 Q And that would be caused by someone grabbing the
3 neck?

4 A It could be caused from someone grabbing a neck, it
5 could be caused with a blow to the neck with the hand.

6 Q Let me see, excuse me, so everybody knows what we are
7 talking about here. This is State's exhibit 18. And if
8 you would, we are talking about this little area right in
9 here, is that correct?

10 A Correct.

11 Q Tell us what that could indicate. This was taken, I
12 believe, on September 17th of 2009.

13 A And again I am reviewing these from the photographs,
14 not from direct examination.

15 Q Right.

16 A From the photograph it appears that if these were a
17 result of trauma you can get petechiae either from like a
18 forceful grabbing. You can also get them from a slap and
19 actually the capillaries in between the imprints of the
20 fingers because of the force applied to that area. Those
21 would be two mechanisms for petechiae resulting from
22 trauma.

23 Q So you have a little small area of petechiae here and
24 an area right here?

25 A Yes.

1 Q And you are saying the finger would lie then between
2 the two?

3 A That could be a mechanism that would cause that.

4 Q Either by squeezing or slapping?

5 A Yes.

6 Q Is that correct?

7 A Correct.

8 Q Now, the bruise to the abdomen, was that consistent
9 with someone pinching the child?

10 A I can't tell you what mechanism, just a significant
11 force applied to the abdomen.

12 Q To the abdomen somehow?

13 A Yes.

14 Q Now you said there was one that you thought was a
15 finger?

16 A Around, there were some fingertip appearing, size
17 marks around the mandible, the jaw bone.

18 Q And which jaw bone, do you recall which jaw bone?

19 A I would have, let me look at my notes again. They
20 appeared on both sides actually.

21 Q As if someone would grab the front of the jaw like
22 that?

23 A It could be consistent with that.

24 Q But you can't say it was that?

25 A Right.

1 Q It would be consistent with that?

2 A Correct.

3 Q And that is one way you would get that type of injury
4 on both sides of the jaw?

5 A Correct.

6 Q Would you also agree that the type of injuries we are
7 describing here with some of the bruising and some of the
8 acceleration injury to the head are injuries that are
9 really inflicted out of somewhat frustration?

10 A I really wouldn't be able to--

11 MR. ABLE: Your Honor, I object, speculation.

12 MR. WISE: She is an expert, she is entitled to
13 speculate a little bit.

14 THE COURT: She is entitled to give opinion
15 testimony, I think perhaps if you would draw upon your
16 experience, Mr. Wise, and rephrase that question based
17 upon her expertise.

18 Q You have been involved in how many child abuse cases,
19 would you say?

20 A I see a wide range of child abuse, hundreds of cases.

21 Q Okay. And you interviewed people who have admitted
22 abusing the child?

23 A I have never interviewed anyone who has admitted
24 abusing a child. Medical literature suggesting, you know,
25 with perpetrator interviews but I have never interviewed

1 anyone who has admitted.

2 Q But have you reviewed the medical literature in the
3 area?

4 A I have.

5 Q And the medical literature in the area would tell you
6 that it tends to be a frustration emotional type of
7 injury?

8 MR. ABLE: Same objection.

9 THE COURT: Overruled.

10 A I think the most common trigger point for this type
11 of injury is crying in an infant or toddler age is
12 reported in the medical literature.

13 Q And why does crying trigger this?

14 A I think it probably elicits frustration in not being
15 able to take care or to address the needs of the child.

16 Q Thank you.

17 THE COURT: Ms. Mayes, redirect?

18 MS. MAYES: Yes sir, Your Honor.

19 REDIRECT EXAMINATION

20 By Ms. Mayes:

21 Q Dr. Croswell, I would like to follow up with a little
22 more on some of those questions that you got about
23 bruising and colors and dating. Why is it that a bruise
24 can't be given a specific date?

25 A Multiple medical studies have been done looking at

1 how well physicians can accurately date bruises. And the
2 results are that we are just very unreliable at accurately
3 giving any type of precision to the time that the injury
4 occurred, to the bruise occurred. There can be a wide
5 range of variability as far as when bruises first appear
6 depending on the location, how deep the bruise is, how
7 long it takes for it to tract to the skins surface to be
8 able to actually visualize the bruise on the skin surface.

9 Q So, with that understood that you cannot give a
10 specific date to a bruise I would like to ask you a few
11 questions about the colors that you noted in your exam, if
12 you could shed some light on that. The forehead bruise
13 that Mr. Wise was asking you about. First let me ask you
14 this, Dr. Croswell, your exam was on what date?

15 A October 13th, 2009.

16 Q We are talking about within 24 hours of when she had
17 last reported to have been healthy?

18 A Correct.

19 Q And with this exam, what if anything was noted
20 concerning the color of the forehead bruise that you
21 observed?

22 A There were two forehead bruises. One was yellow and
23 it was located in the middle of the forehead and then
24 there was a purple bruise on the right forehead just
25 underneath the hairline.

1 Q So the yellow bruise was located where?

2 A In the middle of the forehead.

3 Q And realizing that you cannot date bruises I believe
4 you were shown a photograph, that is State's exhibit 17
5 that is dated October 6th. If a child has a forehead
6 bruise, let's say a week before she is seen by you is it
7 possible for that forehead bruise to appear yellow?

8 A It is possible.

9 Q And the purple bruise was located where?

10 A The right forehead just underneath the hairline.

11 Q And what about the injuries that you noted to the
12 mandible or jaw area that Mr. Wise was asking you about?

13 A They were--

14 Q You need to break them down in different colors let
15 us know.

16 A I specified one was purple but they all appeared in
17 the same color in that area.

18 Q So, how many different ones did you note around the
19 jaw or underneath the jaw or chin area?

20 A There were five bruises that I noted and then I also
21 noted that I could distinguish the taping that was
22 obstructing full view of some of the bruising.

23 Q So there were at least five bruises underneath the
24 jaw or chin area. Would that be correct?

25 A At least five, five to six.

1 Q And according to your notation what color were these
2 bruises?

3 A Those were purple.

4 Q All of them were purple. And are these the bruises,
5 can you tell us whether or not those are the bruises that
6 you had previously referred to as possible fingertip type
7 bruise?

8 A Correct.

9 Q And when we talk about the color of the abdominal
10 bruises, what if anything was noted?

11 A It was a bright purple bruise.

12 Q Was there one or more?

13 A There was two.

14 Q And what if any colors were noted?

15 A I commented about the color of the bright purple
16 bruise that was next to the belly button but I didn't
17 comment on the color of the c-shaped bruise on the lower
18 left corner of the abdomen.

19 Q All right. So, just to clarify you noted that there
20 were two bruises to the abdomen, one was purple?

21 A It was a bright purple.

22 Q Bright purple?

23 A Yes.

24 Q And was there a color to the second bruise that you
25 noted?

1 A I did not know the color.

2 Q How do you describe that bruise?

3 A 1.75 by 1.75 centimeter inverted c-shaped bruise,
4 contusion in the left lower quadrant.

5 Q C-shaped bruise. What if any significance is if you
6 did not note the color of a bruise or a contusion?

7 A Just in my own pattern I typically noted if it is
8 outside of the purple color, I tend to note if it is
9 yellow or brown or a brighter color, just in my typical
10 notation. So, I would expect that that would have been a
11 purple C-shaped contusion but I did not document.

12 Q Now, when you talked about the chest area what if any
13 notations did you make concerning the colors of bruises to
14 the chest area?

15 A She had a bruise on her left chest that was
16 purple/yellow in color. And she had two small circular
17 bruises underneath her left collar bone.

18 Q So, just to clarify, what would be the location of
19 the purple/yellow bruise to the chest area?

20 A It was inferior to the clavicle which is the collar
21 bone. So it is underneath.

22 Q Underneath the collar bone?

23 A Underneath the collar bone.

24 Q Did you note what side?

25 A On the right.

1 Q Right collar bone. And then you further noted two
2 circular bruises at what location?

3 A Underneath the left collar bone.

4 Q And was a color noted for those?

5 A Purple.

6 Q Those circular bruises were purple?

7 A Yes.

8 Q What did you mean when you responded to Mr. Wise's
9 question about some type of impact and you stated there
10 was evidence of impact?

11 A Well, externally she had some, let me find on my
12 physical exam, in the very back of her scalp she had a
13 linear patch of erythema which is redness that was about
14 four to five centimeters long that was clear in the center
15 located on the back of her scalp. So externally that
16 looks like a site of impact. On her autopsy Dr. Ward also
17 noted that she had some hemorrhages in her scalp, he
18 noticed that in the right occipital scalp which is in the
19 back of the head was a one inch purple red contusion. And
20 then once he pulled the scalp back he saw an area of
21 bleeding underneath the scalp that was on the right side
22 of the head extending back to the back of the head.

23 Q Can you tell us in your opinion whether or not that
24 finding is consistent with some type of impact or blunt
25 force trauma?

1 A Those findings are consistent with some type of blunt
2 force trauma.

3 Q And did you also have an opportunity to review the
4 autopsy photographs?

5 A Yes, I did. A few of them, a select few of the
6 autopsy.

7 Q You have spoken of colors that that might appear as
8 bruising. Can you tell us whether or not the autopsy
9 photos depicted the bruising was more prominent?

10 A The bruising is much more prominent in the autopsy
11 photographs.

12 Q And why is that?

13 A Once the patient is deceased and circulation stops
14 flowing, anything in the skin, any pigment in the skin
15 becomes much more prominent because of the lack of
16 circulation through the skin.

17 Q Thank you, nothing further.

18 THE COURT: Mr. Able.

19 MR. ABLE: Yes, sir.

20 REXCROSS-EXAMINATION

21 By Mr. Able:

22 Q Dr. Croswell, concerning following up some questions
23 that Mr. Wise had for you concerning the petechiae around
24 the neck from the photo of September 17th of 2009, you
25 didn't examine Audrina on that day, did you?

1 A I did not.

2 Q Or concerning the petechiae around the neck?

3 A I did not.

4 Q And as a matter of fact, my client Ms. Hepburn
5 reported to you when you interviewed her that three weeks
6 prior she had taken the child to the doctor because of
7 this petechial rash, correct?

8 A She did report that she had taken the child three
9 weeks before for the petechial rash.

10 Q And she stated that they had done blood work at her
11 primary care provider, Children's Care in Greenwood?

12 A That is correct.

13 Q And she also told you she took the child back two
14 days later because they were concerned about the
15 possibility of meningitis?

16 A That is correct.

17 Q And that the rash had completely resolved itself?

18 A Eventually that it did resolve, yes.

19 Q Okay. Now, Dr. Croswell, as a doctor in this State,
20 after examining a child and are concerned that there might
21 be, or you are suspecting in your professional capacity
22 child abuse, you are required to report that, aren't you?

23 A We are.

24 Q The law mandates that?

25 A We are mandated to report.

1 Q And if a doctor had suspected that, from these photos
2 that the petechiae rash that was on Audrina's neck three
3 weeks prior had been the result of abuse you would believe
4 that that doctor would have reported that to the
5 appropriate authorities?

6 A I would hope if they suspected abuse that that would
7 be reported as they are required.

8 Q Now, petechial like this on these photos, it can be
9 caused by a lot of different things, can't it?

10 A Correct.

11 Q And you were discussing with Mr. Wise that it could
12 have been caused by trauma but it could have been caused
13 by a lot of different things with a toddler this age?

14 A Petechiae in and of themselves in isolation can be
15 caused from a wide variety of things that would need to be
16 medically evaluated.

17 Q And if you take the child to the doctor to see what
18 is going on and that is what you would expect of a parent
19 who, a parent of a sixteen month old who sees this around
20 the child's neck. You would expect that parent to take
21 that child to the doctor and say, tell me what is wrong
22 with my child?

23 A Correct.

24 Q That would be what you would hope a parent would do?

25 A That is correct.

1 Q But petechiae in a child of this age, can it be
2 caused by like a viral infection?

3 A It can.

4 Q Can it be caused by a stressful cough?

5 A That on the neck would be an unusual location for a
6 stressful cough but you can see the petechiae on the face
7 from a stressful cough.

8 Q Can you see petechiae as a result of crying too hard?

9 A You can.

10 Q Irritation of the skin?

11 A That is not, irritation of the skin is usually not
12 associated with petechiae.

13 Q Did I ask you about viral infections?

14 A They can cause petechiae.

15 Q Let me ask you again. Petechiae in a child this age
16 can be caused by a viral infection?

17 A There are some viral infections that could cause
18 petechiae.

19 Q And the mother mentioning to you the doctor's concern
20 about meningitis, that can cause petechiae?

21 A That is correct. You have to do a full evaluation to
22 determine if that is a consideration or not.

23 Q It is just not trauma, what we are looking at here on
24 State's exhibits 18 and 19. What you see there could be
25 caused by lot of different things other than just trauma?

1 A Petechiae in isolation can be caused by other things
2 than trauma but in a setting of other injuries it would be
3 highly concerning for trauma.

4 Q You said you didn't examine her at that time?

5 A I did not.

6 Q Did you review the records, did you review the
7 records from the Children's Care Center in Greenwood?

8 A I did.

9 Q The ones from three weeks prior?

10 A That is correct.

11 Q Concerning this petechial rash?

12 A Yes, I did.

13 Q And there was nothing about any other trauma in
14 there?

15 A There was no report in history of trauma.

16 Q Now, as far as Mr. Wise's question concerning crying
17 being a trigger for abuse, there is a lot of other things
18 that can trigger somebody to hurt a child, isn't it?

19 A Correct.

20 Q Not just a baby crying?

21 A That is correct.

22 Q Thank you.

23 RECROSS-EXAMINATION

24 By Mr. Wise:

25 Q The injury to Audrina's head you say was to the right

1 side and back?

2 A There is evidence on external exam of injury to the
3 right side of the back.

4 Q And what part of your head, if you could touch your
5 head?

6 A This side.

7 Q So, toward the--

8 A Exactly, on her right parietal which is right here
9 and right occipital which is back here.

10 Q So if someone got a blow to that area of the head?

11 A That could be one contributing cause.

12 Q Could be done with the hand?

13 A Could be.

14 Q And if the same person has bruises ranging from red
15 to bright purple to purple to purple/yellow, that would
16 pretty well indicate they were done at different times?

17 A The medical literature doesn't support me being able
18 to say that definitively because of the wide variety of
19 ways that they can be visualized.

20 Q When I get bruised, my bruises tend to go from that
21 purple to purple/yellow?

22 A There are case studies of being able to say that but
23 as a physician I have no medical literature to stand on to
24 support me dating or saying that a bruise of different
25 colors did not occur at the same time.

1 Q Thank you.

2 REDIRECT EXAMINATION

3 By Ms. Mayes:

4 Q It is possible that they could be of different ages?

5 A It is possible that they could be of different ages.

6 MS. MAYES: Nothing further.

7 RECROSS-EXAMINATION

8 By Mr. Able:

9 Q But they all could have been caused at the same time,
10 all the bruise?

11 A They could have all been caused at the same time.

12 THE COURT: Thank you, you may step down. No
13 objection to excusing the Doctor?

14 MS. MAYES: No, sir.

15 MR. WISE: No objection.

16 MR. ABLE: No, sir.

17 THE COURT: Doctor, you are excused. Ladies and
18 gentlemen, we will take our lunch break. Please be back
19 at 2:15 and we will resume the trial. Please do not
20 discuss the case with anyone or your fellow jurors. Have
21 a good lunch and see you back at 2:15.

22 (Whereupon, the jury was excused from open court for
23 a lunch break.)

24 THE COURT: We will see you all back at 2:15.

25 (Whereupon, a lunch break was taken.)

1 THE COURT: Anything before the jury comes in, Ms.
2 Mayes?

3 MS. MAYES: No, Your Honor.

4 THE COURT: Mr. Able or Mr. Wise?

5 MR. ABLE: No, Your Honor.

6 MR. WISE: No, sir.

7 THE COURT: Bring the jury in, please.

8 (Whereupon, the jury came into open court at
9 approximately 2:25 p.m.)

10 THE COURT: For the record the jury is present along
11 with counsel for the State as well as the defendants. We
12 are resuming the trial. Ms. Mayes, call your next
13 witness, please.

14 MS. MAYES: The State calls Dr. Anthony Johnson.

15 Dr. Anthony Johnson, after being duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 By Ms. Mayes:

19 Q Dr. Johnson, where are you employed and in what type
20 of capacity?

21 A I am a pediatric ophthalmologist employed at Jervey
22 Eye Group in Greenville.

23 Q And can you give us some information concerning your
24 educational background and training that led you to
25 becoming a pediatric ophthalmologist?

1 A Yes, I went to medical school at the University of
2 Texas in San Antonio followed by a residency at Tulane in
3 New Orleans followed by a Ophthalmology Fellowship at
4 Scottish Rite Hospital in Atlanta. And then started a
5 practice in Greenville in 1986.

6 Q And have you testified previously in court as an
7 expert in the field of pediatric ophthalmology?

8 A I have.

9 MS. MAYES: Your Honor, at this time the State would
10 offer Dr. Anthony Johnson as an expert in the field of
11 pediatric ophthalmology.

12 THE COURT: Any objection?

13 MR. ABLE: No objection.

14 MR. WISE: No objection.

15 THE COURT: Ladies and gentlemen of the jury, again I
16 instruct you that the parties have stipulated Dr. Johnson
17 as an expert in the field of pediatric ophthalmology.
18 Normally a person can't give opinion testimony, the same
19 exception applies for Dr. Johnson. He has been qualified
20 in pediatric ophthalmology and he is permitted to give his
21 expert opinion in that area. You may accept the opinion,
22 that doesn't mean you have to accept, you don't have to
23 accept but it is evidence that you may use in the manner
24 you chose to see fit. Ms. Mayes.

25 MS. MAYES: Yes sir, Your Honor.

1 Q Dr. Johnson, can you give us some information, kind
2 of explaining what type of medical practice you offer
3 especially as it may come, might concern toddlers and
4 kids?

5 A Yes, I do comprehensive pediatric ophthalmology care
6 including office examinations and any associated surgery
7 that is necessary and hospital consultations when
8 requested by any of the hospital house staff or attending
9 physicians.

10 Q You mentioned hospital consultations. Did you have
11 the opportunity to be involved in a hospital consultation
12 concerning a critically injured toddler by the name of
13 Audrina Hepburn?

14 A Yes, I did.

15 Q And do you have with you today the records from that
16 exam?

17 A I do.

18 Q And are those records were your own notes that you
19 made during the course of the exam?

20 A They are, yes ma'am.

21 Q I want to start, Dr. Johnson, by asking you a little
22 bit about retinal hemorrhages. Can you explain to us as
23 an ophthalmologist what is meant by that term?

24 A Retinal hemorrhages are hemorrhages that occur
25 anywhere in the substance of the retina. The retina is

1 like a film in the camera. It is the tissue, it is very
2 fragile tissue at the very back of the eye. And the
3 retinal hemorrhages can occur anywhere within the
4 substance of the retina, on the surface of the retina or
5 in front of the retina. And it is abnormal to have any
6 kind of retinal hemorrhage without at least some type of
7 explanation.

8 Q All right. And did you have, do your notes reflect
9 what your findings were with Audrina's exam?

10 A Yes, they do.

11 Q And what were your findings.

12 A If it is okay I will just read them so I will be
13 complete with them. This is the examination on October
14 the 14th which was done just after 12:00 noon. There were
15 numerous retinal hemorrhages, too numerous to count in
16 both eyes. The hemorrhages were intra-retinal as well as
17 involving the nerve fiber layer with flame shaped
18 hemorrhage. There were also numerous pre-retinal
19 hemorrhage in both eyes. There was also noted to be edema
20 which is swelling. Edema of the macula in both eyes with
21 no evidence of any sub-macular hemorrhage in either eye.
22 The hemorrhages were diffusely scattered through the back
23 of the eye and extending out to the mid-peripheral of the
24 retina in both eyes. So the key points, the hemorrhages
25 were too numerous to count so they were extensive and

1 every where. They were not only straight back in the back
2 of the eye but they also extended out to the far
3 peripheral retina involving all of the retina.

4 Q I am going to ask you to take a look at this diagram
5 of the human eye and see if you might can explain to us in
6 a little bit better terms exactly what areas of the eye
7 you are talking about in which you would have seen
8 hemorrhaging. And just to clarify, when you use the word
9 hemorrhage, you are referring to what?

10 A The blood.

11 Q All right. If you could take a look at this diagram
12 and take your time to look over it and using this marker
13 indicate to us the different areas of the eye that we are
14 looking at and where you saw bleeding?

15 A This is the front of the eye, this is the cornea,
16 this is where a contact lense would be sitting if you are
17 a contact lense wearer. And it is visible to everyone if
18 you are talking to them. This is the back of the eye back
19 here and this is the retina, this outer layer right along
20 here extending up all the way up this way. And this is
21 the optic nerve that transmits all the information from
22 all of the retinal cells, the rods and the cone cells back
23 to the brain. These blood vessels enter the back of the
24 eye through the optic nerve and they provide the nutrition
25 and oxygen to the retinal layer all throughout the retina.

1 The front part or the peripheral retina is considered this
2 part as you get farther away from the optic nerve. And
3 the farther you get away from the optic nerve the thinner
4 the retina is. So you can see that the blood supply comes
5 to the back of the eye from this area and the farther away
6 from the blood supply the smaller the blood vessels
7 become. And therefore if there are hemorrhages that are
8 significant, if they are right here in the back of the eye
9 but it is even more significant if they extend farther out
10 here in the peripheral retina. If you can see on this
11 diagram the retina is very thin, it represents only about
12 less than a twenty-fifth of an inch in thickness. That is
13 very fragile. It is made up of about ten layers. And in
14 the diagram it is hard to tell that because it is just a
15 black and white diagram right here like so. But the
16 hemorrhages can be, as I described earlier, they can be
17 within the substance of the ten layers of the retina.
18 They can be underneath the retina, subretinal hemorrhage,
19 they can be on the surface layer of the retina. Those are
20 called the flamed shaped hemorrhage. And they can be in
21 front of the retina which would be called a pre-retinal
22 hemorrhage. And if it is a pre-retinal hemorrhage it just
23 blocks any view of the retina.

24 Q And could you indicate to us specifically as to
25 Audrina or note by marking the areas in which you observed

1 bleeding?

2 A Yes. I will just do it in terms in just circles,
3 hemorrhage.

4 (Whereupon, the witness draws on diagram.)

5 A So it involved, even though this is not a very good
6 artist representation it involves all layers of the retina
7 from the back of the eye all the way out as far as could
8 be observed when looking through the dilated pupil in this
9 direction and in this direction and of course straight
10 back into the eye.

11 Q And those hemorrhages were too numerous to count?

12 A They were too numerous to count.

13 MS. MAYES: Your Honor, at this time this would be
14 State's exhibit 21 for evidence.

15 THE COURT: Any objection?

16 MR. ABLE: No objection.

17 MR. WISE: No objection.

18 THE COURT: State's 21 is in evidence.

19 (Whereupon, State's Exhibit 21 was admitted into
20 evidence.)

21 Q Dr. Johnson, what if anything does it suggest when
22 these findings such as extensive retinal hemorrhage are
23 found in conjunction with acute subdural hemorrhage and a
24 severe brain injury in a toddler or infant?

25 A The combination of those findings that you just

1 described, the extensive retinal hemorrhage, the severe
2 brain injury and the bleeding in the brain, in all of the
3 medical literature really are not described by any other
4 injury other than non-accidental injury to the head and to
5 the eye.

6 Q And when you use the term or when physicians use the
7 term, non-accidental injury you are referring to what?

8 A The forces that are required to cause the blood
9 vessels in the brain to break and bleed. The force that
10 is also required to cause those retinal vessels to break
11 and bleed and therefore with the brain injury causing the
12 loss of consciousness and the severe brain injury.

13 Q And when you use the term, non-accidental, can you
14 tell us whether or not you are referring to abuse?

15 A Yes, I am referring to abuse.

16 Q In your expert opinion, Dr. Johnson, what degree of
17 force would be necessary in order to produce these
18 injuries?

19 A There have been numerous studies on patients,
20 children with severe brain injuries that were accidental
21 brain injuries, for instance falls from large distances,
22 for instance automobile accidents where they are ejected
23 from a car. And even with the severe injury from being
24 ejected from a car or even a fall from a ten story
25 building to concrete or asphalt, those type accidents have

1 happened and they still don't result in this extensive
2 retinal hemorrhage.

3 Q All right. What is it about an acceleration or
4 deceleration abusive head injury, what is the mechanism
5 that results in the bleeding between the eyes or behind
6 the eyes?

7 A If, may I point to that diagram. This volume within
8 the eye itself is made up of a clear protein material
9 called vitreous. And the vitreous is about the substance
10 of table jello. Just taking a saucer with table jello, if
11 you jiggle it that is sort of the consistency. It is not
12 solid but it is not liquid. But it has very dense
13 attachments to this very fragile retina. It has got dense
14 attachments up in this area. It has got dense attachments
15 right along the optic nerve, right here where this little
16 pit is, that is called the macular or the phobia. That is
17 where our central 20/20 vision is. And it also has got
18 dense attachments along every one of the blood vessels.
19 So, if you can imagine that whatever the force is being
20 generated, if this globe is filled with this jelly
21 material is rapidly accelerating and decelerating, went
22 back and forth or twisting or whatever motion it is going
23 through. This vitreous material is not firmly adherent to
24 everything but in those attachment points I described. So
25 every time it is moving rapidly back and forth, not just

1 with a force like if you are an adult and you are jogging
2 or, just like you are nodding your head it is moving,
3 there are forces there. Those forces don't do anything in
4 terms of causing injury to these attachment points. But
5 when it is forceable and violently moved back and forth
6 and twisting and turning directions it causes ultimately
7 these tissues to split apart and for blood vessels to
8 break and for the bleeding to occur. And as I mentioned
9 the edema swelling, there is a ring around the attachment
10 of the fobia and that area, sometimes it is a severe
11 injury such as this can result in blood underneath the
12 retina and this ring that is kind of a doughnut fashion.
13 In this case there was no blood under the retina but there
14 was this ring of swelling where that attachment just
15 continued to pull and tug and cause fluid to collect
16 within the retina. And in addition to those findings when
17 I examined the patient I just this past week reviewed the
18 final reports of the autopsy and with microscopic
19 examination those findings of those extensive retinal
20 hemorrhages were all confirmed in all layers of the retina
21 all the way out to the far peripheral retina and also in
22 the lining of the optic nerve. That is a portion of
23 bleeding that you can't see on the clinical exam but that
24 is highly correlated with non-accidental trauma having the
25 bleeding in the lining of the optic nerve.

1 Q Now, after, let me clarify this also. Are we talking
2 about both eyes, the left eye and the right eye?

3 A Yes, they were both about the same.

4 Q After such as an injury of this state, the retinal
5 hemorrhages would be extensive bleeding, can you tell us
6 whether or not you would expect Audrina's vision to have
7 been impacted?

8 A It would have been immediately impacted.

9 Q What do you mean by that?

10 A The retina with all of the blood in it, the swelling
11 surrounding the macular where our central vision is would
12 have grossly impaired vision immediately when that injury
13 happened.

14 Q And with that understanding would you expect a child
15 to be walking and interacting with an adult normally after
16 such an injury?

17 A I will comment on the vision related to that. I
18 think that would be very difficult to do anything like
19 that because of the immense impact on the vision. The
20 brain injury would be a whole different question. I would
21 defer that opinion to other experts.

22 Q That is all I have.

23 THE COURT: Mr. Able.

24 CROSS-EXAMINATION

25 By Mr. Able:

1 Q Just a follow-up, Doctor. Given the extensive
2 injuries that you described you wouldn't expect this child
3 to be able to interact with anybody?

4 A It would have been very obvious to an observer that
5 the sight was impacted tremendously, yes.

6 Q Immediately?

7 A Immediately.

8 Q So, if you had had a child interacting with people,
9 sitting at table eating, a sixteen month old toddler like
10 Audrina, you had here on the evening of October the 12th
11 playing with her brother, interacting with adults, sitting
12 at a table and eating you wouldn't expect to be suffering
13 from these injuries at that time?

14 A Correct.

15 Q That is all I have. Thank you.

16 THE COURT: Mr. Wise.

17 CROSS-EXAMINATION

18 By Mr. Wise:

19 Q Dr. Johnson, this would not be caused by someone who
20 is striking the baby with a hand on the head, would it?

21 A No, sir.

22 Q This would be an acceleration?

23 A Yes, sir.

24 Q In your opinion?

25 A It would be.

1 Q And it would be someone basically just shaking the
2 baby?

3 A I didn't speculate the exact mechanisms of injury but
4 that would be consistent with the shaking injury, yes sir.

5 Q Any other type of injury that it would be consistent
6 with?

7 A Any other type of injury would have required so much
8 force that the history would have demonstrated that.

9 Q If it resulted from a fall obviously you would have
10 had a fractured skull?

11 A Yes, sir.

12 Q And so you didn't have a fractured skull in this
13 case?

14 A Yes, sir.

15 Q So what you are talking about is someone who just
16 basically grabbed the child and shook it very severely?

17 A That would be consistent with this injury.

18 Q Thank you.

19 MS. MAYES: Nothing further, Your Honor, we would ask
20 that he be released.

21 THE COURT: No objection to releasing Dr. Johnson.

22 MR. ABLE: No, sir.

23 MR. WISE: No, sir.

24 THE COURT: Dr. Johnson, thank you very much for
25 coming and you are free to go. Call your next witness,

1 please, Ms. Mayes.

2 MS. MAYES: The State calls Dr. Christine Philpott.

3 Christine Philpott, after being duly sworn,

4 testified as follows:

5 DIRECT EXAMINATION

6 By Ms. Mayes:

7 Q Dr. Philpott, where are you employed and in what
8 capacity?

9 A At the Children's Center, I am one of the
10 pediatricians there.

11 Q And you are employed at the Children's Center. What
12 kind of clinic or medical provider is the Children's
13 Center?

14 A It is a Federally funded community health center. So
15 we mainly see underserved population.

16 Q And that is located where?

17 A In Greenwood, South Carolina.

18 Q All right. And can you give us some information
19 concerning your medical background and training?

20 A I graduated medical school in 2001 and did my
21 residency at Vanderbilt in Nashville, Tennessee. And I
22 finished that in 2004. And I stayed on as faculty at
23 Vanderbilt for two years and I did private practice for a
24 year in Charlotte and then we moved to Greenville to be
25 closer to my husband's family in 2008.

1 Q And what type of medicine to you practice?

2 A Pediatrics.

3 MS. MAYES: Your Honor, at this time the State would
4 offer Dr. Philpott as expert in pediatrics.

5 THE COURT: Any objection?

6 MR. ABLE: No objection.

7 MR. WISE: No objection.

8 THE COURT: Ladies and gentlemen of the jury, again
9 the parties have stipulated Dr. Christine Philpott is an
10 expert in the field of pediatrics. And accordingly she
11 will be able to give her opinion testimony which normally
12 a normal witness can not give on any field in that area.
13 Her testimony is like any other, you are free to reject
14 it, you are free to accept it and give it the weight and
15 credibility that you chose to.

16 Q Dr. Philpott, there at the Children's Center what
17 type of services do you offer to families and children?

18 A It is well child checks, preventive medicine and sick
19 visits as well.

20 Q Tell us a little bit about your well child check.
21 Like when you have an infant or a toddler, give us some
22 information about the different milestones or time periods
23 in which you would like to see a child for a well baby
24 check?

25 A We normally see them after they are born and in the

1 nursery. And then we usually see them 24 to 48 hours
2 later in the office just to make sure they are gaining
3 weight okay and feeding well. And then after that in
4 terms of routine visits they come in for a two month, a
5 four month, a six month, nine month, twelve month,
6 fifteen, eighteen and twenty-four month visits for their
7 checkups to make sure they are developing well, receiving
8 their immunizations and then yearly after that, after the
9 age of two.

10 Q And did you have the opportunity to provide services
11 or pediatric services to Audrina Hepburn during her life?

12 A Yes. The first one when she was seven months old.
13 She came for a follow-up, she was diagnosed with croup by
14 one of the other pediatricians in the office. And she
15 just came in for a follow-up.

16 Q And that was to actually see you, is that correct?

17 A Yes, she had seen me.

18 Q Now prior to that, if you can just take us back to
19 when she was a patient at, are there other medical
20 providers within the Children's Center as well?

21 A Yes. At the time we had four pediatricians, four
22 medical doctors and three nurse practitioners and she had
23 seen several of us. Her first visit according to her
24 medical records was at four months of age and she came in
25 for a sick visit. She was wheezing and mom was concerning

1 she had some trouble breathing at the time.

2 Q And just to clarify, so her first visit was at four
3 months?

4 A Yes.

5 Q Were you also able to obtain a history from the
6 family about Audrina or about their circumstance at some
7 point?

8 A When she had come for her seven month checkup I just
9 reviewed her medical records and I think the family had
10 moved from Washington. And I just had asked mom, if she
11 had family in Greenwood and why she had moved and she
12 said, yes.

13 Q And what is your understanding of why she and Audrina
14 had been living in Washington?

15 A I think Audrina's biological dad was in the military.

16 Q And so your understanding then is that they would
17 have been relocated to this area of South Carolina around
18 the time she was four months with that visit?

19 A Yes.

20 Q And so that first visit is November of 2008. What
21 else do your records reflect about her visits?

22 A Her visits afterwards?

23 Q Correct.

24 A She had come in at six months of age and she came in
25 again for a sick visit. She had cough and congestion for

1 a week. The other doctor had diagnosed her with just a
2 cold at the time. And then the other provider, the other
3 doctor had seen her a month later for croup and then they
4 saw her, let's see, two days afterwards for follow-up of
5 that visit. She was diagnosed with croup two days before
6 and she was doing better but still had some coughing and
7 some congestion.

8 Q And I believe your testimony was that was January of
9 2009, is that correct?

10 A Yes.

11 Q And after that visit in January of 2009 when do the
12 records reflect she next came in?

13 A She came in April 24th of 2009 at ten months of age.
14 She was there for her nine month checkup.

15 Q So, she got the nine month checkup in April of 2009
16 and what next?

17 A She was ten months at the time and then she came in
18 June 1st of 2009, age eleven months for a sick visit, she
19 had a runny nose.

20 Q And that was in June of 2009?

21 A Yes.

22 Q Now, after that date did she appear for the twelve
23 month or one year baby check?

24 A She had missed that visit, she did not show up.

25 Q All right. When did she next appear after the June

1 of 2009 visit?

2 A It looks like she had an appointment scheduled on
3 August 14th but she failed to show at that visit as well.
4 So, the next time we had seen her at the Children's Center
5 was September 11th of 2009.

6 Q So, she next appeared September of 2009?

7 A Yes.

8 Q And she was how old during the September of 2009
9 visit?

10 A She was fifteen months old.

11 Q What was the purpose or the general purpose of the
12 visit in September of 2009 at age fifteen months?

13 A She was there for her twelve month checkup. She was
14 fifteen months at the time but needed her vaccines, her
15 shots.

16 Q So, actually she would have turned one year in June,
17 she would have been getting some shots and vaccinations?

18 A Yes.

19 Q And that didn't happen, can you tell us whether or
20 not that is what occurred in September when she came in at
21 that point?

22 A When she came in she did receive a vaccine. The
23 nurse practitioner who had seen her at the time elected
24 not to give two vaccines, the measles, mumps and rubella
25 vaccine and the chicken pox vaccine because she had a rash

1 and was concerned about that.

2 Q Now, you used the word, rash, can you tell us
3 ultimately what actually, start at the beginning. When
4 she came in in September of 2009 at fifteen months for
5 that one year to get the vaccination, what if anything
6 else was reported?

7 A Mom had reported at that visit that there was a rash
8 that she had noticed since the day before she came in for
9 the visit. And she had a cold about two weeks prior to
10 that visit and maybe had an episode of vomiting during
11 that visit, two weeks before she came in.

12 Q And when you say, mom, you are referring to her
13 mother, Ashley Hepburn?

14 A Yes, Ms. Hepburn.

15 Q And is Ms. Hepburn the one who had brought her into
16 the visit in September of 2009?

17 A Yes, according to the chart she is the one who was at
18 that visit.

19 Q Was Ms. Hepburn able to give you a history of what
20 had caused the rash or when the rash, anything detailing
21 when the rash had developed?

22 A According to the chart the rash had developed the day
23 before she came in for her visit. And Ms. Hepburn didn't
24 know where the rash came from, like what it was from.

25 Q Now, you used the term, rash. Ultimately what was

1 the diagnosis or the condition that you and the other
2 providers there at the Children's Center determined that,
3 what you called a rash, what did you determine that
4 ultimately to be.

5 A The nurse practitioner had seen her at that visit had
6 documented her chart that it was a petechial rash. And a
7 petechiae is just pinpoint red dots on the skin that are
8 tiny, pinpoint. And if you touch it it doesn't go away,
9 it just kind of stays there.

10 Q And she was first seen for that petechiae in
11 September. How many visits did she have in September
12 relating to that petechiae?

13 A She had three visits. The next visit she had was the
14 day after September 11th, on September 12th. And then she
15 had come in for a follow-up four days later on September
16 16th.

17 Q The rash was still present, the petechiae was still
18 present, what if any recommendations were made by the
19 Children's Center in terms of getting some type of blood
20 screening?

21 A On September the 11th the nurse practitioner had done
22 some blood test. So when you think about petechiae we
23 think about infection, if it is a bacterial or a viral
24 infection or there is something wrong with her platelet
25 count that could have been the cause of the rash, the

1 petechiae. And the blood test that was done during that
2 day was normal. Her platelet counts were normal, her
3 white blood cell count was normal indicating there was no
4 infection.

5 Q With that information can you tell us whether or not
6 you were able to rule out infection as the cause of
7 petechiae?

8 A Audrina, according to the record, had looked well,
9 she did not have a fever. She did not look sick and so
10 infection was unlikely at the time. The nurse
11 practitioner did note another rash but it seemed like a
12 different kind of rash because when she touched it it
13 would kind of go away. So, it looked like a viral rash.
14 There looked like there was two rashes that was going on
15 at that time.

16 Q All right. Now, what about meningitis and viruses or
17 disease of that nature. Can you tell us how you went
18 about or how you would be able to go about ruling
19 something like that out as the cause of petechiae?

20 A We would get the history and of course if the child
21 had a fever, high fever, if the child is not acting well
22 or if the white blood cell count was high we would be
23 concerned about meningitis.

24 Q Let me show you two photographs and ask you to review
25 them to yourself.

1 A All right.

2 Q On what date did you actually observe Audrina?

3 A I saw her when she came in, the third time she was
4 seen for the rash, on the 16th of September.

5 Q So, that would be September 16th that you saw her?

6 A Yes.

7 Q Dr. Philpott, what if anything is significant about
8 the petechiae being located there beneath the neck?

9 A One is just, it is clustered together. So sometimes
10 in kids who have vomiting or if, just the force of the
11 vomiting or if they are coughing we see petechiae usually
12 around their eyes. Sometimes on their cheeks or their
13 neck but that would be more diffused and not as clustered
14 as that rash.

15 Q And State's exhibit 19. Can you tell us whether or
16 not that is consistent with the petechiae that you
17 observed the day before or on September 16th, 2009?

18 A It looks like it. The rash was like on the right
19 side of her neck.

20 Q And in State's exhibit 18, that right side of the
21 neck being this location here?

22 A Yes.

23 Q So, in your opinion, Dr. Philpott, can you tell us
24 whether or not that is consistent with what you would
25 expect from a normal vomiting episode?

1 A Not usually, no. Just on that one location, no.

2 Q After your exam on the 16th or during that time
3 period of your exam on the 16th which was her third exam
4 dealing with the petechiae around the neck. What if any
5 impressions or diagnosis, diagnosis was considered?

6 A The nurse practitioner had asked me to look at the
7 rash with her and we had discussed it and given that she
8 has had the rash and just the, I mean you think about
9 other things that it could be. And I had mentioned that
10 one of the things we needed to think about is abuse as a
11 possibility.

12 Q And do your records reflect whether or not you
13 documented the possibility of abuse as a diagnosis on
14 September 16th, 2009?

15 A I personally did not document it on the chart. The
16 nurse practitioner who Audrina was seeing at the time had
17 documented it on her chart, question possible abuse.

18 Q All right. And when you have a documentation like
19 that and it is questioned possible abuse but without it
20 rising to the level of an actual diagnosis, is that
21 something that you feel comfortable making a report to
22 social services or the law enforcement about?

23 A At the time the nurse practitioner had made a comment
24 that she had talked to Ms. Hepburn and was, I mean
25 comfortable that that was not the case at the time.

1 Q And so although the record reflected the possibility
2 of abuse it was not to the level of being a diagnosis at
3 that point and time?

4 A No, it was just one of the things we had to think
5 about.

6 Q Have you and the other medical providers at the
7 Children's Center later learned that Audrina died on
8 October 17th of 2010, I am sorry, 2009?

9 A Yes. I saw it on the news.

10 Q After your visit with her, your examination of her
11 along with the other medical providers on September 16th
12 of 2009 was there ever any other visits to the Children's
13 Center from that date when you last observed the petechiae
14 and October 17th which was her date of death?

15 A No.

16 Q Nothing further.

17 THE COURT: Mr. Able.

18 CROSS-EXAMINATION

19 By Mr. Able:

20 Q Dr. Philpott, you have the records for Audrina dating
21 back to November 3rd of 2008, is that correct?

22 A Yes.

23 Q And on the visit on November 3 of 2008 she would have
24 been four months old, is that correct?

25 A Yes.

1 Q And she was brought in by her mother?

2 A Her mom and her grandmother and her brother as well
3 accompanied her.

4 Q And that was for, basically looks like congestion?

5 A Yes.

6 Q And then the next note you have is December 30th of
7 2008?

8 A Yes.

9 Q And she was brought in that day by her mother?

10 A Yes.

11 Q And it says the chief complaint, the reports sounds
12 congested?

13 A Cough, congestion for a week.

14 Q Did she tell you that she was premature, she was a
15 premature baby?

16 A Yes, she was born at 29 weeks, 11 weeks early.

17 Q Next note, the last one was 12/30/08. The next is
18 January the 6th of '09. Is that correct?

19 A Yes.

20 Q And again reports that she was brought in by her
21 mother, Audrina was brought in by her mother?

22 A Yes.

23 Q The chief complaint, coughing and wheezing, rasping
24 breathing?

25 A Yes.

- 1 Q Barking cough?
- 2 A Yes.
- 3 Q Next visit was January the 8th of 2009. Two days
- 4 later?
- 5 A Yes, I had seen her during that visit.
- 6 Q And that was again accompanied by mother?
- 7 A Yes.
- 8 Q Follow-up for croup, cough and congestion?
- 9 A Yes.
- 10 Q General appearance on January 8th of 2009, healthy
- 11 appeared?
- 12 A Yes.
- 13 Q And that would have been the same for all the visits
- 14 before except for the illnesses that she came in for, she
- 15 appeared to be a well, healthy baby, didn't she?
- 16 A Yes.
- 17 Q The next visit was noted January 24th of 2009, is
- 18 that correct?
- 19 A Did you say January?
- 20 Q I am sorry, April, April 24th of 2009?
- 21 A Yes.
- 22 Q Again brought in by mother?
- 23 A Yes.
- 24 Q There for the nine month well baby check?
- 25 A Yes.

1 Q Chief complaint, the infant is active, healthy and
2 has no current health issues?

3 A Yes.

4 Q So we had at nine months a healthy baby being
5 accompanied by the mother to the doctor's office?

6 A Yes.

7 Q Was there anything noted at that well baby check for
8 nine months, anything noted about the baby's appearance or
9 anything that stands out that wasn't appropriate to the
10 age?

11 A No. The only thing that the nurse practitioner who
12 saw her at that visit was that she wasn't pulling up yet
13 but given her prematurity that is still within normal.

14 Q The next visit was June 1 of 2009?

15 A Yes.

16 Q And again accompanied by mother and grandmother?

17 A Yes.

18 Q General appearance at that time, healthy, appearing
19 alert, normally nourished, developmental normal and no
20 acute distress, smiling, playful?

21 A Yes.

22 Q Chief complaint was a runny nose for two or three
23 days?

24 A Yes.

25 Q And a fever?

1 A And a fever, yes ma'am.

2 Q Now, the next visit she had had was 6/9/'09?

3 A It was a scheduled visit but she didn't show up.

4 Q And then the scheduled visit was August 14th of 2009?

5 A Yes.

6 Q Now, how, through your agency, how are y'all paid.

7 You said for y'all are, for under service clients?

8 A I don't really know.

9 Q You don't know?

10 A No.

11 Q Okay. Well that is fine then. So, on all of the
12 visits that you just mentioned her mother brought her in?

13 A Yes.

14 Q Including the ones that we are talking about here
15 today, the one from September 11th of 2009, Audrina was
16 brought in by her mother at that time?

17 A Yes. All of these visits Ms. Hepburn had brought her
18 in.

19 Q And said the patient is here today for her twelve
20 month well baby exam?

21 A Yes.

22 Q And her chief complaint was rash all over since
23 yesterday?

24 A Yes.

25 Q And Brenda Wulfekotte?

1 A Yes, she is one of the nurse's.

2 Q Nurse practitioner saw her on September 11th of 2009,
3 correct?

4 A Yes.

5 Q And Nurse Wulfekotte noted the general appearance
6 again as healthy, appearing alert, normally nourished,
7 developmentally normal and no acute distress?

8 A Yes.

9 Q Now, this rash we are talking about, the is petechial
10 rash on the neck. Ms. Wulfekotte says petechial on neck
11 with two irritated non-blanchable areas on either side of
12 the neck?

13 A Yes.

14 Q Non-blanchable means basically when you push on it, I
15 think you can take a glass and push on it and it goes
16 away?

17 A That is what petechiae is, it doesn't blanch.

18 Q Ma'am?

19 A That is what makes it a petechiae, it doesn't blanch.

20 Q You push on it and it doesn't go away, it doesn't
21 blanch. Okay. What is the significance of that?

22 A It is a certain kind of rash and it leads you to
23 think about certain things.

24 Q And then there was a, on trunk is blanchable,
25 macular--

1 A Macular.

2 Q Faint--

3 A Erythematous, it is pink.

4 Q Okay, pink rash. Okay, thank you. Spell that,
5 e-r-y-t-h-m-a-t-o-u-s?

6 A It is e-r-y-t-h-e-m-a-t-o-u-s. It is misspelled on
7 the record.

8 Q Okay. I am glad you told me.

9 A We don't have spell check.

10 Q So, you had two different things going on?

11 A Yes.

12 Q Where was that pink rash you are talking about, where
13 was it located?

14 A On her trunk meaning on her chest and abdomen area.

15 Q Now on that visit, the well check, well child
16 checkup, everything was fine and everything was normal?

17 A Except for the rash.

18 Q Except for the rash and the rash is mentioned on
19 down. Nurse Wulfekotte said that the rash on the trunk
20 looks viral?

21 A Yes, according to her assessment.

22 Q Meaning caused by a virus?

23 A Yes.

24 Q And that is not unusual in a child sixteen months
25 old?

1 A No, not at all.

2 Q I am sorry?

3 A Not at all.

4 Q Okay. And she goes on to say as to the status of the
5 rash, the patient's problem is stable. Mother to return
6 to office if rash on neck begins to spread?

7 A Yes.

8 Q She said specifically if it did start spreading down
9 on this child to come back and see us?

10 A Yes. And according to the medical record Nurse
11 Wulfekotte had one of the nurses from our office call to
12 see how Audrina is doing and mom had reported that the
13 rash seems to be spreading. And so they had recommended
14 that Audrina return for a follow-up visit and that is why
15 she came back on the 12th.

16 Q Now, on September the 11th Nurse Wulfekotte said
17 patient instructed to return in three months?

18 A For her next well check.

19 Q For the next well check, that is what that was for?

20 A Yes.

21 Q And then said instructed to return to office if not
22 improving or symptoms worsen?

23 A Yes.

24 Q Now, why did the nurse from your office call?

25 A Why did the nurse?

1 Q Yes.

2 A Nurse Wulfekotte emailed one of our nurses to call,
3 to make sure the rash is not spreading or if anything has
4 changed as to come back.

5 Q And mom reported the rash looks like it is spreading
6 to me?

7 A Yes. And that is why she came back the following
8 day.

9 Q Y'all said come on back and she came on back, didn't
10 she?

11 A Yes.

12 Q She came back on September 12th. Do you know what
13 day of the week that was?

14 A That is a Saturday.

15 Q That was a Saturday?

16 A Yes. If I recall correctly.

17 Q September 12th of 2009 was a Saturday. And again the
18 record of Nurse Platt indicates that accompanied by
19 mother?

20 A Yes.

21 Q Chief complaint, seen yesterday with a petechial rash
22 on the neck?

23 A Yes.

24 Q Mom reports or mom notes it seems to have spread down
25 her neck onto to her chest with two larger spots on the

1 abdomen?

2 A Yes.

3 Q And I believe Dr. Pike saw her at that time?

4 A He is one of the residents at the Montgomery Family
5 Center in Greenwood.

6 Q He came in to see the child that day too?

7 A Yes, he was seeing patients as well during that time.

8 Q And as to the rash the record states, status, the
9 patient's problem is stable, will continue to monitor,
10 advise mom to return for any fever or other change.

11 A It looks like the rash is not any different. But she
12 had commented that it seemed to have spread a little.

13 Q As she was instructed to do if this seems to get
14 worse or if it seems to spread we want you to bring that
15 baby back in to see us?

16 A Yes.

17 Q And that is exactly what she did, correct?

18 A Yes. Nurse Platt, again, had one of our nurses call
19 to see how she is doing and to follow-up if anything had
20 spread or anything different. And she did, on the 14th, I
21 mean the 16th.

22 Q So, she was told on September the 11th of 2009 that
23 is this gets worse or you think it is starting to spread,
24 mom, you come back to see us?

25 A Yes.

1 Q And she came back the next day?

2 A Yes.

3 Q And then on September 12th of 2009 she was also
4 instructed, Ms. Hepburn was also instructed if you think
5 it gets any worse you come back to see us?

6 A Right.

7 Q And that is what she did on September 16th of 2009?

8 A Yes.

9 Q And she saw Cheryl Platt again?

10 A Yes.

11 Q And that would of been Wednesday of that week, is
12 that right?

13 A Yes, I think so.

14 Q Yes, that would of have been Wednesday of the next
15 week?

16 A Yes.

17 Q So, in a weeks time mom had been to your office three
18 times to try to find out what was going on with this rash?

19 A Yes.

20 Q And on September 16th, again, the note says the child
21 is accompanied by mother and saw Cheryl Platt who she had
22 seen on Saturday?

23 A Yes.

24 Q And the chief complaint noted at that time was rash
25 around the neck area, was seen on Friday and Saturday.

1 Symptoms not worse but have not improved?

2 A Yes.

3 Q History of present illness, return with a few new
4 areas of petechiae on the lower cheek and neck?

5 A Yes.

6 Q And that is when you saw the child that time,
7 correct?

8 A Yes. Nurse Platt has asked me to look at the rash.

9 Q Okay. And you said that abuse had to be part of the
10 differential diagnosis?

11 A I had discussed it with Nurse Platt, yes.

12 Q Ma'am?

13 A When I had discussed it with Nurse Platt, yes.

14 Q Okay. And that was, you said it had to be part of a
15 differential diagnosis, correct?

16 A Yes. It looks like all the blood test were fine.
17 And the other reason why you would have a petechiae if
18 pressure is applied on that area of the skin. And so, it
19 is just one of the things we have to think about.

20 Q Okay. And when she left that day, when Ashley
21 Hepburn left the doctors office that day she was told to
22 return on an as needed basis?

23 A That is what it says on that, on the record, yes.

24 Q Now, a differential diagnosis, as I understand it,
25 Doctor, is basically just a method used by physicians to

1 identify unknowns?

2 A If a patient comes in and has runny nose, cough,
3 congestion, you think could it be a cold, could it be a
4 flue, it is differential, yes. It could be allergies.

5 Q Exactly right. That is what I was getting ready to
6 say. The patient comes in with a runny nose, it could be
7 hay fevers, allergies. a common cold, a flu?

8 A Yes.

9 Q It could be a abusive nasal, congestants from other
10 medications?

11 A Yes.

12 Q So, saying something is part of a differential
13 diagnosis you are not saying that is the cause of this
14 problem?

15 A No.

16 Q All right. And by saying that abuse needed to be a
17 part of differential diagnosis in this case you were not
18 saying that abuse was the cause of the petechial rash on
19 this child's neck?

20 A No, but it had to be considered.

21 Q It had to be considered?

22 A Yes.

23 Q But you were not saying that was the cause?

24 A No.

25 Q You were saying it was a possible cause but not the

1 only cause?

2 A Yes.

3 Q And there are many reasons for a child to get
4 petechiae on its neck and face, correct?

5 A Yes.

6 Q Stressful coughing?

7 A Yes.

8 Q Stressful crying?

9 A Yes.

10 Q Forceful vomiting?

11 A Yes.

12 Q And I think you already mentioned, or maybe didn't,
13 viral infection?

14 A Yes.

15 Q Bacterial infection?

16 A Yes.

17 Q Like meningitis or it could be meningitis?

18 A It could be.

19 Q Okay. Do you know if that was mentioned to my
20 client?

21 A If it was, I am sorry?

22 Q If it was mentioned to my client, they would have to
23 be careful and make, if this was meningitis?

24 A I am not sure if it was mentioned. But if they had
25 done blood work, I am sure it was mentioned that they had

1 to think about infection.

2 Q She would of been told, you need to keep this in mind
3 that this could be a possible cause?

4 A Yes but I had not seen her on those visits so I am
5 not sure what was told.

6 Q Okay. Now, when you saw Audrina on September 16th
7 she was sitting on her mother's lap?

8 A Yes.

9 Q She acted appropriately with her mother?

10 A Yes, she was more scared of us.

11 Q I am sorry?

12 A She was scared of us which is normal at that age,
13 fifteen months.

14 Q I think at some point one of the records said that
15 she turned to her mother for comfort? I might be thinking
16 of something else. It may be a statement, I am sorry.

17 A She was sitting on her mom's lap and was fine.

18 Q The mother acted appropriately with her?

19 A Yes.

20 Q Lovingly?

21 A That is what Nurse Platt had mentioned in her record.

22 Q Now, Doctor, as you were being asked a moment ago by
23 the Solicitor in this case, she eluded to the fact you as
24 a physician in this State you are required in your
25 professional capacity, if you suspect a child who has been

1 abused you are mandated by law to contact law enforcement
2 and the Department of Social Services, correct?

3 A Yes.

4 Q There is no exception to that rule?

5 A No.

6 Q You did not report this to law enforcement or to the
7 Department of Social Services, did you?

8 A No, I believe Nurse Platt felt comfortable at the
9 time that abuse was not going on.

10 Q And you, you and Nurse Platt discussed that?

11 A When I had mentioned it she said that she had
12 discussed it and ruled it out.

13 Q So Nurse Platt told you she had ruled out abuse as
14 part of the diagnosis?

15 A At the time, yes.

16 Q On September 16th?

17 A Yes.

18 Q And if you had thought this was abuse you would have
19 reported it to the authorities as you are required to do?

20 A Yes.

21 Q That is all I have. Thank you.

22 THE COURT: Mr. Wise.

23 CROSS-EXAMINATION

24 By Mr. Wise:

25 Q Ms. Philpott, when you discussed this with Ms.

1 Hepburn did you discuss with her that this could be caused
2 by grabbing a child too strongly?

3 A I actually did not discuss it with Ms. Hepburn. I
4 was not the provider during that visit and so Nurse Platt
5 may have had that discussion.

6 Q Nurse Platt may of had that discussion?

7 A Yes.

8 Q You don't know from one or the other?

9 A No, she was not scheduled to see me. Nurse Platt
10 wanted me to look at the rash.

11 Q And do you know if Mr. Lewis came in on that visit?

12 A I don't know.

13 Q You don't know one way or the other?

14 A No. All I remember was Audrina sitting on her
15 mother's lap.

16 Q And you saw Ms. Hepburn one time prior in September?

17 A In September?

18 Q Right.

19 A Yes.

20 Q And Nurse Platt saw her the other times?

21 A Yes.

22 Q And who she came in with then and what was discussed
23 with her you wouldn't know?

24 A No.

25 Q Thank you.

1 THE COURT: Ms. Mayes.

2 REDIRECT EXAMINATION

3 By Ms. Mayes:

4 Q Dr. Philpott, when you talk about the possibility of
5 abuse along with other causes of petechiae what is it
6 about abuse or trauma that would result in the appearance
7 of petechiae?

8 A It is the pressure, it is the force that is applied
9 on the skin. So, if a child would have had like blood
10 work, if we put a tourniquet on, something that could
11 cause petechiae. So that kind of pressure.

12 Q Thank you, nothing further.

13 THE COURT: You can step down. No objection to
14 excusing Dr. Philpott?

15 MS. MAYES: No sir, Your Honor.

16 MR. ABLE: No, sir.

17 MR. WISE: No, sir.

18 THE COURT: You are free to go. Thank you. Ms.
19 Mayes, call your next witness.

20 MS. MAYES: The State calls Rita Hepburn.

21 Rita Hepburn, after being duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 By Ms. Mayes:

25 Q Ms. Hepburn, tell us a little bit about yourself, who

1 are you married to?

2 A To Kenneth Ebel.

3 Q And where do you reside?

4 A Clinton, South Carolina.

5 Q And tell us about your children?

6 A I have four children. One son, Daniel; a daughter,
7 Brittany; another daughter, Sarah; and a daughter, Emily.

8 Q All right. And your son, Daniel, tell us a little
9 bit about him?

10 A He is my oldest, he is the father of two of my
11 grandchildren, Owen and Audrina. He is a good kid, he was
12 in the Army.

13 Q Let me ask you this. You mentioned your
14 grandchildren, Owen and Audrina. How old is Owen today?

15 A He is four.

16 Q And you mentioned your granddaughter, Audrina?

17 A Yes.

18 Q Tell us a little bit about this history of your son,
19 Daniel and one of the defendant's in this case, Ashley
20 Hepburn. Where did they meet?

21 A They met at high school at a party.

22 Q And ultimately were they married?

23 A Yes.

24 Q And during their marriage they had Owen and Audrina?

25 A Yes.

1 Q Did there come a point and time when your son and
2 Ashley were no longer living together as husband and wife?

3 A Yes.

4 Q And what, I guess what was the general plan
5 concerning childcare arrangements when that occurred, when
6 Ashley and Daniel were no longer living together?

7 A She would have I guess full custody and Daniel would
8 have visitation. He wanted joint custody but they never
9 made it that far to the courts.

10 Q All right. And talking a little bit about that.
11 Where was Ashley residing with Owen and Audrina after she
12 separated from Daniel?

13 A At her mother's in Cross Hill, South Carolina.

14 Q And would that be the same residence that has been
15 referred to previously in Cross Hill in which this
16 incident occurred?

17 A Yes.

18 Q Now, what were the plans after the separation in
19 terms of how often Daniel, you or Daniel would have
20 visitation with the children?

21 A Basically it depended on child support, mostly during
22 the week.

23 Q When Ashley had the children and it was Daniel's turn
24 for visitation where would they normally go to stay?

25 A They would stay with us, Daniel lived with me so they

1 would stay with us at our home.

2 Q All right. I want to take you back to the time
3 period of September of 2009 up through October of 2009.

4 What if anything changed if at all concerning Audrina
5 around the time period of September of 2009. What if
6 anything did you notice about her.

7 A We noticed she had a large chip in her tooth, front
8 tooth. And when we asked her mother, Ashley, when it
9 happened or how it happened Ashley said she didn't know.

10 Q I want to show you a photograph and ask you whether
11 or not you recognize this photograph?

12 A Yes.

13 Q Who is shown in the photograph?

14 A Audrina.

15 Q And what if anything is unusual about Audrina in this
16 photograph?

17 A Nothing, just her tooth.

18 Q And is that visible in the photograph?

19 A Yes.

20 MS. MAYES: Your Honor, this would be State's exhibit
21 22 for evidence at this time.

22 THE COURT: Any objection?

23 MR. ABLE: No, Your Honor.

24 MR. WISE: No, sir.

25 THE COURT: That will be State's 22 in evidence

1 without objection.

2 (Whereupon, State's Exhibit 22 was admitted into
3 evidence.)

4 Q If you could refer to the monitor there, Ms. Hepburn.
5 Are you referring to this chipped tooth at this location?

6 A Yes.

7 Q And you mentioned that you asked or did you have a
8 conversation at some point with her mother concerning the
9 chipped tooth?

10 A Yes. We were all in the living room, Daniel, my
11 girls, Ashley and we were just, you know, she had come to
12 pick them up for a visit and just asked her how it
13 happened. And she acted like she didn't know.

14 Q Okay. Now, after, following the notice of the
15 chipped tooth, what if anything else seemed unusual or did
16 you notice that was unusual about Audrina?

17 A Well, there was a week that went by that we were not
18 able to see her because she was sick, running a high
19 fever. And she had told my son that the doctor suspected
20 meningitis.

21 MR. ABLE: Objection, she is saying something that my
22 client told her son.

23 MS. MAYES: I can rephrase that, Your Honor.

24 THE COURT: Sustained.

25 Q Don't repeat anything that someone has said to you

1 other than information directly from Ms. Hepburn. When
2 you next saw your granddaughter what if anything was
3 unusual about Audrina?

4 A She had all of these marks and bruises on her neck.

5 Q I am going to show you two photographs and ask you
6 whether or not you recognize them and this is State's
7 exhibit 19 and 18.

8 A Yes.

9 Q And who took these photographs?

10 A My son-n-law.

11 Q Can you tell us whether or not those are the marks
12 that you are referring to around her neck?

13 A Yes, they are.

14 Q Did you and your son, Daniel, were you involved in
15 any of her follow-up care after she was seen for these
16 marks on her neck?

17 A Yes. We were asked to take her to Self Regional in
18 Greenwood for platelet count and while we were there the
19 lab tech had asked if she had--

20 MR. ABLE: Objection, objection.

21 MS. MAYES: Okay.

22 THE COURT: Sustained.

23 Q You can't repeat anything anybody else said to you
24 directly. But while you were there getting her platelet
25 count was the, were the marks on her neck visible to other

1 staff who were there?

2 A Yes.

3 Q Now, after you documented the marks on her neck were
4 there any other occasions in which you observed anything
5 unusual about Audrina?

6 A Ashley brought her one Monday morning and when I went
7 to go out to help her like I normally did she ran around
8 the car quickly and before I could open the door she told
9 me Audrina had a bruise on her forehead, that she woke up
10 the day before and she don't know how she had got it. She
11 woke up from a nap with a bruise. Then days later Ashley
12 told me her mother told her it looked like a fingerprint
13 on her forehead.

14 MR. ABLE: Objection, who did she say?

15 A Ashley's mother.

16 THE COURT: Hold on a minute. Are we getting into
17 hearsay again?

18 MS. MAYES: Your Honor, I can--

19 THE COURT: Let's back up and perhaps keep the
20 questions fairly simple and we will go on.

21 Q When you are speaking in regards to something someone
22 else told you it can only be information that came
23 directly from Ms. Hepburn, from Ashley Hepburn. All
24 right. Let me ask you to take a look at this photograph,
25 this is State's exhibit 17 and ask you whether or not you

1 recognize that photograph?

2 A Yes.

3 Q And who is shown in the photograph?

4 A Audrina.

5 Q And who took this photograph of Audrina?

6 A I did.

7 Q The forehead bruise that you mentioned, is that
8 visible in this photograph?

9 A Yes, it is.

10 Q Is it the same bruise that is located here?

11 A Yes.

12 Q All right. For what reason, Ms. Hepburn, were you
13 documenting or did you document the marks and bruises
14 through photographs?

15 A Well, I was starting to suspect something was going
16 on but I wasn't sure.

17 Q The photographs have dates on them and just to
18 clarify what is State's exhibit 17, whose handwriting is
19 that?

20 A That is my son's.

21 Q All right. And can you tell us whether or not
22 October 6th is the date this photograph was taken?

23 A Yes.

24 Q And these particular photographs that are dated the
25 17th, can you tell us whether or not that was the date

1 that you and Daniel took her for her lab work?

2 A It was.

3 Q Now, with this photograph being dated October 6th
4 what if anything was significant about that date, October
5 6th?

6 A That is the first day we had had them. I was
7 shopping with Owen, her brother. I was taking pictures of
8 them eating.

9 Q And when you say it was the first day that you had
10 them?

11 A That week.

12 Q Let me refer you to the month of October, October of
13 2009. Now, October the 6th is a Tuesday. When you say
14 that we had them, who are you referring to?

15 A Daniel, my husband, Kenny and I.

16 Q So, Daniel, your husband, Kenny and you had the
17 children during that time period, is that correct?

18 A Yes.

19 Q And are you referring to both Owen and Audrina?

20 A Yes.

21 Q So that started on Tuesday, October 6th and how long
22 did you and Kenny and Daniel have the children?

23 A Ashley picked them up at 6:00 p.m. on October 8th.

24 Q All right. So they were with you the 6th, the 7th
25 and the 8th?

1 A Yes.

2 Q And when Ashley picked them up on the 8th did you
3 have any additional contact with the children after that
4 date?

5 A No, I did not.

6 Q When was the next time you saw Audrina?

7 A At 11:00 o'clock on the 13th of October up at
8 Greenville Memorial Hospital.

9 Q All right. Other than the forehead bruise that was
10 noted in the photograph that your family took, October 6th
11 were there any other unusual marks or bruises on Audrina
12 during that time period?

13 A No.

14 Q How did you find out, Ms. Hepburn, that Audrina had
15 been injured on the late hours of October 12th into the
16 early morning hours of October 13th?

17 A Doris Davis, Ashley's mother called my cell phone and
18 before I could pick it up it went to voice mail. I picked
19 it up and I saw she was calling from Ashley's phone. So,
20 I picked it up and returned the call to Ashley's phone and
21 Ashley had answered and she told me that Audrina was found
22 unresponsive and was taken to Self Memorial in Greenwood.

23 Q And approximately what time of the early morning
24 hours was this on October 13th?

25 A 3:00 a.m.

1 Q And when you arrived at the hospital who was there?

2 A Richard Crumley, Brandon Lewis and Owen and there was
3 a security guard and I believe another cop in the room
4 speaking with them. We did not see anyone else at that
5 moment.

6 MS. MAYES: Nothing further, Your Honor.

7 THE COURT: Mr. Able.

8 CROSS-EXAMINATION

9 By Mr. Able:

10 Q Ma'am, you had Audrina and Owen for a visit from
11 October 6th to October 8th?

12 A Yes.

13 Q That was Tuesday to Thursday?

14 A Yes.

15 Q And during that time you, when they were in your home
16 you were the primary caretaker?

17 A Yes, my son was at work.

18 Q And you would have been the one feeding them, bathing
19 them, things of that nature?

20 A Yes.

21 Q And dressing Audrina?

22 A Yes.

23 Q And it was on that visit that Audrina had the bruise
24 on her forehead?

25 A Yes.

1 Q And do you remember when I spoke to you about that
2 before in that picture that was just shown, you told me
3 that you were taking a picture of her eating her Halloween
4 cookie?

5 A Halloween cookie.

6 Q You weren't trying to document the bump on her head?

7 A That picture, no.

8 Q That is right. And you were, you were sitting in a
9 Walmart buggy eating a Halloween cookie and you wanted a
10 picture of your daughter eating a Halloween cookie?

11 A Owen was in the other part of the shopping cart, I
12 had a picture of them, two of them together, a picture of
13 Owen by himself and then a picture of Audrina.

14 Q And they had gotten some cookies and eating Halloween
15 cookies?

16 A Yes, eating Halloween cookies.

17 Q That is what you wanted a picture of, you weren't try
18 to document the bump on the child's head?

19 A No, not at that moment.

20 Q And during that visit when you were the primary
21 caretaker for those three days, Tuesday, Wednesday and
22 Thursday, October 6th to October 8th. You didn't see any
23 other bruises or marks on Audrina, did you?

24 A Just little ones on her shins.

25 Q Just on her legs?

1 A Yes.

2 Q Do you remember when I talked to you before you
3 didn't say that, you said the only bruise was the one on
4 her head. Do you remember that?

5 A I don't recall about the bruises. I know the one on
6 the head, that is the one that stuck in my mind.

7 Q So, she may have had a few little bruises on her
8 shins?

9 A Yes.

10 Q All right. And when Ashley brought the children, she
11 brought the children to y'all for a visit, correct. That
12 is when she told you about the bump or the bruise on the
13 head?

14 A Yes.

15 Q And she said that Audrina had woke up in her crib
16 with a bruise on her head?

17 A Yes, the day before.

18 Q Now, Audrina was just starting to learn to walk,
19 correct?

20 A Yes, she was.

21 Q And she would pull up on things?

22 A Yes.

23 Q And she wasn't too sure of herself yet as far as
24 walking?

25 A No.

1 Q Would she go a few steps and fall down?

2 A Yes.

3 Q Now, in September you noticed the rash that we talked
4 about?

5 A Yes.

6 Q You were not with Ashley at the time that she took
7 Audrina to the doctor over in Greenwood?

8 A No.

9 Q And you were aware, however, that she had taken,
10 Ashley had taken Audrina to the doctor three times in one
11 week?

12 A Yes.

13 Q And then it was, I believe, the last time she had
14 taken Audrina to the pediatrician was September 16th and
15 the doctors office had set up some, I think some blood
16 work, is that right?

17 A Yes, for a platelet count.

18 Q And that, on September 17th, well on September 16th
19 when Ashley was at the doctors office that is when she
20 made the appointment to have the blood work done at Self
21 Regional?

22 A I am not sure. I just remember on the 17th we were
23 at, took her to get the platelet count, my son and I.

24 Q Ashley had asked Daniel to take Audrina to Self
25 Reginal to have that done?

1 A Yes.

2 Q And you went with Daniel to have that done?

3 A I did.

4 Q Now, you never saw Audrina be afraid of her mother,
5 did you?

6 A No.

7 Q When you spoke to Ashley that morning, October 13th
8 of 2009, she had told you that she had put Audrina down at
9 10:30, didn't she?

10 A Yes.

11 Q And then she and Owen had gone to sleep?

12 A Yes.

13 Q And that Brandon was the one that woke her up saying
14 that Audrina was unresponsive?

15 A Yes.

16 Q That is all I have.

17 THE COURT: Mr. Wise.

18 CROSS-EXAMINATION

19 By Mr. Wise:

20 Q Was there any set visitation schedule with the
21 children or y'all would get them a few days at a time?

22 A A few days at a time.

23 Q And that is the way it had been since your son came
24 back from the military?

25 A Yes.

1 Q And were, and when I say a few days at the time you
2 mean three or four or five days?

3 A It could have been Monday through Thursday or Tuesday
4 to Wednesday. Like I said earlier, it all depended on, it
5 started getting around child support.

6 MR. ABLE: Objection.

7 THE COURT: Sustained.

8 Q So, you may have the child four days at a time or you
9 may have them two days?

10 A Yes.

11 Q It would vary?

12 A Yes.

13 Q When you would have the children for several days at
14 a time did Ashley call all of the time?

15 A She never called me.

16 Q She never called you?

17 A No.

18 Q Were you there the whole time?

19 A Yes.

20 Q If she had called, the children were with you the
21 whole time?

22 A Most of the time.

23 Q Most of the time. But they would occasionally go off
24 with your son somewhere?

25 A Occasionally.

1 Q But when you were there with the children there were
2 no calls from Ashley?

3 A No.

4 Q I believe you ran across Brandon one time at the
5 Walmart?

6 A Yes.

7 Q And that was just a gratuitous, wasn't it?

8 A Yes.

9 Q And Ashley was with Brandon?

10 A Yes, she was.

11 Q And the two children were with them?

12 A They were.

13 Q And as far as you could tell at that time their
14 relationship with Brandon was fine?

15 A Yes.

16 Q And I believe you went by their house one time too or
17 went by Ashley's house one time and Brandon was there?

18 A Yes.

19 Q And how long did you stay that day?

20 A My son and I strayed maybe two hours to visit the
21 children. We took them into the bedroom to play and then
22 took them outside to play.

23 Q And Brandon was there during those two hours?

24 A He was in the living room.

25 Q Excuse me?

1 A He was in the living room.

2 Q And the children didn't appear to be afraid of him or
3 anything either, did they?

4 A No.

5 Q Thank you.

6 THE COURT: Anything, Ms. Mayes?

7 MS. MAYES: Nothing further, Your Honor.

8 THE COURT: We are going to take a brief break before
9 the next witness. Ladies and gentlemen of the jury, this
10 is a good point to take a break. Don't discuss the case
11 and we will have you back in about five or ten minutes.

12 (Whereupon, the jury was excused from open court for
13 a short break.)

14 THE COURT: We will take a brief break, we will
15 resume in ten minutes.

16 (Whereupon, a short break was taken.)

17 THE COURT: Let's bring the jury in, please.

18 (Whereupon, the jury came into open court at
19 approximately 4:05 p.m.)

20 THE COURT: The record should reflect the jury is
21 back. Ms. Mayes, if you will call your next witness,
22 please.

23 MS. MAYES: The State calls Daniel Hepburn to the
24 stand.

25 Daniel Hepburn, after being duly sworn,

State of South Carolina)
) Court of General Session
County of Laurens) 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 III

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:

Suzanne Mayes, South Carolina Commission on Prosecution
Coordination
Attorney Generals Office
Attorney for the State

Bryan Able, Esq.
Attorney for Ashley Nicole Hepburn

Rauch Wise, Esq.
Attorney for Richard Brandon Lewis

Joy E. Holston
Official Court Reporter

1 testified as follows:

2 DIRECT EXAMINATION

3 By Ms. Mayes:

4 Q Mr. Hepburn, good afternoon. Can you give us some
5 information about yourself?

6 A I am 24 years old, I have two children, Audrina
7 Hepburn and Owen Hepburn. Currently Owen lives with me
8 and I work full-time in Anderson, prior military, Army.
9 Have a honorable discharge from the Army.

10 Q And, Mr. Hepburn, where do you currently reside?

11 A I live with my mother and stepfather and two sisters
12 with my son where I have more of a family setting.

13 Q And you mentioned your son, referring to your son,
14 Owen Hepburn?

15 A Yes, ma'am.

16 Q And who is Owen's mother?

17 A That would be Ashley Hepburn.

18 Q And that is the defendant in this case?

19 A Yes, ma'am.

20 Q And you mentioned that you are currently employed,
21 where do you work?

22 A Cross County Home Services.

23 Q And I want to take you back to the time period before
24 2009, how did you meet the defendant in this case, Ashley
25 Hepburn?

1 A We had met in high school at a friend's house but we
2 had known each other for a while. We had officially
3 started talking I guess you would say at a friend's house
4 that was a party one night. Then after that we just kind
5 of started seeing each other.

6 Q And what high school is it that you are referring to?

7 A Clinton High School.

8 Q And following your graduation or following your time
9 at Clinton High School where did you go?

10 A I ended up moving down to Florida to Orlando. I left
11 high school for a job I was doing down there. I was down
12 there for a couple of months and then Ashley ended up
13 moving down there with me.

14 Q And you said Ashley moved down there with you. Was
15 that before Owen was born?

16 A Yes ma'am, she was still in high school at the time.

17 Q And ultimately how did you end up joining the
18 military?

19 A We had moved back in late of 2005 and then in
20 mid-2006 we found out she was pregnant with my son, Owen.
21 I decided I wanted to try to clean my act up and do what
22 was right so I joined the military in an effort to provide
23 a better home life for the family I wanted to start.

24 Q And while you were in the military what locations
25 were you assigned to and what are some of the places you

1 resided?

2 A I started off in Fort Knox, Kentucky for basic
3 training, I was there for nine weeks. Then went to Fort
4 Gordon, Georgia for AIT training, I was there for another
5 eleven weeks. And then from there came back, I was in the
6 National Guard at that time, came back and lived here in
7 South Carolina. And then decided to go to active duty and
8 was stationed out in Washington State.

9 Q All right. And when your son, Owen, was born did
10 Ashley and Owen reside with you?

11 A Yes, they did. They lived at my mother's house. I
12 was actually in basic training at the time that my son was
13 born.

14 Q And you are referring to your mother, Rita Hepburn,
15 who has testified previously in this case?

16 A Yes, ma'am.

17 Q And after Owen was born where did y'all go to live?

18 A We ended up moving to Greenville. We had an
19 apartment off of Pelham Road. Up there I was working at a
20 car dealership while I was at the National Guard before I
21 joined active duty. We had our own apartment up there,
22 Owen, myself and Ashley.

23 Q And how did you and your family end up in the State
24 of Washington?

25 A I decided to go to active duty. The job market was

1 kind of dieing around here and I had a lot of opportunity
2 in the military so I decided to go active duty and I was
3 given two options, Korea or Washington State. I chose
4 Washington State. If I had of gone to Korea I wouldn't be
5 able to take my family with me. So I decided to go to
6 Washington State and then Ashley had moved there and Owen
7 with me.

8 Q And when Ashley moved there to Washington State did
9 that include with your son, Owen?

10 A It did. Myself and Owen and she was pregnant at the
11 time with my daughter, Audrina.

12 Q Now, how is that you know the defendant in this case,
13 Brandon Lewis?

14 A We went to high school together. We were also
15 friends in high school and had a lot of mutual friends
16 throughout us growing up.

17 Q So, you dated and later were married to Ashley
18 Hepburn and you have also been acquainted with Brandon
19 Lewis from high school. Is that correct?

20 A Yes, ma'am.

21 Q And Brandon Lewis went to Clinton High School as
22 well?

23 A Yes, ma'am.

24 Q Now, prior to Ashley becoming pregnant with your
25 daughter, Audrina, how did Brandon fit into the picture?

1 A Well, I was deployed to Egypt for a little over a
2 month and when I first got back Ashley and I weren't doing
3 so well as far as the relationship was. And we ended up
4 separating and I came to find out she was dating Brandon
5 right after we separated, within days.

6 Q And that was while you were in Egypt?

7 A I am not sure if they were dating while I was in
8 Egypt. I know for sure as soon as I got back they were
9 but while I was in Egypt I couldn't say.

10 Q All right. And so you learned that Ashley and
11 Brandon Lewis were dating. Is that correct?

12 A Yes, ma'am.

13 Q And after that point and time did there come a period
14 in which you and Ashley reconciled your marriage and
15 attempted to live together again?

16 A Yes, ma'am. She had stated to me that she was
17 pregnant and that would be with our daughter, Audrina. At
18 that time we decided that we were going to try to make it
19 work for our children and get back together and that is
20 when I went to active duty shortly after.

21 Q And where was Audrina born?

22 A She was born in Washington State at Madigan Hospital
23 on post at Fort Lewis, Washington.

24 Q After Audrina was born how did it come about that you
25 and Ashley once again separated?

1 A Audrina was premature by three months. I was a
2 little stressful for us as far as the scheduling because
3 she would have to be there at the hospital, Owen was not
4 allowed at the hospital. We didn't know anybody else so
5 we would take turns as far as when I get off of work I
6 would go home and she would go to the hospital. We didn't
7 see each other and we ended up kind of arguing a good bit
8 and it was a stressful time. As soon as Audrina got out
9 of the hospital she decided she was going to move back
10 here with her family. So then left with the two kids
11 shortly after Audrina was released from the hospital.

12 Q So, Ashley and your two children returned to South
13 Carolina, is that correct?

14 A Yes.

15 Q And you remained active in the military in Washington
16 State?

17 A Yes, ma'am.

18 Q And how did it come that you were later able to
19 return to South Carolina?

20 A I was discussing with my first sergeant as far as
21 being away from my family, I was trying to get
22 compassionate reassignment to where I would be on the East
23 Coast at least within driving distance to be able to see
24 them. I was lucky if I got to see them maybe twice a year
25 whenever I got leave. And he discussed with me the only

1 way for me to be able to get over because I was in a
2 lifetime cycled unit, was I could get out and then join
3 back when I wanted to once I had everything situated and
4 settled down. Because at that point I was trying to
5 reconcile with Ashley to get my family back together. And
6 so they let me go ahead and opt out and I got my honorable
7 discharge to get out. And still I can go back in at any
8 time.

9 Q And at that point you were looking to reconcile with
10 Ashley again?

11 A I was.

12 Q Were you able to reconcile your marriage?

13 A No ma'am, I came back because Ashley had decided in
14 May of 2009, I believe it was, she wanted to get
15 separation paperwork filed. We had filed it but then had
16 discussed about getting back together but then the next
17 day I walked in on her and Brandon Lewis together.

18 Q So, to clarify the timeline, that would be
19 approximately May of 2009 or the Spring of 2009?

20 A Yes, I believe it was around the 9th of May.

21 Q And in this time period you returned to South
22 Carolina but you learned that Ashley and Brandon Lewis
23 were seeing each other?

24 MR. ABLE: Objection, leading.

25 MS. MAYES: I can rephrase that, Your Honor.

1 THE COURT: Rephrase.

2 Q The time period that you referred to, can you tell us
3 whether or not that would be May?

4 A That would be May that I returned to do the
5 separation court but I was still in the military and had
6 to go back to Washington at that point.

7 Q And when was it that you learned that Brandon Lewis
8 and your wife, Ashley, were a couple again?

9 A They stated that they were not a couple but I walked
10 in on them as a couple. And it was in May, the day after
11 our separation hearing that I learned that they were
12 actually together.

13 Q And after that date what was your understanding in
14 terms of the relationship between Ashley Hepburn and
15 Brandon Lewis?

16 A They were more than just friends. At that point they
17 were not officially boyfriend and girlfriend but were
18 acting as boyfriend and girlfriend at that time.

19 Q And after that in May and through the summer months
20 did you have knowledge as to whether or not Brandon would
21 come visit the children or Ashley and the children at the
22 Cross Hill residence of her mother?

23 A Yes.

24 Q And did you have information as to whether or not
25 that included staying over some times at night?

1 A Yes. In June when I got out I moved back in with my
2 mother as soon as I got out to kind of get on my feet.
3 And from where we lived to where Ashley's mother lived, we
4 lived in Mountville and they lived in Cross Hill. And
5 there is only one gas station around there. Any time I
6 would go to the gas station you would pass by their house
7 and Brandon's car would be there early in the morning,
8 late at night, anytime I went to Greenwood or anything you
9 would almost always see his car there.

10 Q And can you tell us whether or not that included
11 times when your children were in the home?

12 A Yes ma'am, usually it did. If I was going to the gas
13 station usually I didn't have my kids with me, they would
14 be there with their mother.

15 Q All right. Mr. Hepburn, there has been testimony
16 already in this case about some photographs that were
17 taken of your daughter. And that includes a photograph
18 which is State's exhibit 22 where she has a chipped tooth.
19 Are you aware of that photograph?

20 A Yes, ma'am.

21 Q Were you ever or did you ever have an explanation as
22 to what had occurred to cause a chipped tooth?

23 A Ashley stated that she wasn't sure what had happened.
24 She didn't have a reason as to why she had a chipped tooth
25 or when it had happened. She stated that it must have

1 happened with her being a little kid.. That was her
2 explanation towards it.

3 Q And when Ms. Davis which would be Doris Davis,
4 Ashley's mother and Mr. Crumley would work during the day
5 what was the plan for the children?

6 A Ashley, before I got back was in school and my mom
7 would watch the kids while she was at school during the
8 day. After I got back she would state that she was in
9 school but then she would drop the kids off but yet her
10 car and Brandon's car would always be at the house.

11 MR. ABLE: Objection, there needs to be a proper
12 foundation as to the knowledge of that---

13 THE COURT: Sustained. Explain, lay a foundation
14 about his car, I guess.

15 Q What did you actually observe in that regard?

16 A Anytime I would go to Greenwood and which in this
17 area there is not much around as far as if you wanted to
18 take the kids to go do anything. So I would take them to
19 Greenwood, there are parks and go to Walmart and stuff
20 like that. So I would have to pass by Ashley's house, and
21 at that time when I would be with the kids you would see
22 her car there as well as Brandon's car at her mother's
23 house.

24 Q Now talking about during the day when the kids needed
25 childcare. Did they go to any formal daycare center or

1 anything like that?

2 A Ashley stated that she had signed them up for
3 daycare, the Sunshine House in Clinton. But I don't
4 believe they ever actually attended.

5 MR. ABLE: Objection, he didn't believe they actually
6 attended.

7 THE COURT: You can explore that on cross.

8 A I had gone later to, I was trying to get Owen's shot
9 records because I was signing him up for Montessori
10 program and Ashley told me to go there to go get them.
11 And I went there and they had no record of the children
12 ever actually attending.

13 MR. ABLE: Objection, calls for hearsay.

14 THE COURT: Sustained. The jury will disregard that
15 last point.

16 Q Were you able to obtain any records?

17 A No, ma'am.

18 Q And to your knowledge were the children ever in any
19 formal daycare setting?

20 A No, ma'am.

21 Q And normally during the day what type of job were you
22 working in September of 2009?

23 A I worked at Sykes in Greenwood, a call center for
24 AT&T.

25 Q And what kind of hours did you work when you were at

1 Sykes?

2 A They varied but usually a first to a second shift
3 from what I worked.

4 Q And when you were working and Ms. Davis was working
5 and Mr. Crumley was working what were the arrangements in
6 terms of childcare for the children?

7 A If it was a day where Ashley was allowing me
8 visitation, when the children came to my house my mother
9 would watch them while I was at work. If it was days she
10 had the children, I am not sure what she did exactly.

11 Q Was she working anywhere at the time of September of
12 2009?

13 A Not where I had known. She stated she was working at
14 an Ingles but not that I knew that she was ever there.

15 Q Now, how did it come about that in September of 2009
16 or September 17th of 2009 you and your mother took Audrina
17 for some lab work?

18 A Ashley had dropped the children off at the house, I
19 believe it was the night of the 16th. And she was telling
20 me about as far as the bruising or the busted capillaries
21 on Audrina's neck. And some phone conversations we had
22 had before that as far as what was going on, she was
23 scared it might be meningitis from what she said, that she
24 was told. And then she said that on the 17th that Audrina
25 had an appointment at Self Regional Memorial in Greenwood

1 to have her platelets tested. So, my mother went with me
2 to take the two children up there because it was my days
3 to have them. And I took Audrina back to have her
4 platelets tested for the busted capillaries.

5 Q And is that the same date that this photograph was
6 taken as being State's exhibit 18?

7 A Yes ma'am, that was taken the night of the 17th after
8 I had been at the hospital.

9 Q Now, when you went to the hospital for her to have
10 the lab work done, you, your mother and Audrina, anyone
11 else?

12 A And Owen.

13 Q Okay. And were the marks on Audrina visible?

14 A Very.

15 Q And as a result of that what happened?

16 A My mother had stayed in the waiting area with Owen
17 and I took Audrina back with one of the nurses to the lab
18 where they were going to do the testing. And they had
19 asked some questions that kind of raised some concerns
20 which I ended up taking those pictures later on that night
21 from the questions that were asked to me from the nurses.

22 Q And did those concerns cause you to address them with
23 Ms. Hepburn herself?

24 A They did.

25 Q And confront her?

1 A Yes, ma'am.

2 Q And what happened, what did you say to her?

3 A I had asked her if Audrina had been trying to tear up
4 a bib or a necklace or something around that area that
5 would cause any kind of petechiae in that area. And she
6 got defensive right away, stated that no one had choked
7 her. It was her response to that. There was no question
8 as to I never asked anything about anyone choking her. I
9 asked if it was a simple something that a child would do,
10 you know, trying to take a bib off or a necklace or
11 something like that. But she automatically got defensive
12 about it right away.

13 Q Now, there is a photograph that has also been
14 discussed that was taken on October 6th, there of Audrina
15 in the shopping cart. And on October 6th where had she
16 come to stay?

17 A She came to our house. It was a Tuesday and it was
18 usually the days that I paid child support and that is the
19 days that I was able to get the kids. And that was the
20 day she came to our house, on the 6th.

21 Q All right. And when she showed up what if anything
22 unusual did you observe?

23 A I wasn't actually home when she dropped the children
24 off, I was at work. It was later that day when I got
25 home, I was on first shift that day. My mother was

1 telling me about it and I had noticed it when I walked in,
2 seeing Audrina's head like that. And I had called Ashley
3 later that night to ask her some questions as far as what
4 had happened. And she stated that from what she could
5 tell it was from one of the bars on the crib was the only
6 way it would have been caused.

7 Q And who made that statement to you?

8 A That was Ashley.

9 Q And you stated that on this day, October 6th, Audrina
10 and Owen both came to stay with you and your mom and your
11 family?

12 A Yes, ma'am.

13 Q So that would be on Tuesday, the 6th?

14 A Yes, ma'am.

15 Q And how long did the children remain there in your
16 care?

17 A They were there until the 8th.

18 Q So that would be the 6th, the 7th and the 8th,
19 correct?

20 A Yes, ma'am.

21 Q And then when did they go back to Ashley?

22 A Early evening or late evening until the night hours
23 of the 8th.

24 Q So on Thursday the 8th they returned to the care of
25 Ashley?

1 A Yes, ma'am.

2 Q And that would be at the Cross Hill residence?

3 A Yes, ma'am.

4 Q And at that time other than the bruise on the
5 forehead was there anything abnormal or unusual about
6 Audrina's appearance?

7 A I had given her a bath that night and she had no
8 marks or anything on her. It was just the forehead and
9 that was it.

10 Q And, Mr. Hepburn, you have been in the courtroom
11 previously. You have observed on State's exhibit 14 the
12 abdominal bruise. Was that present on Audrina when she
13 left your care?

14 A No, ma'am.

15 Q When did you next see your daughter?

16 A It was the morning of the 13th at Greenville
17 Children's Hospital.

18 Q And how did you learn that she had been injured?

19 A I was in my room sleeping in the early hours of that
20 morning and my mom came in and woke me up and said she got
21 a phone call that Audrina was in the hospital around 3:00
22 in the morning and at that point they said she was at
23 Greenwood Hospital so we had rushed to get there. But
24 once we got there they said we couldn't see her, that she
25 was being rushed up to Greenville. We ended up staying at

1 the hospital for a little bit for Owen, before we could
2 leave.

3 Q And what happened once you got to Greenville.

4 A When we first got up there I had actually ridden with
5 Doris Davis and Ashley Hepburn, trying to get as much
6 information as far as what had happened because it was
7 still very unclear to me, nobody was really explaining
8 anything. We got up to Greenville Hospital and I walked
9 in to the waiting room of the PICU and Dr. Seigler was in
10 there waiting for us to discuss as far as what the
11 seriousness and severity of the injuries were and as far
12 as what was going on.

13 Q And that was Dr. Seigler who we heard from this
14 morning?

15 A Yes, ma'am.

16 Q At that point in time did your daughter ever respond
17 to you again?

18 A No, ma'am. Not since the 8th.

19 Q What arrangements were made for your son, Owen?

20 A At Greenwood Hospital they wanted to check him to
21 make sure he didn't suffer any signs of child abuse or
22 anything like that as well. So, we had to have a full
23 checkup, I had to take him back to have X-rays done and a
24 full examination. So, I had to stay at Greenwood Hospital
25 until that was done. At that point I sent him with my

1 mother and stepfather to my sister's house so she could
2 watch him for me while we all went up to Greenville. And
3 I got up to Greenville and they wouldn't let me in to see
4 Audrina for a while. They let Ashley in right away but I
5 wasn't allowed to go see her yet. It wasn't until the
6 SLED agents had gotten there that I was allowed to go
7 back. So, I had to sit in the waiting room and wait until
8 anyone would actually let me in to the PICU.

9 Q And was that, was anybody else allowed to see Audrina
10 at that point?

11 A At that point it was just Ashley.

12 Q Because she was the mother?

13 A Yes.

14 Q And was Mr. Lewis there in Greenville?

15 A He was taken, I saw him for maybe ten minutes while
16 we were in Greenwood in the family room. And he didn't
17 say a whole lot, he didn't really look around much and the
18 police had taken him for questioning him at that point and
19 I didn't see him again after that for a few months.

20 Q When you saw Mr. Lewis in the hospital in Greenwood
21 following, learning of this incident what explanation, if
22 any, did he provide to you for what had happened?

23 A He stated that, in his opinion she had had a seizure
24 from what he stated. He said he walked in to check on her
25 and she was rigid at one point, seemed like she had had a

1 seizure or something along those lines. And that was the
2 only explanation I had at that point as far as what was
3 wrong with her.

4 Q All right. And after Audrina was treated, being
5 treated in Greenville what arrangements were made for Owen
6 in terms to where he would live from that point forward?

7 A There is a DSS worker who was in charge, a Mr. Calvin
8 Hill, actually had custody for the separation hearing we
9 had. I was in active duty military and I wasn't able to
10 get custody of any kind. And so he was giving her the
11 option of Owen staying with me during this or would have
12 to stay with her father. At that point Ashley had not
13 make a decision but then once he realized that we were
14 actually still married, we were just separated, that I
15 still had full parental custody then he allowed Owen to go
16 with me and he has been with me since.

17 Q All right. Nothing further at this time.

18 THE COURT: Mr. Able.

19 CROSS-EXAMINATION

20 By Mr. Able:

21 Q Now, you didn't, you never saw your wife be violent
22 with your children, did you?

23 A No, sir.

24 Q And when y'all went to your separation hearing in
25 May, on May 12th of 2009 you agreed for her to have

1 custody of your children, didn't you?

2 A At that point, yes sir.

3 Q And we are talking about the bruise on the forehead
4 and the chipped tooth, you were aware that Audrina was
5 starting to walk?

6 A Yes, sir.

7 Q She wasn't walking too good, was she, she was just
8 starting to learn?

9 A No, because my mother and I were the two that
10 actually worked with her on the walking. We are the ones
11 that got her to walk.

12 Q I am sorry, sir?

13 A My mother and I were the ones that actually taught
14 Audrina to walk.

15 Q Now, and she was, when she was walking she would
16 obviously fall over?

17 A Yes, sir.

18 Q And that wasn't an unusual thing. You had seen her
19 fall over?

20 A Yes, sir.

21 Q Now as far as the bumps on the neck, you were aware
22 at the time, September the 11th, September 12th and
23 September 16th of '09 that Ashley was taking Audrina to
24 the doctor to have the rash on her neck looked at?

25 A Yes, sir.

1 Q Did you talk with her about that?

2 A I attempted to, yes sir.

3 Q And she told you about the rash on her neck?

4 A She gave me very limited information. But, yes sir.

5 Q But you were aware that she was taking the child to
6 the doctor to have that looked at?

7 A Yes, sir.

8 Q As a matter of fact on September 16th, 2009, the day
9 that she had last taken the child to the doctor, taken
10 Audrina to the doctor for the rash on the neck she brought
11 the child to your home, didn't she?

12 A Yes, sir.

13 Q For you to keep both children?

14 A Yes, sir.

15 Q And she had told you that while she had been at the
16 doctors office on September 16th of 2009 that they had
17 made an appointment for her to go back to Self Regional to
18 be looked at?

19 A Yes, sir.

20 Q And asked you if you would mind taking Audrina back
21 to that visit, correct?

22 A Yes, sir.

23 Q And you and your mom, the next day at her request
24 took Audrina to Self Regional to have her tested?

25 A Yes, sir.

1 Q Now, when you say you had walked in, I think you said
2 walked in on them together, you mean you had walked in,
3 according to one of your statements you had walked in on
4 Ashley and Mr. Lewis at El Jalisco?

5 A Yes, sir.

6 Q That is where you walked in on them?

7 A They were at a restaurant doing shots of Tequila.

8 Q They were at a restaurant?

9 A Yes, sir.

10 Q So, you didn't walk in on them in any type other
11 situation other than sitting in a public place drinking
12 Tequila?

13 A At that time, no sir.

14 Q Now, according to the temporary order in your
15 separation case, by the way, y'all are still married,
16 correct?

17 A Technically, yes sir.

18 Q Pursuant to the terms of the temporary order in your
19 separation she had custody, correct?

20 A Yes, sir.

21 Q And you had visitation rights reasonable that the
22 parties can work out?

23 A Yes, sir.

24 Q Now, on October 8th of 2009, I think you said you had
25 given Audrina a bath?

1 A Yes, sir.

2 Q You were helping your mom take care of her?

3 A Yes, sir.

4 Q And at that time there were no other marks or bruises
5 or rashes on her other than the bump on the forehead?

6 A Correct.

7 Q That is all I have of this witness.

8 THE COURT: Mr. Wise.

9 CROSS-EXAMINATION

10 By Mr. Wise:

11 Q Mr. Hepburn, you contacted her and asked her if
12 Audrina had worn a necklace of some sort?

13 A Yes, sir.

14 Q And did you describe any injuries to Audrina's neck
15 when you asked that question?

16 A This was pertaining to the, after I had taken her to
17 the hospital to have the platelets tested. As far as the
18 markings around the neck, those were what they pertained
19 to.

20 Q And Ashley's response immediately was no one had
21 choked her?

22 A Correct.

23 Q And you had never mentioned the word, choked?

24 A Correct.

25 Q You never really even mentioned anything about

1 injured neck, had you?

2 A Well, I had asked about her trying to pull a necklace
3 off of her neck or a bib, at that point I was talking
4 about her neck.

5 Q And that was her response?

6 A Correct.

7 Q Now, when you would have the children for several
8 days at a time and it was just kind as y'all worked out,
9 wasn't it?

10 A Correct.

11 Q And you would sometimes spend three or four days with
12 the children, sometimes maybe two?

13 A Correct.

14 Q Would Ashley constantly call when you had the
15 children?

16 A Her and I talked at least once a day.

17 Q Once a day?

18 A At least once a day when I had the children.

19 Q Okay. Then you called her on the 12th of October?

20 A Correct.

21 Q And when you called her on the 12th could you hear
22 Audrina in the background?

23 A Yes.

24 Q And what was Ashley's attitude at that point from
25 which you could tell on the phone conversation?

1 A Ashley seemed a little frustrated. Audrina was
2 teething at the time, as been stated, and was a little
3 fussy at that point.

4 Q More frustrated than normal?

5 A Not more than normal.

6 Q Okay. Now, you were working at Sykes at the time?

7 A Yes, sir.

8 Q She had applied for a job there too in October of
9 2009?

10 A Both her and Mr. Lewis.

11 Q Correct?

12 A Correct.

13 Q And she didn't get the job?

14 A Neither of them, no.

15 Q Neither did?

16 A Correct.

17 Q Was she upset about that or did you talk to her about
18 it?

19 A We didn't talk about it until actually the 13th when
20 we were on our way to Greenville Hospital that she had not
21 gotten that job.

22 Q Okay. That was the first you had talked to her about
23 it?

24 A Correct.

25 Q Now, also there was a time when Ashley came out to

1 Washington while you were still out there without the
2 children, didn't she?

3 A Correct. I had just gotten out of the hospital when
4 she came out to make sure I was okay.

5 Q All right. And y'all spent a week out there?

6 A Yes, sir.

7 Q And I think you classified is you drank too much
8 while y'all were out there.

9 MR. ABLE: Your Honor, I am going to object. What
10 period of time are we talking about.

11 MR. WISE: We are talking about--

12 Q When did she come out there?

13 A It was probably around February of 2009.

14 MR. ABLE: February of 2009 I think it is irrelevant,
15 it is immaterial, it is too remote, it has no probative
16 value at all.

17 MR. WISE: We are probably going to need to excuse
18 the jury. I have another question that he is probably
19 going to object to also.

20 THE COURT: Ladies and gentlemen of the jury, if you
21 will excuse us for just a moment and we will have you back
22 in about five minutes and don't talk about the case.

23 (Whereupon, the jury was excused from open court for
24 a break.)

25 THE COURT: The jury is out, Mr. Wise.

1 MR. WISE: Your Honor, in the statement that was
2 given to us in discovery he also recites an incident in
3 the State of Washington when he was, when Ashley was out
4 there that she started striking him and hit him four
5 times. I think that is very consistent with a third party
6 guilt defense as the Court is aware of, everything just
7 builds on. So, I think I am entitled to ask him about
8 that incident. It shows the violent temper on her part.

9 THE COURT: What do you anticipate being elicited
10 from this witness as far as an answer.

11 MR. WISE: That that happened.

12 THE COURT: What was the context of it again, if you
13 will.

14 MR. WISE: Well, his statement was while she was
15 there Ashley and I drank heavily, we got into an argument
16 one night and she punched me four times while I was
17 driving, have him a black eye.

18 THE COURT: And the purpose that you are introducing
19 this is to demonstrate--

20 MR. WISE: To show that she had a temper and will
21 strike people which is consistent with the stuff that the
22 Court is aware of too.

23 THE COURT: Mr. Able.

24 MR. ABLE: Judge, I think it is irrelevant under Rule
25 402, it is immaterial, the prejudicial value outweighs any

1 probative value. We are talking about February of 2009.
2 The crimes that this lady is charged with occurred when
3 indicted from August 1 to October 13th of 2009. It would
4 be excluded under Rule 403, it is too remote in time and I
5 believe 404(b), would be excluded under all of those, I
6 believe.

7 MR. WISE: 404(b) is a prior bad act Rule. My quick
8 answer to that is if you weren't the defendant we wouldn't
9 have that problem.

10 THE COURT: If I recall, Mr. Wise, I think you have
11 made that argument before.

12 MR. WISE: I think so. Of course, the rules as to
13 what is admissible as far as third party guilt are
14 different than the rules what is admissible when you talk
15 about a defendant.

16 THE COURT: I am going to allow the question. I
17 think it is relevant. There has already been a great deal
18 of testimony as to the rocky relationship between the
19 witness and Ms. Hepburn. And certainly this provides
20 additional context and I feel it is also relevant. I
21 realize at this moment and time there has been no evidence
22 that Ms. Hepburn was drinking on that particular occasion.
23 But assuming Mr. Wise is going somewhere, will perhaps
24 provide additional evidence that brings this up. I do
25 feel that perhaps there was, there could be some evidence

1 which would be proper for Mr. Wise's client to explore. I
2 will allow it. I will note your objection.

3 MR. ABLE: I just want to make sure for the record,
4 Judge. You are allowing it over my objection on the fact
5 that I believe it to be irrelevant.

6 THE COURT: I believe it is relevant--

7 MR. ABLE: As to 402. The prejudicial value
8 outweighs--

9 THE COURT: I don't believe that the prejudicial
10 value outweighs the probative. It is something that Mr.
11 Wise can explore.

12 MR. ABLE: I find it immaterial, you are overruling
13 on that.

14 THE COURT: Yes. It is not too remote. I realize
15 that the death of the child, it is obvious that this was a
16 rocky relationship between this witness and your client in
17 the months preceding the death of the child. And I feel
18 that that is an area that could be explored and is a
19 proper area for Mr. Wise to explore. It has already been
20 touched on to an extent. You will have a great deal of
21 latitude to deal with it.

22 MR. ABLE: And I also objected on Rule 404(b). You
23 overruled that.

24 THE COURT: I overruled, yes.

25 MR. ABLE: Thank you.

1 THE COURT: Let's bring them back.

2 (Whereupon, the jury came into open court at
3 approximately 4:45 p.m.)

4 THE COURT: Mr. Wise, you may continue with cross.

5 CONTINUE CROSS-EXAMINATION

6 By Mr. Wise:

7 Q Mr. Hepburn, in February of 2009 your wife came out
8 to Washington to visit with you?

9 A Yes, sir.

10 Q And without the children?

11 A Correct.

12 Q And this was an attempt for y'all to get back
13 together?

14 A Well, she was back, she came to check on me because I
15 had just gotten out of the hospital.

16 Q Right. And still, was it going to be an attempt to
17 get back together, is that how you looked at it?

18 A I wasn't looking at it that way, no sir.

19 Q Okay. But anyway, she came out without the children
20 and stayed with you for about a week?

21 A Yes, sir.

22 Q And during that period of time I think you admit that
23 y'all started probably drinking too much?

24 A We did go out one night, yes sir.

25 Q Excuse me, you did what?

1 A We had gone out one night and had a good bit to
2 drink, yes sir.

3 Q I think you drank heavily is the way you put it?

4 A Yes, that night we had drank heavily, correct.

5 Q And you were driving?

6 A Correct.

7 Q And on the way back from where y'all were going she
8 actually started attacking you?

9 A We had gotten into an argument and she did get angry
10 and strike me, correct.

11 Q And gave you a black eye, I think?

12 A Correct.

13 Q Hard enough to give you a black eye?

14 A Yes, sir.

15 Q A pretty hard blow, then?

16 A Yes, sir.

17 Q And in fact it resulted in you almost losing control
18 of the car?

19 A Correct.

20 Q And you finally got pulled by the police who was
21 right behind you?

22 A Correct.

23 Q Thank you. Also you noticed several bruises starting
24 to appear on Audrina August and September of 2009, didn't
25 you?

1 A Correct.

2 Q Did you discuss that with Audrina, I mean, excuse me,
3 discuss that with Ashley?

4 A I did.

5 Q Excuse me?

6 A I did.

7 Q You did. And did she have an explanation for it?

8 A I think such as the chipped tooth or the one on the
9 forehead, she had given those explanations as far as being
10 just a child, things that happen with a child.

11 Q What was the explanation for the chipped tooth?

12 A Just she couldn't figure out where it would have come
13 from. It had to have been Audrina just crawling and must
14 have bumped her face on something.

15 Q And the explanation for the bruise on the forehead?

16 A She must have hit her head on the crib.

17 Q Had you seen the crib?

18 A Yes, sir.

19 Q Did it seem consistent with the crib?

20 A It did seem, it was a long-gated crease across her
21 head and it was the same width as the bar on the crib so
22 it was a possibility, yes sir.

23 Q So it was a possibility?

24 A Yes, sir.

25 Q And when you would talk with Ashley about the

1 injuries to Audrina's neck did Ashley get defensive?

2 A She did, yes sir.

3 Q And start raging with you or what?

4 A Yes sir, she did.

5 Q Starting denying anything was wrong?

6 A Yes, sir.

7 Q More so than, she had no simple explanation for it
8 either, did she?

9 A No sir, I tried to probe it out of her a little as
10 far as anything that happened to the children from her or
11 from Mr. Lewis because I had some issues with Mr. Lewis.
12 And I asked some questions about that and she got
13 defensive right away about that. She got defensive as far
14 as me asking anything about Mr. Lewis.

15 Q And she would start raising her voice?

16 A It was over the phone. I am not sure. I don't
17 remember her particularly raising her voice but she did
18 get aggravated with me asking.

19 Q Thank you very much.

20 THE COURT: Ms. Mayes.

21 MS. MAYES: Yes sir, Your Honor.

22 REDIRECT EXAMINATION

23 By Ms. Mayes:

24 Q Let me show you a photograph and ask you whether or
25 not you recognize the photograph?

1 MR. ABLE: Your Honor, I think we need to have a
2 sidebar on that.

3 THE COURT: Y'all come over here for a second.
4 (Whereupon, a bench conference was held in the
5 presence of the jury but out of the hearing of the
6 jury.)

7 Q Now, you had mentioned that you and Ms. Hepburn are
8 technically still married I believe was your response in
9 your cross-examination?

10 A Yes, ma'am.

11 Q Tell us about that.

12 A We actually had our hearing set for the divorce, in
13 South Carolina you have to be separated for at least a
14 year unless you can prove adultery or something along
15 those lines. We opted to wait the year. It was actually
16 set for October of 2009, our court hearing in Laurens
17 County to have our divorce but due to what had happened it
18 was put off. Since then it has kind of taken the back
19 burner to everything because of what is going on here.
20 And I tried to get it settled outside of court but there
21 is an issue as far as custody. Ashley wants to try to get
22 custody back with Owen after everything is done and over
23 with. And I don't agree to it and that is why we are
24 still not divorced as of yet.

25 Q All right. Now, you mentioned I believe in one of

1 your responses to cross-examination that she got defensive
2 right away about Mr. Lewis. What do you mean by that?

3 A I had some issues with Mr. Lewis as far as from what
4 I had known him in the past. I didn't like him being
5 around my children.

6 MR. WISE: I would object--

7 THE COURT: Repeat the question, if you will.

8 Q I was asking about his response to Mr. Wise's
9 question about her being defensive about Mr. Lewis.

10 MR. ABLE: He responded to one of my questions that
11 way.

12 THE COURT: You will have another chance to get
13 around on cross, Mr. Wise. Repeat the question.

14 Q Without any specific incidents what was your concern
15 that you are referring to?

16 A I didn't feel as far as his character, as far as how
17 I knew him when we were friends. I didn't want someone
18 like that around my children. So, I had some issues with
19 him being around my children as much as he was.

20 Q And what was her reaction when you raised that point?

21 A She got defensive right away as far as me questioning
22 him being around the children, me questioning her right as
23 a parent to allow him around the children.

24 Q And was it your understanding that Mr. Lewis, whether
25 or not Mr. Lewis was--

1 MR. WISE: Objection, she is leading the witness.

2 THE COURT: Sustained.

3 Q What was your understanding about whether or not Mr.
4 Lewis was allowed around your children?

5 A He was always pretty much around. The 4th of July as
6 an example I had the children at the beginning of the day,
7 she was, she came and picked the children up. Originally
8 she was going to stay there with us and have a family
9 barbecue and then she picked the children up and took them
10 with Mr. Lewis and his family on Lake Greenwood.

11 Q And she had knowledge and was aware of your concerns.
12 Can you tell us whether or not that is correct?

13 A Yes, that is correct.

14 Q Nothing further.

15 THE COURT: Mr. Able.

16 RECROSS-EXAMINATION

17 By Mr. Able:

18 Q Now, back in February of '09 Ashley came from Cross
19 Hill, South Carolina out to Washington to check on you
20 because you had been in the hospital?

21 A Correct, she was concerned about me and wanted to
22 make sure I was okay.

23 Q Why were you in the hospital?

24 A I had had some issues, I was, after she had left with
25 the children I had issues with depression. I was given

1 multiple different kinds of doses of antidepressants. I
2 was home to see the children on Christmas and didn't like
3 how I wasn't very responsive. I was pretty much overly
4 medicated so I stopped taking the medication and I had an
5 adverse affect to it and I slipped into deeper depression
6 and ended up in the hospital because of the depression.

7 Q Did you try to commit suicide?

8 A Correct.

9 Q Took a bunch of pills?

10 A I did, I took some pills and I also slit my wrists as
11 well.

12 Q She came out there as your wife to check on you and
13 to make sure you were okay?

14 A Correct, she was concerned.

15 Q Okay. And she gets out there and you and her go out
16 one night?

17 A Correct. We had gone out, we had gone out with a lot
18 of the guys that were in my unit and their girlfriends or
19 wives.

20 Q And this night that you said both of you were
21 drinking heavily, you were arrested?

22 A Correct, I was, for reckless driving.

23 Q Again, you testified before you never saw Ashley be
24 violent toward her children?

25 A No, she had never been that violent towards the

1 children.

2 Q And talking about the rash on the neck. You said, I
3 believe in cross-examination by Mr. Wise that she denied
4 anything being wrong but she, you had already knew she had
5 taken the child to the doctor three times, correct?

6 A Correct. And she had stated that it was meningitis.
7 The questions that I was asking had nothing to do with
8 meningitis, it was actually leaning towards any kind of
9 physical reasons for this.

10 Q But you knew she had been going to the doctor to try
11 to find out what was wrong?

12 A Correct.

13 Q That is all I have.

14 THE COURT: Mr. Wise.

15 RECROSS-EXAMINATION

16 By Mr. Wise:

17 Q Did you ever go back to family court and see about
18 changing your custody because Mr. Lewis was around?

19 A I had not had the chance being that I was in
20 Washington and because I was in the military I was
21 ineligible to get full custody of the children or any
22 joint custody.

23 Q When did you first learn that she was seeing Mr.
24 Lewis?

25 A Originally I had heard about it probably around

1 Christmastime. I had heard from some friends.

2 Q Christmas of 2008?

3 A Correct. I had heard about her possibly being around
4 him.

5 Q You came back to South Carolina when?

6 A I came back, I believe it was around December 22nd or
7 23rd on leave to see the children and to see her. I had
8 asked her about it and she said she hadn't seen him.

9 Q When did you come back to stay?

10 A To stay was June 22nd of 2009.

11 Q June 22nd of 2009 you knew she was seeing Mr. Lewis?

12 A Yes.

13 Q Y'all went to family court when?

14 A As far as the separation?

15 Q Yes.

16 A That was in May, May of 2009.

17 Q You never went back to court after that?

18 A No, sir.

19 Q Thank you.

20 THE COURT: Anything further, Ms. Mayes?

21 MS. MAYES: No sir, Your Honor.

22 THE COURT: Mr. Able?

23 MR. ABLE: No sir, Your Honor.

24 THE COURT: You may step down. Do you have another
25 witness, Ms. Mayes?

1 MS. MAYES: Yes sir, the State calls Ben Blackmon.

2 MR. ABLE: Judge, there is a matter that I will need
3 to take up with the Court outside the presence of the
4 jury.

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, if you will excuse us for a few moments. Don't talk
7 about the case and we will have you back in about five
8 minutes. Thank you.

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

10 THE COURT: Is it okay if Mr. Blackmon remains in
11 here while we discuss this issue?

12 MR. ABLE: Yes, sir.

13 THE COURT: If you want to have a seat, Mr. Blackmon,
14 that will be fine. Mr. Able.

15 MR. ABLE: Judge, it is my understanding that Mr.
16 Blackmon was called as an investigator with the sheriffs
17 office, he testified concerning the voluntary statement
18 provided by Mr. Lewis on October 13th of 2009, the time of
19 6:42 a.m. I was wanting to raise to the Court the Bruton
20 issue as to part of the statement. There is, within the
21 statement, a statement by Mr. Lewis wherein he says, "I
22 didn't shake her or anything." I think that that phrase
23 runs afoul of Bruton in that by implication he saying I
24 didn't do it and by implication he is pointing a finger at
25 my client.

1 THE COURT: The statement is October 13th.

2 MR. ABLE: 2009 at 6:42 a.m.

3 MS. MAYES: Your Honor, it is the handwritten
4 statement and I think, it has previously been submitted to
5 the Court for the hearing--

6 THE COURT: I have got it.

7 MS. MAYES: Okay.

8 THE COURT: Hold on a second. Ms. Mayes, what is
9 your response to that?

10 MS. MAYES: Your Honor, I do not think that that
11 particular statement on its face implicates the
12 codefendant in any way. I believe that is the standard
13 test that the case has upheld since Bruton of whether or
14 not on its face it implicates the codefendant. And I
15 don't see that statement to be an implication of guilt
16 towards someone else at all. It seems to be an outright
17 denial by Mr. Lewis as to that form of physical assault on
18 a child. It is without question that he is denying that
19 he did it. He can deny that he did it without implicating
20 the codefendant.

21 MR. ABLE: The statement is establishing that it is
22 only two of them there other than my client's mother and
23 boyfriend in another room. Of course it implicates her
24 saying he didn't do it. By association it implicates her,
25 there is on doubt about it.

1 THE COURT: There is a case on point.

2 MS. MAYES: Was that the vehicle--

3 THE COURT: It may have been a felony, do you
4 remember the name of it. Evans, I believe.

5 MR. ABLE: Which case is this, Judge?

6 THE COURT: This is Evans. 450 SE2d 47, 1994,
7 Supreme Court. Basically it is a joint situation where
8 two individuals are in a truck. The defendant, Mr. Evans,
9 had been charged with felony DUI, apparently two counts of
10 murder involving a death of two people who have been
11 struck walking along side the road. The witness for the
12 State testified that often discussed the accident with him
13 and made a statement, "I wasn't driving anyway." Evans
14 contends that the statement implicates him as the driver
15 and because Evans did not testify at trial the admission
16 of his testimony violated the confrontation clause under
17 Bruton. And it goes on to say the statement did not, "on
18 its face" incriminate evidence although it is
19 incriminating certainly in verbal from other evidence that
20 was properly admitted against him. It would appear to me
21 that the statement is admissible under State v. Evans.
22 Ms. Mayes, how long do you anticipate this witness taking.
23 MS. MAYES: Your Honor, he interviewed Mr. Lewis and
24 took the statement in addition to getting, obtaining the
25 search warrant and being at the scene, it would be past

1 5:30.

2 THE COURT: How many more witnesses do you have, Ms.
3 Mayes?

4 MS. MAYES: We are expecting to finish our case
5 tomorrow afternoon.

6 THE COURT: Tomorrow afternoon. Do you have, I am
7 not holding you to this, a rough idea of how long your
8 direct and cross if we were, is Mr. Blackmon available
9 tomorrow.

10 MS. MAYES: Yes sir, Your Honor.

11 MR. WISE: Your Honor, it appears that it would be
12 nice to give us a break.

13 THE COURT: We will take a break. Bring the jury in,
14 please.

15 (Whereupon, the jury came into open court at
16 approximately 5:15 p.m.)

17 THE COURT: Ladies and gentlemen of the jury, I was
18 taking up an issue of law with the attorneys involved in
19 this case and we have been pushing a lot harder than it is
20 typical for many jury trials. It has been a long day and
21 you have had a lot of testimony already thrown at you.
22 So, we are going to call it a day. When you go home
23 tonight, again, do not discuss this case with anyone. It
24 is your decision and your decision alone, you can't be
25 influenced by friends or family members or significant

1 others, anyone. It is solely for you to determine. If
2 you happen to cross any news reports of the trial you are
3 not to pay them any attention, you are not to look at
4 them, you are not to listen to them, you are not to read
5 them if something appears in the paper or on any other
6 media. Have a good evening and we will see you back
7 tomorrow morning at 9:00 o'clock. Thank you.

8 (Whereupon, the jury was excused from open court for
9 the day.)

10 THE COURT: The jury is out and we are at ease until
11 tomorrow at 9:00.

12 (Whereupon, the trial will resume the next morning at
13 9:00 a.m.)

14 MS. MAYES: Your Honor, may we approach?

15 THE COURT: Sure.

16 (Whereupon, a bench conference was held with the
17 attorneys and the Court.)

18 THE COURT: We are back on the record. I met just a
19 moment ago with counsel here at the bench concerning the
20 statement Mr. Lewis gave to Sergeant Moody and I have
21 explained what I feel is proper evidence in the State's
22 case-in-chief to counsel. There was one additional
23 modification of it, of the statement from last Wednesday's
24 hearing. And we made a redacted copy and an un-redacted
25 copy of Mr. Lewis' statement. Part of the Court's record

1 is Court's exhibit number 4 just for purposes of any
2 review.

3 (Whereupon, Court's Exhibit 4 was marked for
4 identification only.)

5 THE COURT: And I explained that there was an
6 additional portion that I thought it would be unfair to
7 Mr. Wise where the portions reads, in or around 12:45 in
8 the a.m. I heard Audrina crying in her room. I didn't
9 feel it was appropriate, I felt it was too prejudicial or
10 raising some improper inference with the jury to allow
11 that to be heard by the jury at this point and time simply
12 because the way the narrative would flow would be, it
13 would have Mr. Lewis hearing the baby crying and the next
14 thing he does would, according to the way the testimony is
15 going to be presented would be to go check on this
16 codefendant in this codefendant's bedroom as opposed to
17 perhaps getting up and checking on the baby. So, that
18 additional portion has been removed from the statement.
19 It is my understanding Ms. Mayes will be eliciting the
20 statement by way of testimony as opposed to actually
21 introducing a redacted version of the statement which I
22 feel would be in accordance with Bruton and perhaps a much
23 safer course of action. Mr. Wise informed me that he
24 would be objecting and had some issues. Of course Mr.
25 Wise wants the entire statement to come into evidence

1 un-redacted. And Mr. Wise had wanted to discuss with me
2 his cross-examination or as he put it, "the lack thereof"
3 in light of the redacted version of the statement given to
4 Sergeant Moody. Mr. Wise, is that correct?

5 MR. WISE: That is correct, Your Honor. First of all
6 I think I am entitled to ask whether or not he gave a
7 written statement which I think he can answer yes without
8 any problems. But then I think I am entitled to show that
9 he, that at 11:56 he cooperated with law enforcement, told
10 them the story of what happened and all the detail.
11 Because that then relates to Officer Plaxico taking this
12 same written statement and confronting Ashley Hepburn with
13 it and her saying, oh my god it is true. Which is I think
14 from my client's standpoint is a very helpful admission on
15 her part to foster his case that he wasn't responsible for
16 this child's death. And between cross-examining this
17 officer about what Mr. Lewis said and cross-examining or
18 examining Officer Plaxico I think, it is third party
19 guilt. I think I am entitled to it. I have a
20 constitutional right to present a complete defense and a
21 complete defense would consist of statements by a
22 codefendant that she did this crime. And that is what we
23 have here is a statement by a codefendant that she did
24 this crime because she in essence said, this statement was
25 true. In essence that is what she said, this statement is

1 true. And if she says this statement is true then my
2 client is exonerated by her and I think I am entitled to
3 put a jury, to have that information.

4 THE COURT: And of course we have traveled down this
5 road before and we may as well go down it one more time.
6 Obviously I am constrained by Bruton, what Bruton allows.
7 I understand the provisions of Holmes versus South
8 Carolina. I don't read Holmes as standing for the
9 proposition that the defendant has an absolute
10 constitutional right to prove third party culpability in
11 the manner that you are suggesting, Mr. Wise. I think
12 what Holmes does say is that the defendant has the
13 constitutional right to present evidence and that any
14 state rule of evidence abridging that right must not
15 impact a significant right or a Federal right and such a
16 rule must not be arbitrarily disproportionate. I realize
17 the Court's ruling may impact a right of the defendant,
18 that is you can't use an arguable statement by the
19 codefendant to prove third party culpability. I don't see
20 where it is arbitrarily disproportionate in that we are
21 attempting by what we do today to protect recognizable,
22 Federally recognizable right of the codefendant to
23 confront her accusers under the sixth amendment of the
24 constitution. Obviously you are at liberty to present
25 your defense. I understand it may involve your client, if

1 he chooses to pursue that, may involve him testifying in
2 some respects. But at the same time that is the only way
3 that I can see your client with both Bruton and giving due
4 deference to Holmes. Certainly you can call this witness
5 at a later point and time. I am more than happy to
6 explain to the jury anything you may wish me to explain to
7 them without the statement at the appropriate time. We
8 are in the State's case-in-chief and in my mind the law is
9 clear. It is improper for your client to testify against
10 Ms. Hepburn, it is improper for her to testify against Mr.
11 Lewis at this stage of the proceedings and that is what
12 will be, that would be a practical effect, it would be if
13 we were to permit this statement to come in. I understand
14 your position.

15 MR. WISE: First I want to add, this problem is not
16 caused by anything I have done or Brandon Lewis has done.
17 The problem is caused entirely by the State's selection to
18 try these two defendants together. Holmes I think very
19 clearly says, because they cite in an earlier case for the
20 proposition that the constitutional guarantees criminal
21 defendants a meaningful opportunity to present a complete
22 defense. Now, whether I do it through cross-examination
23 or calling those witnesses in my case-in-chief, before he
24 testifies I am still entitled to present a complete
25 defense. And there is really no difference, if Mr. Lewis

1 doesn't testify there is really no difference in my
2 cross-examining him about it or going on and call him as a
3 witness in chief about it. You have got the same problem.
4 So in essence what the ruling is is I cannot call these
5 witnesses on my behalf unless Brandon Lewis testified and
6 I think you are conditioning it upon, forcing the
7 defendant to testify in order to get credible third party
8 evidence, third party guilt evidence in.

9 THE COURT: And I would agree with you, Mr. Wise,
10 that Holmes does stand for the proposition that the
11 constitution will guarantee a defendant meaningful
12 opportunity to present a complete defense. The way I read
13 Holmes is that it says any evidentiary rule which
14 infringes upon that right has to fall and can't stand. We
15 are not dealing with an evidentiary rule here, we are
16 dealing with the constitutional guarantee to Ms. Hepburn
17 and to your client. It goes both ways.

18 MR. WISE: I think what we are dealing with here is a
19 decision by the State to present, to prevent my client
20 from presenting testimony by the third defense by choosing
21 to try them together. Now, that is an arbitrary rule, I
22 think. Because we have a decision by the State and who
23 has created this dilemma, not anything this Court has
24 done, my client has done or Mr. Able has done.

25 THE COURT: I understand this. I think it was

1 brought out on Wednesday of last week, obviously there
2 would be other evidentiary problems with the statements,
3 hearsay comes to mind, that is the first one that comes to
4 mind if they would be tried separately. Ms. Mayes, you
5 want to weigh on this?

6 MS. MAYES: Yes sir, Your Honor, absolutely. It is
7 actually to the benefit of Mr. Lewis to have a joint trial
8 because it gives him the opportunity if he so chooses to
9 put up a defense and actually admit the statement that
10 they consider exculpatory by Ashley Hepburn in a joint
11 trial. If Mr. Lewis were tried individually that
12 statement would be not admissible. Ms. Hepburn cannot be
13 compelled to testify, she could invoke her fifth amendment
14 right against self incrimination and they absolutely would
15 not be able to offer that statement.

16 MR. WISE: I disagree with that statement. I think
17 statement of third party guilt would be admissible in a
18 separate trial with no problem. But I understand the
19 Court's ruling. I am not going to be allowed to
20 cross-examine Officer Moody about any of the redacted
21 portion of the statement given by Mr. Lewis.

22 THE COURT: That is essentially correct. If you want
23 to ask open ended questions, I am trying to give you
24 gentlemen as much latitude as I possibly can within the
25 confines of what the constitution will allow me to do. If

1 you want to ask Sergeant Moody was he cooperative, did he
2 seem cooperative, what his demeanor was. That is fair
3 game. So, I am not limiting you in any way, shape or
4 form.

5 MR. WISE: I want to understand the rule. I cannot
6 ask him specifically about any redacted portion.

7 THE COURT: Not at this point and time but you are
8 free to call him at a later point and time. Anything
9 before we bring the jury in.

10 MR. ABLE: Yes sir, Judge I had mentioned to the
11 Court at sidebar that I wanted to renew my motion that we
12 made last Wednesday on the 16th. As to the statement that
13 we are discussing presently. I had moved last week to
14 exclude the statement in whole pursuant to Bruton. As to
15 the confrontation clause, of course, the sixth amendment
16 and I am asking the Court to again to reconsider its
17 ruling. I understand the redacted portion, I understand
18 what the Court has done however I would renew the motion
19 that the, given the way it is redacted I would renew the
20 motion that the Court suppress and exclude the statement
21 in whole.

22 THE COURT: I appreciate your position, Mr. Able. I
23 feel that this is the proper course of action with what is
24 attempted to do here in limiting the State's examination
25 as well as Mr. Wise's examination and as much as I can

1 possible do to protect your client under Bruton. And I
2 feel that it is a fair redaction and I don't see where, in
3 my mind, a different Court may disagree with me and that
4 is perfectly fine but I don't see in my mind where there
5 is any implication or negative implication. With all due
6 respect the motion is denied.

7 MR. ABLE: Allow my motion to--

8 THE COURT: You will not need to object when Sergeant
9 Moody testifies.

10 MR. ABLE: Thank you.

11 THE COURT: Ms. Mayes, are you ready?

12 MS. MAYES: Your Honor, we also need to take up the
13 matter, are there any objections to autopsy photographs.

14 MR. WISE: I would say all of them.

15 THE COURT: It is my understanding that the
16 photographs which were emailed to me Thursday or Friday of
17 last week, I haven't had a chance to review them. It is
18 my understanding and I will take a look at what you have,
19 Ms. Mayes in a moment. I will come down there and look at
20 them with counsel. But is it anything different than was
21 sent to us last week?

22 MS. MAYES: I don't believe it is, Your Honor. Dr.
23 Ward is reviewing them so there might be some additional
24 photographs that he has selected. I believe there are six
25 photographs.

1 THE COURT: And it is my understanding that none of
2 the photographs indicate anything such as dissection, it
3 is basically--

4 MS. MAYES: These are external photographs, correct,
5 Your Honor.

6 THE COURT: They are external photographs of the
7 deceased child.

8 MR. WISE: And, Your Honor, my point is I don't
9 think, I think the pictures that are already in adequately
10 show exactly the same thing that has been shown on those
11 photographs of the deceased child.

12 THE COURT: For what purpose does the State seek to
13 introduce these photographs and how will that aid the
14 testimony.

15 MS. MAYES: Yes sir, Your Honor, there are a number
16 of bruises which are more prominent and more visible. At
17 autopsy I believe that was explained yesterday by Dr.
18 Croswell that some of the bruising along the neck and
19 chest and face had been not as visible in the photographs
20 that were taken in the hospital because she was on a
21 respiratory and was not yet at a point where the bruises
22 would be as prominent. She had also explained that the
23 masking tape around the respirator had concealed some of
24 the bruises as well. And those are more prominent in the
25 autopsy photographs.

1 MR. WISE: Does she need all six to show that. If
2 she thinks that a picture or two show a bruise more
3 prominent than the others then let's identify which
4 pictures shows which bruise more prominently than the
5 others so the Court can compare the autopsy pictures with
6 other pictures and see if it does show it more
7 prominently.

8 MS. MAYES: Your Honor, on this one is the prominent
9 ear bruise. I believe that was the only one that had
10 indicated that particular injury. The shoulder bruising
11 is prominent on this particular photograph.

12 THE COURT: Let's go ahead and get them marked so
13 that we can refer to the ones that we are referring to
14 with a little bit more specificity. Just make them ID.

15 MR. WISE: We still have a problem that two pictures
16 that we inadvertently let in were identified, caused by
17 hospital treatment.

18 MS. MAYES: No, that is not correct.

19 MR. WISE: They are not.

20 MS. MAYES: They were marked for ID only, those are
21 not in evidence.

22 MR. WISE: I thought they were 12 and 13 is the
23 reason I asked. Okay, it was 9 and 10. Okay.

24 (Whereupon, State's Exhibits 23 through 28 were
25 marked for identification only.)

1 THE COURT: These have been marked 23 through 28 as
2 ID, State's exhibits. 23 is a facial shot taken from
3 above the child's head. The child's eyes are closed.
4 They are not taped, a gloved hand is holding the child's
5 neck upward I suppose to try and get a better shot of the
6 child. 24 indicates bruises on the left side of the
7 child's, below the ear and around the collar bone on the
8 left. There is tape which appears, tape which was holding
9 the child's eyes closed. 25 is a similar shot but a
10 little bit closer. 26 is taken of the upper torso of the
11 child. It shows a red mark on the right shoulder, the
12 eyes are not taped, indicates bruising, what appears to be
13 bruising around the neck area and upper rib cage of the
14 child. 27, again another photo, the child is on its back,
15 its neck is turned to the right, her neck is turned to the
16 right. Bruising again is shown on the left side of the
17 child and around the neck, the clavicle as well as what
18 appears to be a red area on the left side of the child
19 from the midrib cage down to the waste. And 28, again
20 similar photo and this one the child's eyes are taped,
21 again bruises around the clavicle. The redness around the
22 abdomen, the waste line is evidence in that one. Ms.
23 Mayes, which ones are you looking to introduce, all of
24 them and what do you anticipate, how do you anticipate the
25 physician on these photos will state his testimony.

1 MS. MAYES: Yes, sir. We would be offering 27, 26,
2 28 and 23. I believe 23 is the only one that shows the
3 eye injury and the right shoulder. There are bruises
4 prominent in 27, 28 and 26 depict the chest bruising and
5 then in 28 the chin bruise.

6 MR. WISE: My objection of 26 is there is a mark that
7 is obviously caused by the medical procedure.

8 THE COURT: I would presume that the pathologist can
9 testify to that.

10 MR. WISE: And it also looks like to me from the
11 chest area that that is where blood is deposited after
12 death and it is nothing to do with any injury.

13 MS. MAYES: He can clarify anything like that.

14 MR. WISE: Clarify it but I don't necessarily know
15 the need for it because I think, it is shown on the others
16 and there was testimony about it. I don't think they add
17 anything.

18 THE COURT: I appreciate that, Mr. Wise, Mr. Able.
19 Under 403 analysis I think the question is are they unduly
20 prejudicial. These are obviously postmortem photos, they
21 certainly are not, although they are disturbing in the
22 sense that they show photos of the deceased child. They
23 are not of the kind of gore or inflammatory type
24 photographs that normally one would see during an autopsy
25 or after an autopsy. Subject to the witness testifying in

1 such a way that helps explain the photographs and of
2 course subject to your cross-examination, Mr. Wise and Mr.
3 Able, I will allow the State, it appears they are only
4 seeking introduction of these four. You are not looking
5 at the other two at this point and time.

6 MS. MAYES: Not of those two, Your Honor, not at 25
7 and 24.

8 THE COURT: 25 and 24, the State is not seeking
9 introduction of those at this point and time. You are not
10 going to ask the doctor about those unless something comes
11 up during direct or cross. You can question the doctor
12 about those photographs, if there is any desire for a
13 limiting instruction or for me to explain something to the
14 jury I am more than happy to consider that, gentlemen.

15 MR. ABLE: Let me understand this, Judge. Our motion
16 is pursuant to 403, you are denying that these be
17 suppressed pursuant to 403. Any probative value, as Mr.
18 Wise said I think the initial ones have been put in. I
19 don't think these photographs that we are discussing now
20 has anything by way of further evidence. I think they
21 would only serve to inflammatory, they are inflammatory
22 and I believe their prejudicial value outweighs any
23 probative value.

24 THE COURT: I understand, the distinction I am sort
25 of drawing in this particular case though, it is my

1 understanding if the pathologist is the one who is going
2 to be testifying as to these photos obviously by the
3 nature of his job the pathologist is going to be condemned
4 with the manner of death. The other physicians who have
5 testified, they testified as to bruising and things when
6 the child was alive and injuries the child had while the
7 child was alive. The pathologist has some what of a
8 different perspective, obviously, professionally than
9 does, then do the other physicians who have testified.
10 And under 403 analysis I can't say that the prejudicial
11 effect is outweighed by the probative value of these
12 photographs. If you care to object, they are not in
13 evidence at this point and time. I am not saying they got
14 to come into evidence. She will have to move them into
15 evidence, you can make the objection at that point and
16 time. And they are subject to the physician demonstrating
17 relevance. I am assuming for the moment that Ms. Mayes
18 can cross that threshold. Let's go ahead and bring the
19 jury in, please.

20 (Whereupon, the jury came into open court at
21 approximately 9:45 a.m.)

22 MS. MAYES: May we approach?

23 THE COURT: Sure.

24 (Whereupon, a bench conference was held in the
25 presence of the jury but out of the hearing of the

1 jury.)

2 THE COURT: The record should reflect that the jury
3 is back. Ladies and gentlemen of the jury, I hope you all
4 had a good evening last night. We are resuming with the
5 trial in this case and I apologize for getting you back in
6 later than we expected. We had some unexpected issues
7 come up this morning. Ms. Mayes, call your next witness,
8 please.

9 MS. MAYES: The State calls Dr. Michael Ward.

10 Dr. Michael Ward, after being duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Mayes:

14 Q Dr. Ward, will you give us some information about
15 yourself concerning where you are employed and in what
16 capacity?

17 A I am employed in Greenville County by Pathology
18 Associates of Greenville which is a private practice
19 pathology group. I am also employed by Greenville County
20 as the Chief Medical Examiner.

21 Q And tell us a little bit about being Chief Medical
22 Examiner, what does that mean?

23 A A medical examiner is charged with investigating
24 deaths that occur in whichever jurisdiction we might be
25 talking about to determine cause and manner of death.

1 Q Can you give us some information concerning your
2 educational background.

3 A I have a Bachelor's Degree in Biology from the
4 University of Alabama. I received my Master's Degree in
5 forensic science from the University of Alabama in
6 Birmingham. I went to Medical School and received a
7 Medical Degree from the University of South Alabama. I
8 did a four year anatomic pathology residency at the
9 Medical University of South Carolina and one year
10 Fellowship in Forensic Pathology at the University of New
11 Mexico in Albuquerque. I am Board Certified by the
12 American Board of Pathology in both anatomic and forensic
13 pathology.

14 Q And have you testified previously as a forensic
15 pathologist in the State of South Carolina?

16 A Yes, I have.

17 Q And does that include in cases of homicide?

18 A It does.

19 Q Is it possible for you to estimate how many autopsies
20 you have performed throughout your career?

21 A At least 250 autopsies for close to 20 years so well
22 over 4 or 5 thousand.

23 MS. MAYES: Your Honor, at this time the State would
24 offer Dr. Michael Ward as an expert in forensic pathology.

25 THE COURT: Any objection, Mr. Able, Mr. Wise?

1 MR. ABLE: No objection.

2 MR. WISE: No objection.

3 THE COURT: Ladies and gentlemen, as I have explained
4 with previous physicians who have testified. A person
5 normally cannot give an opinion about something that they
6 have not seen or heard or observed with their senses. An
7 exception exist with people who are qualified in certain
8 expertise through training or experience. And in this
9 case the State and the defendants have agreed that Dr.
10 Michael Ward is certified as an expert in the field of
11 forensic pathology. He is qualified to give his opinions
12 in that area therefore that does not mean of course that
13 you must accept his opinions. But it is evidence for you
14 to use in any way that you see fit and give it the weight
15 and credibility that you believe it deserves in your
16 discretion. Ms. Mayes, you may continue.

17 MS. MAYES: Yes, Your Honor.

18 Q Dr. Ward, throughout your career in forensic
19 pathology have you had the opportunity to conduct
20 autopsies on children who are victims of abuse?

21 A Yes, I have.

22 Q And are you familiar with the medical literature and
23 have you had clinical experience with abusive head
24 injuries of children?

25 A Yes, I have and I am.

1 Q Dr. Ward, I want to start by asking you how you
2 became involved in the case concerning Audrina Hepburn who
3 was sixteen months of age?

4 A I was contacted by Coroner Nick Nichols who is the
5 Laurens County Coroner, was informed of this case and
6 asked by him to perform an autopsy on Audrina.

7 Q And can you tell us whether or not you routinely
8 performed autopsies at the request of county coroners and
9 law enforcement?

10 A We perform all medical legal autopsies for Greenville
11 and Pickens Counties, basically all the coroner autopsies
12 for Greenville County, Pickens County and most of the
13 Laurens County cases. At this time when Audrina died we
14 were doing cases on a case by case basis, basically if
15 they died at Greenville Memorial Hospital Coroner Nichols
16 would ask us to perform those autopsies. Now, we perform
17 all of Coroner Nichols autopsies.

18 Q Dr. Ward, on what date did you perform on autopsy on
19 Audrina Hepburn?

20 A October 19th, 2009.

21 Q Can you take us through the steps of the autopsy, Dr.
22 Ward, and sort of explain how you go about doing an
23 autopsy?

24 A Certainly. An autopsy is a detailed physical
25 examination performed on a person after they die. The

1 initial portion of the autopsy involved an external
2 examination looking at the outside of the body for any
3 identifying marks, any signs of trauma, documentation of
4 any injuries that are present, both on paper,
5 photographically and in the written form. And then
6 progression of the autopsy takes it from the outside to
7 the inside where we look at the underside of the skin, the
8 muscle and the underlining visceral organs or the organs
9 of the chest, abdomen and brain. Again, looking for any
10 evidence of injury.

11 Q Again, in this particular autopsy concerning Audrina
12 can you take us through, were there medical findings?

13 A Yes, there were.

14 Q Can you take us through the various medical findings
15 that you made in Audrina's case beginning with whether or
16 not she had head injuries?

17 A My autopsy protocol is divided into regions, head,
18 chest and abdomen, upper extremities and lower
19 extremities. Examination of Audrina's head and face,
20 there was a healing bruise on the left jaw, on the
21 mandible. It had some coloration to it, it was a half
22 inch yellow green contusion or a bruise here right
23 overlying, this bone is the mandible and it is right here
24 on the jawline, right at the mandible. Just to the front
25 of that was a separate bruise, about a quarter inch in

1 diameter, sort of a blue, red, purple contusion or a
2 bruise just in front of this second one. So, there is one
3 here and a separate one here. On the left scalp in the
4 back just behind the ear was an area of, I am trying to
5 translate here into a lay term, it is a scab. Basically
6 there was an abrasion or a scratch to the skin with a scab
7 formation over it. So, it is from the left back here. On
8 the back of the right side of the head was a one inch
9 bruise to the skin that we were able to see from the
10 outside. And those were all the injuries that we were
11 able to see from the outside of Audrina's head. During
12 the autopsy the skin of the head is reflected both forward
13 and backwards to expose the underlying skull as well as
14 the under surface of the skin. After that was performed
15 there was a large area of bleeding into the skin or to the
16 under surface the skin overlying the right side of the
17 scalp and extending to the right back of the scalp. And
18 this is called subgaleal hemorrhage or basically
19 hemorrhage beneath the skin that we can only see from the
20 underside but not from the outside.

21 Q And to clarify, Dr. Ward, the subgaleal hemorrhage,
22 that was on the right or the left or both?

23 A It is on the right side, the right side extending to
24 the right back. And it had overall dimensions of four by
25 three inches. So a fairly large area of hemorrhage

1 especially on a child's head. The next step in the
2 autopsy, after the skin is reflected forward and backward
3 is to remove the skull cap or the bones of the skull.
4 Those are removed and then once that is removed it exposes
5 the underlying dura or the thick covering over the brain.
6 Once the dura is removed there should be nothing there but
7 basically space between the dura and the brain. In
8 Audrina's case there was a layer of blood called subdural
9 blood or beneath the dura which is blood that had
10 accumulated between this thick covering, fibros tissue
11 covering over the brain and the brain itself. And, again,
12 there should be nothing there. That should be a space.
13 So in this space was a layer of subdural blood, again,
14 overlying the right side of the brain. The next layer
15 down, as we get to the brain itself it is called the
16 arachnoid and that is a very thin layer that actually
17 covers the brain itself. The dura is attached to the bone
18 and helps to protect the brain. The arachnoid is a very
19 thin layer within which blood vessels actually run.
20 Audrina had hemorrhage within the arachnoid layer
21 overlying her brain primarily on the right side. So she
22 has got hemorrhage within the skin, blood collecting
23 beneath the dura, subdural and hemorrhage within the very
24 thin tissue covering over the brain subarachnoid. So, she
25 has got multiple layers of blood as we move down. If you

1 look at the outside or look at the brain itself, there was
2 evidence that her, Audrina's brain had become swollen.
3 The word we use is edematous but it was swollen.
4 Basically any response that the brain has to injury is to
5 recruit an increase in blood flow to try and heal itself
6 and that results in swelling of the brain or cerebral
7 edema. So, we are able to see hemorrhage in the skin,
8 subdural, subarachnoid hemorrhage and then the swelling of
9 the brain associated with this brain injury. Would you
10 like to progress to the eyes now?

11 Q Yes.

12 A In cases where external examination of the head and
13 the brain lead us to the possibility of child abuse and
14 abusive head injuries we do an extra step dissection which
15 it involves removing the eyes of the decedent. In this
16 case Audrina's eyes were removed and when they were
17 examined there was hemorrhage extending along the optic
18 nerve. The eyes are fairly unique in that the part that
19 we see fits in a globe, in a little socket. And extending
20 from the back of your eye, attached directly to the brain
21 is the optic nerve. And so your eyes go directly back to
22 the brain. There was hemorrhage along that optic nerve
23 extending out to the eyes. Once we sectioned the eyes or
24 cut them open the back part of the eye is called the
25 retina and that is the part where the light goes through

1 your eyeball and hits the retina and that allows us to
2 see. There should be no blood in that area. There were
3 pinpoint hemorrhages called petechial hemorrhages or
4 pinpoint hemorrhages within the retina of Audrina's eyes
5 on both sides. And these are the result of head injury.

6 Q Are those also termed retinal hemorrhages?

7 A They are retinal hemorrhages.

8 Q Now, Dr. Ward, what is meant by the term diffuse
9 axonal injury?

10 A Diffuse axonal injury is a term that we use for a
11 microscopic description where the nerve cells of the brain
12 have a cell body and they send out fingers, if you will,
13 that attach to other cell bodies in the brain so that they
14 can talk from one side to the other or this part of the
15 brain to the other part of the brain. In certain types of
16 injuries these finger projections can become damaged, they
17 can become torn. And when they are not damaged and when
18 we are alive fluid passes along the covering along the
19 outside of these axons. And once they are broken and we
20 survive for a period of time, after they have been broken
21 and this fluid will accumulate and cause some swelling at
22 the junction or at the point where the axon was damaged.
23 And we can see this microscopically when we look at the
24 brain. And where we see these damaged areas with the
25 swelling around the axon these are called axonal swellings

1 or diffuse axonal injury.

2 Q Can you tell us whether or not there was diffuse
3 axonal injury in Audrina's case?

4 A Yes, there were. Microscopic examination of the
5 brain revealed areas of these cellular swellings or
6 swellings along the axon in the sections of Audrina's
7 brain.

8 Q Dr. Ward, what if anything is a significance of a
9 diffuse axonal injury finding in conjunction with a
10 subdural hematoma, subarachnoid hematoma and retinal
11 hemorrhages in a child?

12 A This constellation of injuries in a child the size of
13 Audrina or the age of Audrina without the history of some
14 severe incident, a car accident, a fall from an extended
15 height, multiple, multiple feet, are considered to be
16 consistent with non-accidental head injuries or abusive
17 head injuries.

18 Q And when you say non-accidental injury or abusive
19 injuries you are referring to child abuse?

20 A That is correct.

21 Q Dr. Ward, I am going to ask you to take a look at
22 this diagram of the human brain and if you could relate to
23 us the different layers that you have referred to where
24 there was bleeding. The subgaleal, the subdural area and
25 the subarachnoid area.

1 A May I stand, Your Honor?

2 THE COURT: Yes.

3 A The first layer would be the skin. So there was a
4 bruise that we were able to see on the outside on the
5 right back and then bleeding or hemorrhage within the skin
6 that we saw on the undersurface. Then there is bone where
7 there was no skull fracture so there is no trauma or not
8 enough trauma to cause skull fracture to the bone. But
9 beneath that bone and beneath the dura is this
10 accumulation of blood here caused subdural blood. And
11 that is blood that is in a space and actually becomes a
12 blood clot in that it lays there and goes from liquid
13 blood into clotted blood. The next layer down is actually
14 on the surface of the brain, this subarachnoid hemorrhage.
15 The first one is skin, the subdural and this is
16 subarachnoid. So, skin, subdural space and then covering
17 up the brain the subarachnoid. And in this region here is
18 roughly the optic nerve. So, this is nerve actually goes
19 out to the eyes. There was hemorrhage along this nerve as
20 well as within, hemorrhage within, pinpoint hemorrhages
21 within the eyes themselves, the retinal hemorrhages. The
22 diffuse axonal injury is deep inside the brain and so from
23 the cellular layer here on the, what is called the cortex
24 or sort of the outer portion of the brain they send these
25 fingers deep into the brain so that they can talk to other

1 parts of the brain, even to the other side of the brain.
2 And it is those axons that are damaged and so microscopic
3 sections of deep structures within the brain show the
4 diffuse axonal injury.

5 MS. MAYES: Your Honor, this would be State's exhibit
6 29.

7 THE COURT: Any objection, Mr. Able, on 29?

8 MR. ABLE: No, sir.

9 MR. WISE: No objection.

10 THE COURT: 29 is in evidence without objection.

11 (Whereupon, State's Exhibit 29 was admitted into
12 evidence.)

13 Q Dr. Ward, ultimately were you able to make a
14 determination concerning the cause of death?

15 A Yes, I was.

16 Q And what was the cause of death for Audrina Hepburn?

17 A The cause of death for Audrina Hepburn was head
18 injuries.

19 Q Were you able to make a determination concerning the
20 manner of death?

21 A Yes, I was.

22 Q And what was the manner of death for Audrina Hepburn?

23 A Homicide.

24 Q In addition to the examination of Audrina's head and
25 brain what other areas of her body were you able to

1 examine?

2 A The next descriptive portion of the autopsy is the
3 chest and abdomen region. On the front portion of the
4 anterior chest, basically extending from below the neck
5 but above the nipple line there were multiple purple, red
6 and yellow-green bruises within the skin that ranged in
7 size from just below half an inch to almost three quarters
8 of an inch. And these were distinct bruises, roughly
9 small circular bruises overlying the chest portion here.
10 On the left upper back, so the back portion of the
11 shoulder of Audrina there were several small abrasions
12 with scab formation or scale crust there in an area of the
13 left upper back or the left upper shoulder region. Again,
14 these were showing some evidence of healing and that they
15 had formed a scab. On the left stomach just to the left
16 of the belly button, if you will, there was a one inch in
17 diameter yellow-green bruise of the skin.

18 Q Dr. Ward, I want to first ask you to take a look at
19 some photographs of Audrina when she was hospitalized at
20 Greenville Memorial and these are State's exhibit 5, 8, 4,
21 7, 13, 6, 12, 14. If you could review these on your own.

22 A Yes, ma'am.

23 Q And as part of your autopsy how do you document?

24 A We document the autopsy by doing a written body
25 diagram, by doing a dictated protocol where I describe the

1 injuries and by, also by taking photographs.

2 Q And I am going to ask you to take a look at what is
3 State's exhibit 23, 26, 28 and 27 for identification at
4 this time and ask you whether or not you recognize those
5 photographs.

6 A Yes, I do.

7 Q And how do you recognize them?

8 A These are photographs taken during the autopsy of
9 Audrina Hepburn.

10 Q And that would be during the autopsy that was
11 performed by you in Greenville?

12 A That is correct.

13 Q The injuries that you have mentioned externally such
14 as the bruising, is that apparent in the photographs from
15 the autopsy?

16 A Yes, they are.

17 Q And why is it, if at all, that bruising in autopsy
18 photographs is more prominent or may be more prominent
19 than when Audrina was in the hospital?

20 A Right now as we sit here we have blood that is
21 circulating through our bodies and it perfuses not only
22 our vital organs but also our skin. So the capillaries of
23 the skin are being, there is blood flowing through it and
24 it gives us our color. Some of us may have a ruddy red
25 look and some of us a different color look but it gives us

1 our own color. When we die blood stops flowing and begins
2 to settle to gravity so any, the skin surface that is on
3 the front, if I am laying on my back all the blood is
4 going to, if you will, drain away to the deep tissues. So
5 anything that is on the skin such as a bruise it will
6 become much more prominent after death as the blood is no
7 longer flowing through the skin giving us our color and
8 drains away. So a bruise as you know is blood vessels in
9 the skin that have been damaged and leaked blood out. And
10 so all of the other blood can drain away but this can't so
11 it is going to stay there and become more prominent.

12 Q And, Dr. Ward, can you tell us whether or not the
13 last four photographs that I handed you from the autopsy
14 are fair and accurate representations of the bruising you
15 observed and documented in your autopsy report?

16 A Yes, they are.

17 MS. MAYES: Your Honor, at this time we would offer
18 as evidence what is State's exhibit 27, 28, 26 and 23.

19 MR. ABLE: Yes sir, we would object pursuant to Rule
20 403 of the South Carolina rules of evidence.

21 THE COURT: Same objection, Mr. Wise, 403?

22 MR. WISE: Yes, sir.

23 THE COURT: Subject to your objection they are in
24 evidence. State's, 26, 23, 28 and 27 are in evidence
25 subject to defense counsels objections.

1 (Whereupon, State's Exhibit 23, 26, 27, 28 were
2 admitted into evidence.)

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

4 THE COURT: Yes, ma'am.

5 Q In addition to the contusions that you have mentioned
6 in the chest and face area what if any other notations did
7 you make concerning bruising to Audrina?

8 A On the left wrist, the front part of the wrist,
9 roughly in this area was a almost half inch purple-red
10 contusion. And on the right foot, on the what we would
11 call the top of the foot near the toes extending from,
12 between the second and third toes up onto the portion of
13 the foot were multiple small pinpoint hemorrhages into the
14 skin.

15 Q Can you tell us whether or not the abdominal bruise
16 that Audrina had was present during the autopsy?

17 A I am sorry.

18 Q Can you tell us whether or not there was evidence of
19 abdominal bruising?

20 A Yes, there was a bruise to the left abdomen.

21 Q Dr. Ward, I am going to start by showing you what is
22 State's exhibit 27 and ask if you can detail for us
23 whether or not any bruises that you have described are
24 visible in this photograph?

25 A Yes, they are.

1 Q How so?

2 A We talked about the head before. Within this region
3 is the yellow-green contusion that was on the side of the
4 mandible or the side of the cheek. And here is the
5 smaller purple contusion just to the front of it. Here
6 are the multiple contusions or bruises to the anterior
7 portion of the chest. Here is one here, here, here, here
8 and here. Although it is faint the yellow-green contusion
9 of the abdomen is in this region here.

10 Q And, Dr. Ward, what if anything is significant about
11 a bruise inside the ear in the pinna area?

12 A This bruise here?

13 Q Yes, sir.

14 A This bruise here, generally that is not an area that
15 we hit. We may hit bony prominences but we generally
16 avoid our ears. So, a bruise in that region often,
17 especially in children reflects a pinch or a tight
18 squeezing of that area.

19 Q And, Dr. Ward, next I am going to show you what is
20 State's exhibit 28.

21 A This is a photograph much of the same region. Again,
22 the blue-green contusion to the left side of the face,
23 purple contusion just along the jawline and the multiple
24 bruises overlying the anterior chest, extending up to the
25 neck region.

1 Q State's exhibit 23?

2 A Again, the bruises to the face are along the jawline
3 right in this region here.

4 Q Were there notations about the clavicle area?

5 A Not that I am specifically recalling. This is
6 medical treatment, this is where needle puncture sights
7 have been made. There was a needle puncture that had been
8 put into the right clavicle region. Here are the multiple
9 bruises that you can see across the chest. Some are
10 covered by this hand but here is one and the others would
11 be in this region here.

12 Q Dr. Ward, how does the clavicle area that you
13 mentioned is marked for medical purposes in which an IV
14 was placed. How is that different than what you observed
15 on Audrina's back and described earlier as an abrasion or
16 types of abrasions.

17 A Well, first of all there was an actual IV site, a
18 catheter present in this area at the time, when I first
19 saw her. So, there was an intravenous catheter within the
20 skin there. This is a very common site for an IV or
21 intravenous injection, often in the arms, the subclavian
22 region. The ones on the back are not and this is, as you
23 can see, a very small, almost a perfect circle. The ones
24 on the back are shorter, they are linear and they have
25 scale crust and more importantly there is nothing in the

1 back, no one would put an IV in the back for several
2 reasons. One, there is no vein there, you know,
3 accessible vein. And two, patient's lay on their back so
4 taking care of that would be extremely difficult. So,
5 there was no medical therapy to the back that I am aware
6 of.

7 Q And, Dr. Ward, finally State's exhibit 26.

8 A Again, the photograph showing the multiple bruises
9 across the chest extending up to the neck region. Again,
10 the faint bruise along the jawline.

11 Q I am going to show you now what is State's exhibit 6
12 that you reviewed earlier.

13 A This is a photograph taken during hospitalization and
14 prior to the autopsy. This region here are the abrasions
15 of the right, I am sorry, of the left upper back. Here is
16 the shoulder, extending onto to the back are these
17 multiple linear abrasions. These haven't shown the degree
18 of healing that I saw at the time of autopsy in that there
19 is no scab or scale crust over them. Here they are fresh
20 and haven't shown as much healing as we saw at the time of
21 autopsy. But these are their locations.

22 Q Can you tell us, Dr. Ward, what if anything may be
23 the mechanism of such injuries?

24 A These injuries especially in association with
25 circular injuries to the front portion of the chest are a

1 good indicator that these are injuries made by fingers
2 grasping the body, firmly grasping the body with bruises
3 on the front portion. If you postulate that these are
4 finger grasps then these certainly would be consistent
5 with fingernail marks where the skin is scratched by the
6 fingers as they are grasping the body.

7 Q And is it possible when you do an autopsy, is it
8 possible to know whether they would be short fingernails
9 or long fingernails and things of that nature?

10 A No, they wouldn't have to be particularly long, just
11 long enough to reach the skin. They are certainly not
12 below the skin line but they just have to be long enough
13 to cause an abrasion in the skin. They don't have to be
14 particularly long.

15 Q And, Dr. Ward, I am going to refer you back to
16 State's exhibit 27 already in evidence. The bruising that
17 you noted here, can you tell us what if anything in your
18 opinion may be the mechanism of that pattern of bruising?

19 A In my opinion this pattern of bruising is most
20 consistent with a grasp with fingers. So, each bruise is
21 an individual fingermark.

22 Q Thank you. Dr. Ward, what if anything was noted
23 concerning Audrina's mouth?

24 A That she had the normal component of deciduous teeth
25 that you would expect for a sixteen month.

1 Q Anything else concerning the components of the mouth?

2 A No, ma'am.

3 Q Were you able to, were you able to visualize any
4 lacerations to the tongue or did it appear normal at the
5 time of autopsy?

6 A The tongue was normal, unremarkable.

7 Q All right. Now, in a case like this where this is a
8 combination of subdural bleeding, subarachnoid bleeding
9 and diffuse axonal injury, what would you expect the
10 symptoms to be following such an injury?

11 A An injury of this magnitude to a sixteen month's
12 head, in my opinion would result in almost immediate
13 appearance that Audrina is no longer normal. She is not
14 going to just receive this injury and be perfectly fine.
15 She is likely going to be unconscious, she may regain
16 consciousness after a while. But initially in my opinion
17 she would be unconscious. As the brain injury progresses
18 and this is because the brain again swells. We have this
19 cerebral edema which is the response of a brain to the
20 injury that has occurred. Then very likely she may have
21 periods of nausea and vomiting, she may progress to
22 seizures, she will become unconscious and subsequently
23 progress to, as she did, to brain dead.

24 Q Would you expect a child who has received these
25 injuries or sustained these injuries to appear normal in

1 walking and interacting with others?

2 A I would not.

3 Q That is all I have.

4 THE COURT: Mr. Able, cross-examine.

5 CROSS-EXAMINATION

6 By Mr. Able:

7 Q Dr. Ward, the injuries that were caused to Audrina,
8 you would expect that would have been a powerful force to
9 cause injuries like those?

10 A These are certainly significant injures, yes.

11 Q You wouldn't expect those types of injuries to come
12 from a sixteen month old toddler learning to walk and
13 falls down and bumps her head?

14 A That is correct, I would not.

15 Q There would have to be a substantial trauma?

16 A That is correct.

17 Q That is all I have.

18 THE COURT: Mr. Wise.

19 CROSS-EXAMINATION

20 By Mr. Wise:

21 Q You notice the bleeding inside the scalp to the right
22 side of Audrina's head?

23 A Yes, sir.

24 Q What area of the head does that give, if you can put
25 your hand on it?

1 A Excuse me. There is bleeding or subgaleal hemorrhage
2 roughly in the area that we call the parietal which is the
3 right side of the scalp extending to the back which we
4 call the occipital region. So it is this area here
5 extending to the back and then there is a separate area of
6 bleeding into the skin associated with the bruise that we
7 were able to see on the outside. The right back is the
8 distinct bruise in this region here and then a separate
9 area of bleeding into the skin primarily over the right
10 side.

11 Q And would that be consistent with a hand hitting
12 upside the head of a child?

13 A It certainly could be.

14 Q Okay. And so, it would be consistent with that?

15 A It could be, yes.

16 Q You also mentioned a bruise along the right, excuse
17 me, the left cheek bone?

18 A That is correct.

19 Q And it was linear along the cheek bone?

20 A There were two separate areas, there was a larger
21 bruise along this jaw, yes, along the jawline and then a
22 separate one further towards the front again along the
23 jawline.

24 Q And it was linear along the jawline as opposed to up
25 and down across the jaw?

1 A It is, appears to be more horizontal, yes, than
2 vertical.

3 Q Would that be consistent with a thumb grabbing the
4 jaw in that area?

5 A It certainly could be, yes.

6 Q And the thumb is one of the stronger fingers we have,
7 isn't it?

8 A I would think so, yes.

9 Q It might be the strongest?

10 A I would think so, yes.

11 Q And if someone were to grab someone would you expect
12 the thumb to leave a bruise before any other finger would?

13 A Would depend yet of course how it is being grasped
14 but, yes, that is possible.

15 Q Thank you.

16 REDIRECT EXAMINATION

17 By Ms. Mayes:

18 Q Just to clarify, Dr. Ward, to followup on what Mr.
19 Wise was asking you about. Is it possible to estimate how
20 many different areas of bleeding there were or areas of
21 injury there were to the outside of the scalp involving
22 the head area and then just below the surface which would
23 be the subgaleal area?

24 A Looking at only what we would call the scalp which
25 would be the region of the head primarily covered by hair.

1 There are, we know of three distinct areas of impact, of
2 injury. One, where the abrasion is to the left side. One
3 where the visible bruise on the right back and then there
4 is an area of the right side fairly diffuse, five inches
5 or so, of hemorrhage within the skin. This could be one
6 impact or it could be a blending of multiple impacts of
7 hemorrhage into the skin. We would be unable to tell at
8 autopsy exactly how many. So there is at least three
9 areas of injury, left back, right back and right side.

10 Q So at least three areas of impact and can you tell us
11 whether or not it could possibly be more?

12 A It certainly could be more.

13 Q And that includes both the left side and the right
14 side and the right towards the back?

15 A I think the areas are possibly blending, multiple
16 impacts would be along the right side.

17 Q Let me show you what is State's exhibit 8 already in
18 evidence. Are any of the abrasions or contusions that you
19 mentioned visible in this photograph?

20 A The area to the left, back of the scalp where at the
21 time of autopsy was an abrasion with scale crust or a scab
22 is depicted in this photograph here which is just behind
23 the left ear.

24 Q Thank you. And, Dr. Ward, just as an overall
25 question, is it possible to know from viewing a pattern of

1 bruises, is it possible to say with a reasonable degree of
2 medical certainty whether it is administered by a male or
3 a female?

4 A Not in this case, no.

5 Q Is it possible to know from a reasonable degree of
6 medical certainty whether it is administered by a left
7 handed person or a right handed person?

8 A I see no pattern that specifically guides me to
9 either a left hand dominant or a right hand dominant
10 person.

11 Q Thank you.

12 MR. ABLE: Nothing further.

13 RECROSS-EXAMINATION

14 By Mr. Wise:

15 Q The blow to the right side of the head, up in this
16 area?

17 A Yes, sir.

18 Q Would that blow had been inflicted by someone facing
19 the child with their left hand?

20 A Or behind the child with their right.

21 Q Correct. Behind the child with the right with the
22 left hand. And if someone grabbed the child by the jaw
23 and left a thumb print on the left side of the jaw would
24 that be the thumb of a left hand or a right hand?

25 A If this is truly a thumb mark then it would be the

1 left hand.

2 Q Thank you.

3 MR. ABLE: Just a followup on that.

4 THE COURT: Yes, sir.

5 RECROSS-EXAMINATION

6 By Mr. Able:

7 Q And talking about the jaw bruise, that would be, you
8 are saying that would be the left hand, that would be if
9 the baby were facing --

10 A -- that is correct.

11 Q If the baby were approached from the baby's head it
12 could be the right hand?

13 A Well, it certainly could be a right hand.

14 Q If the baby were laying head to toe?

15 A If you make it only a thumb mark?

16 Q Yes, sir.

17 A It is very difficult to make it anything other than
18 left because even from behind, if you reach around and
19 still not a thumb, but it doesn't have to be thumb.

20 Q Yes sir, it doesn't have to be thumb anyway?

21 A That's correct.

22 Q You don't know that the bruise on the left cheek was
23 a thumb mark?

24 A That is correct.

25 Q What I am saying is if you approach the child with

1 the head here and the feet here and I grabbed it with my
2 right arm I would be grabbing its left cheek with my
3 thumb?

4 A Yes, that is correct.

5 Q You understand what I am saying now?

6 A Yes.

7 Q So, right, left, it doesn't matter. You can't tell
8 whether it is a thumb mark on the baby's left cheek and
9 you wouldn't be able to tell if it is left handed or a
10 right handed person that grabbed the child. It would
11 depend upon how they approached the child?

12 A That is correct.

13 Q And whether somebody was using a hand to hit the
14 child on the right-hand side it would depend upon how you
15 approach the child?

16 A That is correct.

17 Q Thank you.

18 MS. MAYES: We would ask that Dr. Ward be excused.

19 THE COURT: No objection to the Doctor being
20 released?

21 MR. ABLE: No, sir.

22 MR. WISE: No, sir.

23 THE COURT: Dr. Ward, you are excused. Thank you
24 very much. Ladies and gentlemen, we are going to take a
25 brief break at this point and time. Don't discuss the

1 case. And we will back in a few moments.

2 (Whereupon, the jury was excused from open court for
3 a break.)

4 THE COURT: We will be at ease for a few moments.

5 (Whereupon, a short break was taken.)

6 THE COURT: We are resuming with the trial. I seem
7 to be having some heartburn this morning. If I happen to
8 stand up during the course of any examination that is why.
9 Don't think we are going to take a break or anything like
10 that. I felt very bad during that last witness. Let's
11 have the jury.

12 (Whereupon, the jury came into open court at
13 approximately 10:48 a.m.)

14 THE COURT: Let the record reflect the jury is in the
15 courtroom. Ms. Mayes, call your next witness, please.

16 MS. MAYES: The State calls Ben Blackmon to the
17 stand.

18 Ben Blackmon, after being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 By Ms. Mayes:

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

23 THE COURT: Yes, ma'am.

24 (Whereupon, a bench conference was held in the
25 presence of the jury but out of the hearing of the

1 jury.)

2 THE COURT: I apologize, ladies and gentlemen, if you
3 will step out for a moment, don't discuss the case. Thank
4 you.

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

6 MS. MAYES: Your Honor, we have had a discussion
7 about the statement as we addressed earlier.

8 THE COURT: The one that we spoke about this morning?

9 MS. MAYES: Yes sir, Your Honor, an un-redacted copy.

10 THE COURT: I believe there have been an un-redacted
11 copy.

12 MR. WISE: That is the second statement we introduced
13 as a Court's exhibit.

14 COURT REPORTER: It is Court's exhibit number 4.

15 (Whereupon, the attorneys are in conference.)

16 MS. MAYES: Thank you, Your Honor.

17 THE COURT: Are we ready to go?

18 MS. MAYES: Yes sir, Your Honor.

19 THE COURT: Bring the jury.

20 (Whereupon, the jury came into open court at
21 approximately 10:58 a.m.)

22 THE COURT: The record will reflect the jury has
23 returned. Mr. Blackmon is on the stand, Ms. Mayes.

24 CONTINUE DIRECT EXAMINATION

25 By Ms. Mayes:

1 Q Can you give us your full name and tell us where you
2 are employed?

3 A My full name is Michael Benjamin Blackmon. I am
4 employed at the Laurens County Sheriffs Office.

5 Q Investigator Blackmon, how long have you been with
6 the sheriffs department here in Laurens County?

7 A Approximately 12 years.

8 Q All right. And what different units have you been
9 assigned to while you have been here?

10 A I have been assigned to everything from the detention
11 center, the uniform patrol and criminal investigations
12 division.

13 Q How long have you been in criminal investigations?

14 A Since 2004.

15 Q How did you become involved in the case involving the
16 investigation of injuries to Audrina Hepburn?

17 A The night that this occurred I was assisting
18 Lieutenant Plaxico as he was the on call investigator. He
19 basically asked me to assist him in this case.

20 Q When you say the night that this occurred, you are
21 referring to the early morning hours of October 13th of
22 2009?

23 A Yes, ma'am.

24 Q How did you first have contact with anyone in
25 connection to the case?

1 A We went to Self Hospital in Greenwood where we spoke
2 with the victim's mother and her boyfriend there.

3 Q And you say, we. To the best of your recollection
4 which officers do you recall being involved with going to
5 Self Hospital in Greenwood to follow up?

6 A Lieutenant Plaxico, Deputy Josh Garrison and myself.

7 Q Are you aware as to whether or not law enforcement
8 was alerted or how was law enforcement alerted by Self
9 Hospital to respond?

10 A From my understanding we basically received a
11 telephone call from Central Dispatch. I believe they were
12 notified through the hospital and the hospital had
13 notified them.

14 Q At that point were you aware that the investigation
15 involved suspected child abuse?

16 A Yes, ma'am.

17 Q And yourself and Deputy Garrison and Investigator
18 Plaxico went to the hospital. What happened next?

19 A Information was obtained for an initial report by
20 Deputy Garrison and at which time I spoke with Mr. Brandon
21 Lewis briefly about the matter there. He had accompanied
22 Deputy Garrison back to the Laurens County Sheriffs Office
23 where I spoke with him at the office.

24 Q When you first got to Self Hospital how did you make
25 contact with Mr. Lewis?

1 A I believe he was in a separate waiting area. We went
2 in there and sat at a small table and we spoke with him
3 there.

4 Q All right. And at some point did you or at some
5 point how did you go about advising him that you wished to
6 interview him further?

7 A We asked him to go to the sheriffs office with us. I
8 believe Lieutenant Plaxico asked him to accompany Deputy
9 Garrison to the office.

10 Q And when you say to the office you mean in what
11 county?

12 A The sheriffs office here in Laurens.

13 Q Subsequently did Brandon Lewis leave the Self
14 Hospital in Greenwood and arrive in Laurens County at the
15 Laurens County Sheriffs Office?

16 A Yes, ma'am.

17 Q And for what purpose?

18 A For me to take a statement from him.

19 Q And why did you need to take a statement from him or
20 any other people?

21 A Because the information that we had received that the
22 injuries, the victim had, were possibly from an abuse
23 situation and that Mr. Lewis was at the residence at the
24 time when this occurred.

25 Q All right. And where do you recall having contact

1 with Mr. Lewis once he arrived at the Laurens County
2 Sheriffs Office?

3 A In my office upstairs in the old annex building.

4 Q And at this point was Mr. Lewis in custody?

5 A From my understanding he wasn't under arrest.

6 Q And had he, at any point was he placed under arrest
7 on that evening?

8 A Not while I was talking with him.

9 Q And based on your communications did he appear
10 willing to talk with you?

11 A Yes, ma'am.

12 Q I am going to show you what is State's exhibit 31 for
13 identification and ask you whether or not you recognize
14 this document?

15 A Yes ma'am, I do recognize this document as an
16 advisement of rights form that was read to Mr. Lewis on
17 10/13/2009 at about 6:20 a.m.

18 Q What do you mean by an advisement of rights?

19 A Basically Miranda rights that you would explain to
20 anyone that you are speaking with at the police station
21 that may have been involved in a crime.

22 Q And does that particular document bear your
23 signature?

24 A Yes ma'am, as a witness on the paper.

25 Q And who else does it have a signature from?

1 A Josh Garrison.

2 Q Anyone else?

3 A And Richard B. Lewis.

4 Q And what is the date of that document?

5 A The date of the document is 10/13/2009.

6 MS. MAYES: Your Honor, at this time we would offer
7 State's exhibit 31 as evidence.

8 THE COURT: Any objection?

9 MR. WISE: No objection.

10 MR. ABLE: No objection.

11 THE COURT: Without objection in evidence, that will
12 be 31, I believe?

13 MS. MAYES: Yes sir, Your Honor.

14 (Whereupon, State's Exhibit 31 was admitted into
15 evidence.)

16 Q Investigator Blackmon, I am going to ask you to start
17 at the top of that document and proceed down and tell us
18 exactly what rights Mr. Lewis was advised of?

19 A Okay. We will start with the heading. The
20 advisement of rights, it has the case number in which I
21 filled in, the date and the time which was 6:20 a.m. when
22 we began.

23 Q 6:20 a.m, so that will be 6:20 in the morning?

24 A Yes, ma'am. Before we/I ask you any questions you
25 must understand your rights. You have the right to remain

1 silent, anything you say can be used against you in court.
2 You have the right to talk to a lawyer for advice before
3 we/I ask you any questions and to have him/her with you
4 during questioning. If you have no money to pay a
5 lawyer's fee the Court will appoint one to represent you
6 without cost if you wish. If you decide to answer
7 questions now without a lawyer present you will still have
8 the right to stop answering at any time. You also have
9 the right to stop answering at any time until you talk to
10 a lawyer. Do you understand each of these rights which I
11 have explained to you. And then there is a check mark and
12 the initials RBL beside yes. Do you want a lawyer. There
13 is a check mark beside, no and the initials RBL beside
14 that. Do you want to answer questions now and there is a
15 check mark beside the word, yes. And also with the
16 initials RBL.

17 Q What, if anything, is the significance of the RBL
18 initials?

19 A That is the initials of Richard B. Lewis.

20 Q Richard Brandon Lewis?

21 A Yes, ma'am.

22 Q Please continue.

23 A Further there is another paragraph headed waiver of
24 rights in which there is a initial of RBL before the
25 paragraph which reads, I have read this statement of my

1 rights and I understand what my rights are. I am willing
2 to make a statement and answer questions. I do not want a
3 lawyer at this time. I understand and know what I am
4 doing. No promises or threats have been made to me and no
5 pressure or coercion of any kind has been used against me.
6 And then the initials RBL after the paragraph.

7 Q And at what time was this document signed?

8 A This document was signed by Richard B. Lewis at 6:24
9 a.m.

10 Q After, well let me ask you this. Did it appear that
11 he understood the rights as you advised him?

12 A Yes, ma'am.

13 Q Was his speech coherent?

14 A Yes, ma'am.

15 Q Did you make any promises to him in exchange for a
16 statement?

17 A No, ma'am.

18 Q Was he coerced or threatened in any way in order to
19 obtain a statement?

20 A No, ma'am.

21 Q Did it appear to you that his statement was freely
22 and voluntarily given?

23 A Yes, ma'am.

24 Q After waiving his rights did he agree to participate
25 in an interview?

1 A Yes, ma'am.

2 Q And what happened next?

3 A He proceeded to give me a statement that I wrote for
4 him as he spoke. Which I explained to him I may have to
5 slow down his speaking to allow me to catch up.

6 Q I am going to show you a document that is State's
7 exhibit 30 for identification and ask you whether or not
8 you recognize this document?

9 A Yes ma'am, I do recognize this document as a
10 statement given by Richard Brandon Lewis that morning.

11 Q You say the statement was given by him, who wrote
12 this statement?

13 A I wrote it.

14 Q All right. And does it bear his signature at any
15 location?

16 A Yes ma'am, at the bottom where it says signature, a
17 person giving voluntary statement. You are allowed to
18 read it and make any corrections he wished and then sign
19 it.

20 Q And who else has signed that document?

21 A I've signed as a witness.

22 MS. MAYES: Your Honor, at this time it would be
23 State's exhibit 30 as evidence.

24 THE COURT: Any objections?

25 MR. ABLE: No objection.

1 MR. WISE: No objection.

2 THE COURT: Without objection State's 30 is in
3 evidence.

4 (Whereupon, State's Exhibit 30 was admitted into
5 evidence.)

6 Q Investigator Blackmon, how do you go about getting
7 the information that goes into the written statement?

8 A Basically after the individual giving a voluntary
9 statement is advised of their rights you basically tell me
10 what you want to put onto a statement and then I write it
11 as we go. You know, if I need to slow the individual down
12 I will to catch up. And then proceed from there.

13 Q All right. And at this point and time, can you tell
14 us whether or not Mr. Lewis was aware that you were
15 seeking information concerning the injuries to Audrina?

16 A Yes, ma'am.

17 Q And at this point and time can you tell us whether or
18 not he was aware that Audrina was hospitalized and
19 injured?

20 A Yes ma'am, he was aware that Audrina was hospitalized
21 and injured as he had been at the hospital and, you know,
22 during the time he was advised of his rights, he was
23 explained as to why he was giving a statement to police.

24 Q And how do you go about making an individual aware of
25 the fact that you needed as much as information or as much

1 relevant information as possible?

2 A Just tell them that we need as much relevant
3 information as possible.

4 Q Now, I am going to ask you to start at the beginning
5 of the statement that was written by you, I believe has
6 been your testimony and as you write it where are you
7 getting information that goes into the statement?

8 A As I write he would talk to me.

9 Q I need you to read it as slowly as possible for the
10 court reporter and for the Court.

11 A Yes, ma'am. This statement written by M.B. Blackmon
12 at my request. I got to Ashley Nicole Hepburn's house
13 around 8:30 on 10/12/09. We sat in the living room and
14 watched TV. Ashley was going to give the kids a bath. I
15 helped Owen get dressed in his pajamas while Ashley
16 dressed Audrina for bed. After that she put Audrina to
17 bed for a little bit. Then we went and watched TV for a
18 little bit and she got her out of the crib. Then she put
19 her back.

20 Q All right. Let me stop you right there. And
21 according to this statement he arrived at the house at
22 what time?

23 A Around 8:30.

24 Q And that would be p.m. or a.m.?

25 A At p.m. at 10/12/2009.

1 Q And he stated that the kids were given a bath?

2 A Yes.

3 Q And what was mentioned about Audrina?

4 A Ashley dressed Audrina for bath. After that she put
5 Audrina to bed for a little bit. Then we went and watched
6 TV for a little bit and she got her out of the crib.

7 Q What happened next?

8 A Then she put her back.

9 Q All right. What next?

10 A Then she helped Owen brush his teeth. While they
11 were laying down I said I was going to watch football. I
12 watched the game until 11:00 or so and went to the
13 bathroom and stuck my head in the door and Audrina popped
14 her head up. Then I shut the door.

15 Q Let me stop you there. This was Audrina popped her
16 head after what time?

17 A It states that I watched the game until 11:00 or so
18 and went to the bathroom and stuck my head in the door and
19 Audrina popped her head up.

20 Q All right. Please continue.

21 A Then I shut the door. I didn't hold her then but I
22 did earlier in the night. I didn't shake her or anything.
23 I tried to wake Ashley up and she was tired. Then I tried
24 to give her some hash but she didn't want it. So I went
25 back to the living room and put in a movie.

1 Q So he tried to wake Ashley up?

2 A Yes.

3 Q And then went back to the living room?

4 A Yes.

5 Q And what happened next?

6 A The walls were thin so I could usually hear Audrina
7 crying. And then there is a correction in the statement
8 that says, wasn't crying, initialed, RBL.

9 Q All right. And for what reason was there a change or
10 an initial to that particular part of the statement?

11 A I believe he was trying to basically say that Audrina
12 wasn't crying at that point but he could have heard should
13 she cry.

14 Q All right. So he said wasn't crying and was
15 initialed by RBL?

16 A Yes, ma'am.

17 Q And what was written next?

18 A I usually check on her during the night. I looked in
19 on her about 1:20 and she didn't stick her head up so I
20 thought she was asleep.

21 Q So, he looked in on her about 1:20?

22 A Yes, ma'am.

23 Q That would be a.m. or p.m.?

24 A That would be a.m.

25 Q Please continue.

1 A When I seen her she was laying on her stomach with
2 her head on the rails of the crib. I woke Ashley up and I
3 told her I couldn't get Audrina awake. We were panicking.
4 We got her mother and her boyfriend up, called 911. Then
5 we all huddled around her until the EMS came. I remember
6 looking at her lips and thought she had a seizure. EMS
7 got there really quick then we went to the hospital from
8 there. End of statement.

9 Q Was there any other relevant information that Mr.
10 Lewis gave to you at this time?

11 A Other than this statement he didn't share anything
12 further that I didn't write down. At that time I ended
13 the statement at his request and made the small correction
14 that he wanted corrected and then he signed both pages, I
15 witnessed both pages and that concluded our interview in
16 my office.

17 Q All right. Is he given the opportunity to review the
18 statement?

19 A Yes ma'am, that is what he wanted to make a
20 correction about the, wasn't crying.

21 Q And did he in fact review the statement?

22 A Yes, ma'am.

23 Q And the correction that he made?

24 A Yes ma'am, he initialed it.

25 Q Were there any other corrections he asked to make?

1 A I don't see any on the paper that would have been
2 initialed if there had been a correction that he would
3 have liked to make.

4 Q Were there any other additions that he wanted to
5 make?

6 A No, ma'am. We wrote in the statement and I drew a
7 line through the two blank lines that were remaining so
8 that no one could add or alter the statement from what we
9 had written.

10 Q And when he signs the statement can you tell us
11 whether or not, what his understanding is or what he is
12 signing?

13 A Yes ma'am, he understands that he is signing a
14 witnessed statement for police and at that point he had
15 been advised of his rights and understands the importance
16 of what the statement is referenced to.

17 Q All right. Now, after you obtained this statement
18 from Mr. Lewis what if any other role do you have in the
19 investigation?

20 A Besides taking that statement from Mr. Lewis I
21 obtained a search warrant for Lieutenant Plaxico at his
22 request of the residence.

23 Q And when you say you obtained a search warrant can
24 you tell us whether or not search warrants are a routine
25 part of law enforcement investigations?

1 A Yes ma'am, it is quite routine.

2 Q I am going to show you this and ask you if you
3 recognize the document?

4 A Yes ma'am, I do recognize this.

5 Q How so?

6 A Is the search warrant that I obtained and delivered
7 to Lieutenant Plaxico at the residence.

8 Q And for what purpose was a search warrant obtained,
9 Investigator Blackmon?

10 A The search warrant was obtained to collect any
11 evidence at the residence which is listed in the affidavit
12 of the search warrant.

13 Q And what residence were you searching?

14 A We were searching the residence which is 11563
15 Highway 72 West in Laurens County.

16 Q Is that the Cross Hill residence in which this
17 incident occurred?

18 A Yes, ma'am.

19 Q And specifically what items or property were being
20 searched or sought?

21 A I am going to read from the affidavit, description of
22 property sought during search of the residence. Any and
23 all items of evidentiary value including but not limited
24 to bedding, food, formula, medications, blood, hair,
25 fibers, measurements, photographs, diapers, bottles,

1 pacifiers, clothing, play pens, papers, personal effects
2 and any and all other items of physical, serological trace
3 evidence relating to the abuse of a child and any and all
4 other items of evidentiary value associated with this
5 case.

6 Q And how is the search warrant signed or acknowledged?

7 A The search warrant is signed by me, the affiant and
8 it is also signed by Magistrate Copeland.

9 Q And on what date was the search warrant signed by the
10 Judge?

11 A The date the search warrant was signed by the Judge
12 was October the 16th of 2009.

13 Q And following the execution of the search warrant was
14 there also a return?

15 A Yes, ma'am.

16 Q And what is the purpose of the return?

17 A The return is to list items taken from the residence
18 in which we searched.

19 Q And is that particular document signed?

20 A Yes ma'am, it is signed by Robert Plaxico, the lead
21 investigator in this case and also it is signed by
22 Magistrate Copeland as well.

23 MS. MAYES: Your Honor, at this time we would offer
24 the search warrant as State's exhibit 2.

25 MR. WISE: No objection.

1 MR. ABLE: No objection.

2 THE COURT: Without objection State's 2 is in
3 evidence.

4 (Whereupon, State's Exhibit 2 was admitted into
5 evidence.)

6 Q Were you present when the search warrant was executed
7 at the home?

8 A Yes ma'am, I was present.

9 Q And on what date and time was the search warrant
10 executed?

11 A The search warrant was executed on 10/16/09 at 10:30
12 in the morning.

13 Q Were there any mistakes on this particular document?

14 A Yes, ma'am.

15 Q Can you share with us what those mistakes were?

16 A Yes, ma'am. As, let me start at the beginning. As
17 the computer at our office, as I typed this on October the
18 15th of 2009 the computer auto dated the front page of the
19 warrant and does display the time that I printed it
20 although the Magistrate signed it the next morning. And
21 also on the return filled out by Lieutenant Plaxico it
22 displays that it was served at 10:30 p.m. although we were
23 there in the morning.

24 Q So, on October 16th was it 10:30 a.m. or 10:30 p.m.?

25 A It was 10:30 in the morning a.m.

1 Q Were there any typos or mistakes in the Judge's?

2 A Yes ma'am, when this search warrant was returned to
3 Magistrate Copeland he filled the date in as October of
4 '09 with the, it appears to be 10 however the way it is
5 written, the top of the zero is enclosed so I am not sure
6 if he was intending to write 16 or 10.

7 Q And on October 16th of 2009 were you present at the
8 residence in Cross Hill for this search warrant?

9 A Yes, ma'am.

10 Q Which other officers were present?

11 A Lieutenant Plaxico was present, Jim Burns was present
12 along with SLED Agent Skipper.

13 Q All right. And for what reason was a SLED agent
14 present for the search warrant?

15 A SLED Agent Skipper was present that morning because
16 she is a, works in the evidence collection, things like
17 that and she was there to document the house, collect any
18 evidence that we deemed necessary for the case and also
19 she could take it back to the SLED laboratory in Columbia
20 for examination.

21 Q And does the search warrant return reflect the items
22 which were collected from the home on October 16th, 2009?

23 A Yes, ma'am.

24 Q What are those items?

25 A One fitted sheet, one small white towel, two blankets

1 and one padded bumper.

2 Q And the padded bumper refers to what?

3 A A, I guess you could say the mattress that would go
4 in a crib or a padding that would go in a crib.

5 Q Nothing further.

6 THE COURT: Mr. Able.

7 CROSS-EXAMINATION

8 By Mr. Able:

9 Q Mr. Blackmon, looking at what has been marked as
10 State's exhibit for evidence number 30. Below the
11 handwritten portions of the statement there is a typed
12 written paragraph, correct?

13 A Yes, sir.

14 Q And that paragraph on both pages reads the same,
15 doesn't it?

16 A Yes, sir.

17 Q And it starts out by reading, I have read each page
18 of this statement consisting of two pages, each page of
19 which bears my signature and corrections if any bear my
20 initials. And I certify that the facts contained herein
21 are true and correct. It says that, doesn't it?

22 A Yes, sir.

23 Q And Mr. Lewis would have been allowed to have read
24 this entire statement before affixing his signature at the
25 base of it?

1 A Yes sir, he was.

2 Q And it says on the second page the same things that I
3 certify that the facts contained herein are true and
4 correct?

5 A Yes, sir.

6 Q Thank you, that is all that I have.

7 THE COURT: Mr. Wise.

8 CROSS-EXAMINATION

9 By Mr. Wise:

10 Q Mr. Blackmon, you had some initial conversations with
11 Mr. Lewis before you had taken his statement?

12 A Yes, sir.

13 Q I assume you asked him about his education, how far
14 he went in school?

15 A If I asked him about his education it was to insure
16 that he could read and write.

17 Q Right. And did you ask him about his relationship
18 with Ashley Hepburn?

19 A Yes sir, he said she was his girlfriend.

20 Q And you knew that ahead of time?

21 A Yes, sir.

22 Q Did he tell you how long they had been going out?

23 A If he did I don't recall it. I don't know if it came
24 up.

25 Q But you knew they were together?

1 A I knew they were boyfriend, girlfriend couple, if you
2 will.

3 Q Romantically involved?

4 A Yes.

5 Q And now during the course of this statement being
6 given would you have asked a question and clarify things
7 and prod him on the next thing?

8 A If it were to slow him down to catch up in his
9 writing or catch up my writing, excuse me, or something
10 like that or if he got ahead of me I may ask him to repeat
11 himself.

12 Q Right. And would you have occasionally, you knew a
13 little bit about the background of this case?

14 A Yes, sir.

15 Q And you knew that probably there was some allegation
16 about some sort of shaking baby?

17 A I knew that there was injuries to the child. I
18 hadn't been exactly told what caused it at that moment but
19 the baby had been injured, yes.

20 Q And you were anxious to find out if he caused any
21 injuries to the child?

22 A I asked him if he knew anything if the matter and
23 that is what, would be where the statement came in.

24 Q But during this statement you would ask a question
25 for, so that--

1 A If I needed to clarify something he said I would slow
2 him down and ask him to repeat it or clarify. If I need
3 to ask him a question it would be in reference during
4 taking the statement of, to clarify or slow him down a
5 little bit.

6 Q Now, this wasn't recorded?

7 A No, sir.

8 Q And this lasted about, according to you, about
9 twenty-two minutes?

10 A About, thereabouts to actually write the statement.

11 Q And did you have any opportunity to ask him to
12 clarify anything in this statement he wanted to?

13 A Yes, sir.

14 Q He was willing to talk to you?

15 A Yes sir, he was willing to talk to me.

16 Q You didn't conduct the interview about any more
17 detail about this statement?

18 A I asked him if there was anything else he would like
19 to add or change about his statement once we got through
20 and he said no.

21 Q But you were the investigating officer?

22 A I was the investigator who took the statement as
23 Lieutenant Plaxico was the lead officer.

24 Q And you had the opportunity at that point to ask him
25 any questions about any, about his relationship with

1 Ashley Hepburn or anything, relationship with the child or
2 anything, didn't you?

3 A Yes.

4 Q And you didn't ask any questions on that area?

5 A I asked him, you know, just to clarify that they were
6 a couple.

7 Q But that didn't appear in the statement?

8 A No sir, he didn't say that.

9 Q Well, he said they were a couple, didn't he?

10 A Yes, earlier in the day, earlier in the morning.

11 Q Thank you.

12 REDIRECT EXAMINATION

13 By Ms. Mayes:

14 Q Can you tell us whether or not it was clear to Mr.
15 Lewis that you were wanting to know the sequence of events
16 that night?

17 A Yes and I explained to him the importance of giving a
18 very truthful and upfront statement to law enforcement.

19 Q Nothing further.

20 MR. ABLE: Nothing else.

21 THE COURT: Thank you, sir, you can step down. Ms.
22 Mayes.

23 MS. MAYES: The State calls Justin Moody.

24 Justin Moody, after being duly sworn,
25 testified as follows:

DIRECT EXAMINATION

1

2 By Ms. Mayes:

3 Q Where are you employed and in what capacity?

4 A I am a sergeant with the criminal investigation
5 division also narcotics division with Laurens County
6 Sheriffs Office.

7 Q And you mentioned you are currently with narcotics,
8 is that correct?

9 A That is correct.

10 Q And how long have you been working in narcotics?

11 A Approximately two and a half years.

12 Q Now, prior to that what type of work were you doing
13 for the sheriffs department?

14 A Uniform patrol.

15 Q Although you are a member of the narcotics division
16 do you also have the opportunity, can you tell us whether
17 or not you also had the opportunity to assist general
18 investigations for the sheriffs department?

19 A Yes, I do. Any time the criminal investigations
20 division needs me to kind of assist therefore we are more
21 than happy to step in and kind of fill that void or help,
22 whatever is needed.

23 Q I want to take you back to an investigation that was
24 underway on October 13th, in the early morning hours of
25 October 13th of 2009 involving injuries to a child,

1 Audrina Hepburn. Are you familiar with that?

2 A I am.

3 Q How did you become involved in that investigation?

4 A I was asked for assistance by the criminal
5 investigation division to assist in taking a statement
6 from an individual.

7 Q And who is the individual that you were asked to
8 speak with or to interview?

9 A Richard Brandon Lewis.

10 Q And that is the defendant in this case, Brandon
11 Lewis?

12 A Yes.

13 Q Now, do you or, do you have personal knowledge as to
14 when he first arrived at the law enforcement on October
15 13th of 2009?

16 A I do not.

17 Q Approximately when would you have gotten involved in
18 the interviewing process with Mr. Lewis?

19 A Approximately around 11:00 o'clock, 10:30 or 11:00
20 o'clock.

21 Q I am going to show you a document and ask you whether
22 or not you recognize it?

23 A Yes, I do.

24 Q Can you tell us whether or not Mr. Lewis was advised
25 of his rights by you or whether or not he was advised of

1 his rights earlier?

2 A I can't speak of earlier but he was advised of his
3 rights for this statement by myself.

4 Q All right. Can you share with us what rights he was
5 advised of?

6 A Yes. Before answering any questions or making any
7 statements, Sergeant Moody, a person who identified
8 himself as an investigator for the Laurens County Sheriffs
9 Office, duly sworn and advised me and I, a person, and I
10 know and understand that I have the following rights. I
11 have the right to remain silent. I do not have to answer
12 any questions or make any statements at all. Any
13 statements that I make can and will be used against me in
14 a court or courts of law for the offense or offenses
15 concerning which the following statements herein after
16 made. That I have the right to consult the law for the
17 offense or offenses concerning, excuse me, with a lawyer,
18 the choice, before or any time during any questioning or
19 statements I make without cost or expense to me. That I
20 can stop answering any questions or make any statements at
21 any time that I choose. And call for the presence of a
22 lawyer to advise me before continuing any more questioning
23 or making any statements whether or not I have already
24 answered some questions or made some statements. I do not
25 want to talk to a lawyer and hereby knowingly and

1 purposefully waive my right to remain silent and my right
2 to have a lawyer present while making the following
3 statement to aforesaid person. Knowing that I have the
4 right and privilege to terminate any interview at any time
5 thereafter and have a lawyer present with me before
6 answering any more questions or making any more statements
7 if I choose to do so. I declare that the following
8 voluntary statement is made of my own free will without
9 promise or hope of reward, without fear or threat of
10 physical harm, without coercion, favor or offer to favor,
11 without leniency or offer of leniency by any person or
12 persons who delivered.

13 Q And were you aware as to whether or not he had
14 previously given a statement to one of the other
15 investigators, Investigator Blackmon at around 6:40 in the
16 morning?

17 A I am not aware of the following interview before I
18 interviewed him.

19 Q And what time was this interview obtained?

20 A Approximately between, around 10:30 a.m. and 11:56 on
21 October 13th of 2009.

22 Q And at what time would you estimate you ended your
23 interview?

24 A Approximately 11:56.

25 Q So, we are talking about after 10:00 a.m.

1 A Yes, ma'am.

2 Q And that was on October 13th?

3 A That is correct.

4 Q Did it appear to you that he was willing to give a
5 statement?

6 A Yes, ma'am.

7 Q Did you promise anything in exchange for a statement?

8 A No, ma'am.

9 Q Was he threatened in any way in exchange for his
10 statement?

11 A No, ma'am.

12 Q Did he appear to be freely and voluntarily given?

13 A Yes, ma'am.

14 Q I want to start at the beginning and ask you if you
15 can just verbally advise of any information that was
16 shared by Mr. Lewis in this statement?

17 A On October the 12th of 2009 I went to my girlfriend's
18 house being Ashley Hepburn. Around 8:30 or 9:00 in the
19 p.m. we started watching TV. I then went to lay down on
20 her bed and Ashley had told Owen, her son, to go brush his
21 teeth. Ashley got Owen to brush his teeth and then put
22 Audrina in her crib. Ashley then went to bed with Owen
23 and I went to the living room to watch TV. I watched a
24 football game and then around 11:00 in the p.m. I went to
25 check on Audrina. When I went to check on her at that

1 point Audrina was fine, laying in the crib.

2 Q And he indicated that was at what time that Audrina
3 was fine?

4 A Around 11:00 p.m.

5 Q And what else?

6 A I started watching TV again. I then went to check on
7 Ashley in Ashley bedroom. I asked Ashley if she wanted
8 something to eat and Ashley said no. So I just made
9 something to eat for myself. After I ate I then went to
10 check on Audrina in Audrina's bedroom. Audrina was laying
11 in her crib face down and was hardly breathing. I also
12 noticed there was blood on the outside of Audrina's mouth.
13 I began to panic and then picked Audrina up out of the
14 crib and then went and woke Ashley up. Ashley then got up
15 and went to the bedroom to urinate while I was still
16 holding Audrina. Ashley saw then that Audrina couldn't
17 hold her head up and became very frantic and I then gave
18 Audrina to Ashley. We then went and woke up Ashley's
19 mother, Doris Davis and her boyfriend, David in their
20 bedroom. We then laid Audrina on the floor on top of a
21 blanket and made sure that her head stayed still. David
22 then called EMS in which EMS arrived within ten minutes
23 and took Audrina to Self Regional Health Care. EMS then
24 picked Audrina up at approximately, I am sorry, whoever
25 made this copy right here, it is kind of -- at

1 approximately in the a.m. End of statement. The
2 statement was typed by Sergeant Moody per Richard Lewis.

3 Q Nothing further.

4 CROSS-EXAMINATION

5 By Mr. Able:

6 Q Officer Moody, you had said EMS had picked up Audrina
7 at approximately in the a.m., was it 1:30 in the a.m.

8 A I couldn't tell you, my statement was kind of
9 shading.

10 Q Down at the foot of the statement there is a typed or
11 a printed paragraph, that wasn't typed by you, correct,
12 down at the foot?

13 A That is correct.

14 Q And it reads, I have read each page of this statement
15 consisting of one page, each page which bears my signature
16 and corrections if any bears my initials. And I certify
17 that the facts herein, contained herein are true and
18 correct, correct?

19 A Correct.

20 Q That is the way it reads. And Mr. Lewis was allowed
21 to read this entire statement before he affixed his
22 signature at the base?

23 A He was.

24 Q That is all I have.

25 THE COURT: Mr. Wise.

1 MR. WISE: Your Honor, subject to the Court's
2 previous position with cross-examination I have no
3 questions.

4 THE COURT: Very good. Thank you, Mr. Wise. Sir,
5 you can step down.

6 MR. WISE: We would request that this witness not be
7 excused.

8 THE COURT: I am sorry.

9 MR. WISE: We would request this witness not to be
10 excused.

11 THE COURT: Right, you are still subject to your
12 subpoena.

13 MR. MOODY: Yes, sir.

14 MS. MAYES: Your Honor, may we approach?

15 THE COURT: Yes.

16 (Whereupon, a bench conference was held in the
17 presence of the jury but out of the hearing of the
18 jury.)

19 THE COURT: Ms. Mayes, call your next witness.

20 MS. MAYES: The State calls Melissa Skipper.

21 Melissa Skipper, after being duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 By Ms. Mayes:

25 Q State your name, please.

1 A Melissa Skipper Wallace.

2 Q And Ms. Skipper, where are you employed?

3 A At the South Carolina Law Enforcement Division
4 commonly known as SLED.

5 Q How long have you been an agent with SLED?

6 A Approximately five and a half years.

7 Q What type of work do you do with the State Law
8 Enforcement Division?

9 A I am currently assigned to the crime scene department
10 at SLED within the forensic laboratory.

11 Q And when you talk about working crime scenes, what
12 all is involved in that?

13 A We respond to and process crime scenes in all 46
14 counties of the State when requested by state or federal
15 agencies. We also process evidence collected from those
16 scenes for latent fingerprints, fingerprint comparisons,
17 tire tread comparisons, footwear comparisons, blood stain
18 pattern analysis and crime scene reconstruction.

19 Q All right. And I am going to ask you whether or not,
20 Agent Skipper, if you were present for the execution of a
21 search warrant at a residence in Cross Hill in Laurens
22 County related to critical injuries to a child?

23 A I was.

24 Q And I believe the testimony has been that at the
25 search warrant certain items were taken including a fitted

1 sheet, a white towel, two blankets and a padded bumper.

2 How were you involved in that, Agent Skipper?

3 A I collected those items.

4 Q Tell us a little bit about what happens once you
5 begin the execution of a search warrant in a case such as
6 this. What efforts are made to document the scene?

7 A Typically when we respond to a crime scene we make
8 contact with the local investigators and are briefed about
9 the circumstances around the case. After that we begin
10 taking our photographs of the exterior, interior of the
11 residence and in this case it is a residence. And we
12 document all the evidence before collection.

13 Q And in this case can you tell us whether or not you
14 were aware of the fact that it involved allegations of
15 child abuse?

16 A I was.

17 Q And that a child had lived in the home?

18 A That's correct.

19 Q I am going to ask who took photographs in the home?

20 A I took the photographs.

21 Q I am going to show you some documents and ask you
22 whether or not you recognize them and just take your time.

23 A I do recognize them.

24 Q And these as well?

25 A I do.

1 Q How do you recognize those items?

2 A I took the photographs.

3 Q Can you tell us whether or not the photographs appear
4 to be a fair and accurate representation of the scene as
5 you observed it on October 16th?

6 A They are.

7 MS. MAYES: Your Honor, at this time we would offer
8 these items as evidence.

9 MR. ABLE: No objection.

10 MR. WISE: No objection.

11 THE COURT: No objection, State's 32 through 43
12 coming into evidence.

13 (Whereupon, State's Exhibit 32 - 43 were admitted
14 into evidence.)

15 Q Did you also have the opportunity, Agent Skipper, to
16 prepare any type of diagrams related to the home?

17 A I did.

18 Q And how did you go about preparing a diagram?

19 A I used the photographs as a reminder for the diagram.
20 It is computer generated on some software we use to create
21 diagrams.

22 Q Can you tell us whether or not that is routine in
23 your crime scene assessments?

24 A It is.

25 Q I am going to ask you to take a look at this item and

1 tell us whether or not it appears to be a fair and
2 accurate representation of the scene that was processed on
3 October 16th?

4 A It is.

5 MS. MAYES: Your Honor, at this time this would also
6 be State's exhibit for evidence.

7 THE COURT: Any objection to the diagram of the
8 residence?

9 MR. ABLE: Judge, we would object and it is not to
10 scale and I don't believe it fairly and accurately
11 represents a scale drawing. We object to this.

12 THE COURT: You can cross-examine. I think it is
13 going to be used primarily for demonstrative purposes. Is
14 that right, Ms. Mayes?

15 MS. MAYES: Yes sir, Your Honor.

16 MR. WISE: It is not to scale and I would object.

17 THE COURT: I will allow it into evidence subject to
18 the objection.

19 (Whereupon, State's Exhibit 44 was admitted into
20 evidence.)

21 Q I am going to ask you to take a look at this copy of
22 State's exhibit 44 and ask you whether or not that is the
23 same document?

24 A It is.

25 Q I am going to start by asking about this particular

1 location in the home. What is your understanding of that
2 location?

3 A It was the master bedroom of the residence that
4 belonged to the subject's mother who lived at the
5 residence.

6 Q You are talking about the mother of the defendant?

7 A Yes, ma'am.

8 Q If we are looking at this photograph which is State's
9 exhibit 37 could you tell us what we are looking at?

10 A It is a photograph of the dining room area which is
11 on the left-hand side and part of the living room on the
12 right hand side. It is a front door there on the right
13 side and the doorway between the cabinet and the TV stand
14 is the door that leads into the master bedroom.

15 Q All right. So, from the living room into the master
16 bedroom that would be the bedroom that you previously
17 referred to as the defendant's mother's room?

18 A That is correct.

19 Q And this particular photograph depicts what?

20 A It is a photograph of the same area, it is just taken
21 from a different perspective of the wall next to the front
22 door of the living room area.

23 Q And this particular photograph?

24 A It is another photograph of that same area just
25 leading on around to the right of the room and coming up

1 to the corner going towards the kitchen.

2 Q And looking again at the diagram, where would the
3 kitchen area be located?

4 A The kitchen area is the area that is in the upper
5 left corner, that room there.

6 Q And looking at the diagram, where would the bedroom
7 be of the defendant in this case, Ashley Hepburn?

8 A That would be the room that is in the lower right
9 corner, I am sorry, lower left corner.

10 Q Would that be correct?

11 A That is it.

12 Q I am going to show you two photographs and ask you if
13 you recognize this particular room?

14 A That is a photograph of the defendant's bedroom taken
15 from the doorway leading into the room.

16 Q That would be the defendant, Ashley Hepburn?

17 A That is correct.

18 Q And this particular photograph?

19 A That is another photograph of the same bedroom taken
20 from the corner that is on the same wall of the door
21 shooting back towards the door.

22 Q Of Ashley Hepburn?

23 A That's right.

24 Q Now, when you took this photograph where are you
25 located, where are you at and what are you looking at?

1 A This photograph is taken in the defendant's bedroom
2 shooting back across the hallway through the doorway of
3 the victim's bedroom.

4 Q So, if you are standing in Ashley Hepburn's bedroom
5 where does it face or where are you looking?

6 A Faces the doorway to the victim's bedroom.

7 Q Audrina Hepburn?

8 A That's correct.

9 Q Is it possible for you to estimate the distance
10 between the bedroom door of Ashley Hepburn and the bedroom
11 door of Audrina Hepburn?

12 A It is approximately six to eight feet.

13 Q Let me show you the diagram again and ask if you can
14 indicate where the bedroom of Audrina Hepburn, the victim,
15 is located?

16 A It is in the lower center next to the bathroom, that
17 there.

18 Q I am going to show you some photographs and ask you
19 if you recognize what is shown in the photographs?

20 A That is a photograph taken standing next to the crib
21 shooting back towards the doorway.

22 Q This is State's exhibit 43.

23 A That is the inside of the crib.

24 Q And State's exhibit 42 and on this particular image I
25 would like for you to tell us where you are standing and

1 what you are looking at?

2 A This is a photograph taken from inside of the
3 victim's bedroom, that is the door there on the right-hand
4 side and it is shooting back across the hallway into the
5 defendant's bedroom.

6 Q Can you tell us whether or not there is a bathroom
7 located in the area of Ashley Hepburn's room and Audrina
8 Hepburn's room?

9 A There was.

10 Q Where is that located?

11 A That is in the lower left side of the diagram.

12 Q I am going to show you a photograph and ask you
13 whether or not you recognize what is in the photograph,
14 this is State's exhibit 36?

15 A That is a photograph taken from inside the bathroom
16 in front of the tub back through the doorway. You can see
17 part of the kitchen in the background and the sink as well
18 in the bathroom.

19 Q I am going to show you a photograph and ask you
20 whether or not you recognize it?

21 A I do.

22 Q And what is depicted in that particular photograph?

23 A It is a photograph from the kitchen doorway looking
24 back towards the room that has the crib in it, the
25 victim's bedroom.

1 Q And that was also taken by you?

2 A Yes, it was.

3 MS. MAYES: Your Honor, at this time we would offer
4 State's exhibit 45.

5 MR. ABLE: No objection.

6 MR. WISE: No objection.

7 THE COURT: Without objection 45 is in evidence.

8 (Whereupon, State's Exhibit 45 was admitted into
9 evidence.)

10 Q In this particular photograph what are we looking at?

11 A This is a photograph taken inside the kitchen, just
12 inside the doorway shooting back towards the victim's
13 bedroom.

14 MR. ABLE: Ms. Mayes, what exhibit number is that?

15 MS. MAYES: That is State's 45.

16 Q And where this photograph is taken, that is in the
17 kitchen?

18 A Yes, it is.

19 Q And what is this area located here?

20 A That is the victim's bedroom.

21 Q Looking again at the diagram, if someone is standing
22 in the kitchen area, can you tell us whether or not the
23 doorway to the victim's room is visible?

24 A I am sorry?

25 Q If someone is standing in the kitchen can you tell us

1 whether or not the doorway to the victim's room is
2 visible?

3 A They should be able to tell if they are standing on
4 the left hand side or to the center, maybe not from the
5 right hand side of the kitchen.

6 Q And when you are standing in the doorway of Ashley
7 Hepburn or looking from the doorway of Ashley Hepburn's
8 room can you tell us whether or not the doorway of Audrina
9 Hepburn's room is visible?

10 A It is.

11 Q If someone were in the living room can you tell us
12 whether or not it would be visible if someone from this
13 room entered this room?

14 A If they were on the side where the couches were they
15 wouldn't be able to see that, if they were around the
16 dining room they might be able to.

17 Q Let me show you another photograph and ask you
18 whether or not you recognize it?

19 A Yes, I do.

20 Q And how do you recognize that photograph?

21 A It is a photograph of the defendant's, in her
22 bedroom.

23 Q Prior to taking the photographs did you alter the
24 scene in any way?

25 A I did not.

1 Q Did you remove any items from the scene?

2 A I did not.

3 Q Did you remove any items from the bed?

4 A I did not.

5 Q Did you add any items at any location in the home?

6 A No, I did not.

7 Q Looking at that photograph can you tell us whether or
8 not any books were found on the bed or around the bed?

9 A There is some books on the desk but they don't appear
10 to be any on the bed.

11 MS. MAYES: This would be State's 46 as evidence.

12 MR. ABLE: No objection.

13 MR. WISE: No objection.

14 THE COURT: Without objection State's 46 is in
15 evidence.

16 (Whereupon, State's Exhibit 46 was admitted into
17 evidence.)

18 Q This is 46, can you tell us as you conducted
19 photographs whether there were any children's books around
20 the bed?

21 A I don't recall there being any.

22 Q Or on the bed?

23 A Not that I recall.

24 Q If they were present would you have photographed
25 them?

1 A They would have been visible in this photograph.

2 Q Going back to the room of Audrina Hepburn, this is
3 State's exhibit 43, what is depicted in this photograph?

4 A It is a photograph of the inside of the crib. There
5 is a stuffed animal, some type of pink cloth, a white
6 towel and the linens themselves on the crib.

7 Q And prior to taking the photographs was the crib
8 altered in any way?

9 A No, it was not.

10 Q Was anything added to the crib?

11 A No.

12 Q What took place after you photographed the crib and
13 the rest of the scene?

14 A I collected the pink bumper around the edge of the
15 crib, the pink cloth, the white towel and the fitted sheet
16 that actually was onto the mattress of the crib.

17 Q And when you say you collected them, what is the
18 procedure for the collection of evidence in a case like
19 this?

20 A They go in paper bags, individual paper bags.

21 Q And how are they sealed?

22 A They are sealed with our seal tape which is dated and
23 initialed by the sealer.

24 Q What is the purpose of sealing the evidence once it
25 is collected?

1 A For evidence preservation and to show that the
2 evidence has been secured properly.

3 Q And where does the evidence go?

4 A This evidence in particular went to our forensic
5 laboratory.

6 Q And that would be in Columbia?

7 A Yes, ma'am.

8 Q And for what purpose?

9 A For the purpose of DNA testing.

10 Q I am going to show you these items and ask you
11 whether or not you recognize them and if you could step
12 down.

13 A They appear to be the items that I collected from the
14 crib.

15 MS. MAYES: Your Honor, for identification at this
16 time State's exhibit 47, 48, 49, 50 and 51.

17 (Whereupon, State's Exhibit 47 - 51 were marked for
18 identification only.)

19 THE COURT: Mr. Able?

20 MR. ABLE: No questions for the witness, Your Honor.

21 THE COURT: Mr. Wise?

22 CROSS-EXAMINATION

23 By Mr. Wise:

24 Q Is the State capable of making a scale drawing of
25 that trailer?

1 A We typically do not, arson units often do scale
2 diagrams but we do not in our unit.

3 Q Another unit would have to do it?

4 A We don't do scale diagrams in any form or fashion.

5 Q Thank you.

6 THE COURT: Thank you, you may step down. Any
7 objection for this witness to be excused?

8 MS. MAYES: No, Your Honor.

9 MR. ABLE: No objection.

10 MR. WISE: No objection.

11 THE COURT: Ladies and gentlemen of the jury, we will
12 take a five minute break. Don't discuss the case.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: We will take five minutes.

16 (Whereupon, a short break was taken.)

17 THE COURT: Let's bring the jury in.

18 (Whereupon, the jury came into open court at
19 approximately 12:25 p.m.)

20 THE COURT: The record should reflect that the jury
21 is back. Ladies and gentlemen, don't get comfortable. I
22 have talked to the lawyers and we have some matters to
23 take up that don't involve you. You can go ahead and take
24 a lunch break. I am going to ask you to be back here at
25 1:45. Don't discuss the case with anyone. Thank you.

1 (Whereupon, the jury was excused from open court for
2 a lunch break.)

3 THE COURT: The jury is out and also the record will
4 reflect that during the break the court reporter marked
5 the items that were seized from the victim's home and
6 testified to by the last witness. We are now going to
7 take up the issue of the statement that was taken by a DSS
8 worker. Ms. Mayes, I will be happy to hear from you on
9 that.

10 MS. MAYES: Yes sir, Your Honor. Does the Court
11 still have the documents that were submitted, I believe,
12 last Wednesday.

13 THE COURT: Looking at the documents at the very top,
14 I guess it is case number HRC690-R01?

15 MS. MAYES: Yes sir, Your Honor.

16 THE COURT: I do have that.

17 MS. MAYES: This is a two page document and we would
18 just like to address whether there may be any Bruton
19 issues involved. I believe in the upper paragraph of page
20 two, there is a reference, the case worker makes a note
21 during his interview with Ashley Hepburn, makes a note
22 concerning the child being afraid of Brandon Lewis
23 according to Ashley Hepburn.

24 MR. WISE: What page are you on.

25 MS. MAYES: It is the upper paragraph of page two.

1 MR. WISE: I have got bunches of page two. What is
2 the date and the time.

3 MS. MAYES: October 13th.

4 MR. WISE: Okay.

5 THE COURT: At first blush, Ms. Mayes, four lines
6 down Ashley informed CW that she was told at the hospital
7 that Audrina was in serious condition. Here is the
8 apportionment that I have a problem with under Bruton. CW
9 asked Ashley, how do Audrina and Brandon get along.
10 Ashley stated Audrina don't like Brandon. Ashley said
11 Audrina liked Brandon at first but at the last two to
12 three months that she didn't want to be around Brandon.
13 CW asked Ashley did she think that was strange. Ashley
14 replied no. Ashley told CW that when Brandon was around
15 she didn't want to go sleep. That is the part that I have
16 a problem with.

17 MS. MAYES: Where did that begin, Your Honor.

18 THE COURT: It began with CW asked Ashley how do
19 Audrina and Brandon get along. And it ends with the word
20 strange.

21 MS. MAYES: The State has no objection.

22 THE COURT: I am sorry, it ends with the word, sleep.

23 MS. MAYES: The State has no objection to a redaction
24 concerning that statement.

25 THE COURT: Mr. Wise, you are comfortable with that?

1 MR. WISE: Well, my objection to it is that the whole
2 statement violates Crawford. It is an out of court
3 statement gathered by an investigating agency of the
4 government so it is testimonial and therefore it is coming
5 in in the case against me and I think, the whole thing
6 violates Crawford.

7 THE COURT: What is your response to that, Ms. Mayes?

8 MS. MAYES: Your Honor, this is a statement from Ms.
9 Hepburn herself.

10 MR. WISE: Which is my point. The statement from Ms.
11 Hepburn herself who has not testified so it violates
12 Crawford.

13 MS. MAYES: This is a statement against interest by a
14 defendant, an exception to hearsay.

15 MR. WISE: It is not an exception to confrontation
16 clause of the sixth amendment as Crawford points out.

17 THE COURT: For what purpose is the State introducing
18 this statement?

19 MS. MAYES: Your Honor, the statement is relevant and
20 probative to the events that occurred that night according
21 to Ms. Hepburn. They document her recollection of the
22 child's condition, all of the events which according to
23 her occurred leading up to the child's injuries as well as
24 acknowledging information about Mr. Lewis concerning their
25 relationship, how long they have dated and things of that

1 nature.

2 MR. WISE: And I would love to have the opportunity
3 to cross-examine Ms. Hepburn on those issues.

4 MS. MAYES: 801(d)(2), Your Honor, the State does
5 consider this particular statement by Ms. Hepburn to be a
6 statement offered against her or against, in summary of
7 the events that occurred that night according to her.

8 THE COURT: Mr. Wise, doesn't Crawford rest upon the
9 proposition that certainly it is the sixth amendment
10 confrontation case. It is my understanding that Crawford
11 though, was that the statement that was played of the
12 alleged victim, that was played and yet the victim was not
13 called to testify.

14 MR. WISE: That is correct. There is no difference
15 between playing a statement and having someone talk about
16 what they said.

17 THE COURT: I could easily instruct the jury that
18 this statement is being introduced solely as against Ms.
19 Hepburn and your client should not be in any way
20 considered as evidence against your client. It is my
21 understanding, Ms. Mayes, that would be the purpose that
22 you are introducing it?

23 MS. MAYES: Yes sir, Your Honor.

24 THE COURT: Under (d)(2) it would be solely
25 admissible against her as her statement, correct?

1 MS. MAYES: Correct, Your Honor.

2 MR. WISE: And it is not to be considered as to the
3 truth as to Mr. Lewis.

4 THE COURT: Correct. That would be the proper
5 recourse in my mind based upon the case law.

6 MR. WISE: I still would object to it but of course
7 that is better than the way it was.

8 THE COURT: I understand. Mr. Able, what is your
9 position, sir?

10 MR. ABLE: Judge, of course, it would be our position
11 that the entire document including the redaction should be
12 allowed in.

13 THE COURT: You have been present when I explained my
14 position.

15 MR. ABLE: Yes, sir. I understand the Judge's
16 ruling.

17 THE COURT: The portion about, the portion that I
18 just read, four lines down is a reference to a swollen
19 area. Something related by the mother-in-law.

20 MS. MAYES: I have no objection, Your Honor.

21 THE COURT: Nothing has been testified about,
22 testifying to about that previously. That doesn't seem to
23 be relevant to anything that we are dealing with as far as
24 the cause of death.

25 MS. MAYES: No objection, Your Honor.

1 MR. WISE: And the further problem that I have, Your
2 Honor, is that the statement in here, Ashley stated that
3 Brandon woke her up and asked did she want to watch a
4 movie. Ashley said, she stated no and fell back to sleep.
5 Ashley stated she woke up later to Brandon holding Audrina
6 in his arms unresponsive. That is tantamount to saying
7 Brandon was up all alone with the child by himself. And
8 that would be testimonial against my client.

9 THE COURT: Wouldn't that be cumulative to other
10 evidence that has already come in.

11 MR. ABLE: It is before the jury.

12 MR. WISE: Well, not from her.

13 MR. ABLE: It is already there.

14 MR. WISE: But not from her. That is coming from her
15 I should have a right to cross-examine her. I can put my
16 client on the stand to explain things. I can't call her
17 to the stand later to explain things.

18 THE COURT: Correct.

19 MR. ABLE: But I think the Court's point is well
20 made, it is cumulative, it is already before the Court. I
21 mean it is already before the jury by his statement.

22 THE COURT: But obviously Mr. Wise is in a better
23 position to have his client explain his statement as
24 opposed to your client explain hers. That is what he is
25 getting at.

1 MR. WISE: That is correct.

2 THE COURT: But it is cumulative.

3 MR. ABLE: Yes sir, and it is already there so what
4 is the issue.

5 MR. WISE: My brief response is that if it is already
6 there then leave it out, it will eliminate the problem.

7 THE COURT: Mr. Wise, what portion of this are you
8 raising Bruton challenge to.

9 MR. WISE: Four lines from the bottom of the first
10 page. Ashley stated to the end of the first sentence on
11 the second page. Pick up Ashley said David Crumley, her
12 mother or boyfriend called 911.

13 MS. MAYES: Are you starting at Ashley stated they
14 had dinner.

15 MR. WISE: No, Ashley stated Brandon woke her up.
16 Four lines from the bottom.

17 THE COURT: I think that Bruton would apply. Ashley
18 stated that Brandon woke her up and asked if she wanted to
19 watch a movie. Ashley said she stated no and fell back
20 off to sleep. Ashley stated she woke up later to Brandon
21 holding Audrina in his arms unresponsive. Ashley said
22 Brandon stated he found her this way in the crib. Now, we
23 have got the same sort of temporal problem by deleting
24 that we had with the other statement involving Mr. Lewis.
25 So, what the case worker will need to testify to is

1 something to the effect of Ashley stated that she had then
2 read Owen a bedtime story and they fell asleep. When
3 Ashley awoke Audrina was in Brandon's arms unresponsive.

4 MR. WISE: I think that is testimonial against my
5 client.

6 THE COURT: No, I have got that struck. When Ashley
7 awoke Ashley informed CW she grabbed Audrina, I think that
8 is suppose to be from Brandon instead of for Brandon.

9 MR. WISE: Well, she is saying she grabbed her from
10 Brandon Lewis.

11 THE COURT: That is cumulative, I mean we have got a
12 lot of that in there.

13 MR. WISE: But it is, it has got a lot other than not
14 from her.

15 THE COURT: Eliminate for Brandon in reference to
16 Brandon. She grabs Audrina and her head fell back in her
17 arms and she, although for Audrina to wake up. And I
18 think that was suppose to be how. Are we on the same
19 sheet of music.

20 MS. MAYES: Your Honor, actually the State would
21 prefer to strike that entire sentence as opposed to
22 striking the words from Brandon, I believe that would add
23 confusion or be a misrepresentation.

24 THE COURT: Your position on that, Mr. Wise?

25 MR. WISE: Well, she is striking more than you were

1 willing to strike so I would have to agree with that.

2 THE COURT: Everything that precedes wake up on page
3 two. Ashley stated that she ran in the living room where
4 her mother gave Audrina too quick breath, Ashley said
5 David Crumley, her mother's boyfriend called 911. That
6 portion will be eliminated and the swollen area. Anything
7 else, Ms. Mayes?

8 MS. MAYES: Your Honor, if we stop at her reading a
9 bedtime story and fall asleep and then pick up with her
10 running in the living room where her mother gives the,
11 gives CPR I believe that would also add more confusion. I
12 think it may make more sense to just begin with calling
13 911. Otherwise there is no explanation of what would have
14 prompted her to be in the living room with the child.

15 THE COURT: Mr. Able, how do you feel about that. I
16 realize that you want the whole thing in. Having ruled
17 against you on that point. We could have a phrase along
18 the lines of when Ashley realized what happened she
19 directed 911 to be called. She realized what was going on
20 when she woke. When she woke up she directed 911 to be
21 called.

22 MR. ABLE: Right.

23 MR. WISE: It doesn't say here she asked 911 to be
24 called. She just said, David Crumley called 911.

25 MR. ABLE: When she woke up David Crumley called 911.

1 MR. WISE: Right.

2 THE COURT: I can't lean from the statement, whether
3 Ashley directed David Crumley to call 911 or Ashley is
4 merely relating that David Crumley had taken it upon
5 himself to dial 911. Perhaps that is a point that needs
6 to be clarified.

7 MS. MAYES: Your Honor, at this point the State has
8 no objection to beginning, to striking out all of those
9 references. I am just not sure it can be cured to explain
10 how she became awake and began interacting with other
11 family members. So understanding that I would prefer to
12 strike even the reference to Mr. Crumley and EMS arriving
13 within fifteen minutes.

14 THE COURT: Mr. Wise.

15 MR. WISE: I understand the Court's ruling. I think
16 we are getting to a point where it becomes nonsensical.
17 It would, you would be left with Ashley stated, she then
18 read over a bedtime story and then fell asleep.

19 THE COURT: Out of fairness to Ms. Hepburn I will
20 allow portions to come in dealing with the sequence of
21 events. For it to be non-testimonial from Mr. Lewis we
22 need to maintain that same flow out of fairness to Ms.
23 Hepburn. May I suggest to meet with your witness and
24 perhaps get clarification as to what was being
25 communicated and I think you understand what I am saying.

1 It needs to flow, she falls asleep, she is awoken, the
2 baby is limp, 911 is called. Ashley said Brandon told her
3 that Audrina may of had a seizure because she had blood on
4 her lip.

5 MR. WISE: That would be testimonial.

6 THE COURT: I am striking that part, Ashley said
7 Brandon said that Audrina may have had a seizure because
8 she had blood on her lip. You can leave in the part
9 Ashley informed CW that she was told at the hospital that
10 Audrina was in serious condition. But we have got EMS
11 arriving taking the child to Greenwood Hospital. And then
12 skip down to CS asked Ashley how long she and Brandon had
13 dated. Ashley said six months. CW asked Ashley how long
14 had Brandon spent the night at her house. Ashley
15 responded two to three nights a week. But he be there
16 every day. And then the next line is out, the next
17 sentence is out. Is that good with everyone subject to
18 your objections and reservations.

19 MR. ABLE: Yes sir, given the Court's ruling. Judge,
20 on page one you are taking out the last four sentences
21 from that I understand. Starting where Ashley stated
22 Brandon.

23 THE COURT: I eliminated the last four lines on page
24 one.

25 MR. ABLE: And then going over to page two--

1 THE COURT: Wake up is the only part I have
2 eliminated. And we are okay with Ashley stated she ran in
3 the living room where her mother gave Audrina two quick
4 breaths. That is cumulative. Ashley said David Crumley,
5 her mother's boyfriend called 911, whatever that means.
6 Ashley mentioned that EMS arrived within fifteen minutes
7 and took Audrina to Greenwood Self Region Hospital.
8 Ashley informed CW that she was told at hospital that
9 Audrina was in serious condition. CW asked Ashley how
10 long she and Brandon dated. Ashley said six months. CW
11 asked Ashley how often Brandon spent the night at her
12 house and Ashley responded about two to three nights a
13 week but he be there every day. Ashley informed that last
14 two, three weeks she had noticed bruises on Audrina and
15 don't know how they got on her. That is the substance of
16 what comes in. And, Ms. Mayes, you will need to figure
17 out a transitional--

18 MS. MAYES: Perhaps we could reach a stipulation that
19 on the first page after it says read Owen a bedtime story
20 and they fell asleep that page two began after she
21 learned, after she learned Audrina was injured Ashley
22 stated she ran in the living room.

23 MR. WISE: I would object to after she learned
24 because that is not, she is testifying after she learned.
25 That is testimonial against my client.

1 THE COURT: Upon being alerted to the baby's
2 condition.

3 MR. WISE: She was alerted to the baby's condition--

4 MR. ABLE: It has already been said, Judge. His own
5 statement put it out there.

6 MR. WISE: I understand but this is from her which is
7 different. I can never correct this in this trial through
8 cross-examination.

9 MS. MAYES: Does anyone have an objection to all of
10 that coming out until we get to the part where case worker
11 asked how long they dated. The State's position is that
12 otherwise it would not adequately explain how she learned
13 that the injuries or went into the living room according
14 to her.

15 THE COURT: Mr. Able.

16 MR. ABLE: Judge, I am not going to agree to it.
17 Again, going back, I understand the Court's ruling but I
18 would go back and ask the Court to reconsider that the
19 entire statement come in.

20 THE COURT: I understand.

21 MR. WISE: I guess--

22 THE COURT: Hold on one second.

23 MR. ABLE: Given the Court's earlier ruling that,
24 with leaving in the parts that we had spoke about a few
25 moments ago it just doesn't make any sense. There is no

1 way you can read it that way and have a meaning.

2 THE COURT: All right. Here is what we are going to
3 do. Again, I do note that this is cumulative to a degree
4 but on that first page I am going to allow the witness to
5 state as follows: Ashley stated that she then read Owen a
6 bedtime story and they fell asleep. Ashley informed CW
7 she grabbed Audrina and her head fell back in her arm. No
8 reference to Brandon. She hollered for Audrina to wake
9 up. Audrina stated that she ran in the living room where
10 her mother gave Audrina two quick breaths. I will allow
11 that to come in. That doesn't imply, Mr. Wise can still
12 make his argument that she was perhaps awake the entire
13 time even though that is contrary to his client's
14 statement to law enforcement. And the rest of the
15 statement I think I have already dealt with. So, I will
16 allow the witness to testify to that. It is not
17 testimonial against Mr. Lewis, simply Ashley relating what
18 she did. And I deleted the reference to Mr. Lewis. Mr.
19 Able has a valid point, I tried to accomplish the same
20 thing for Mr. Lewis and tried to accomplish the same thing
21 for Ms. Hepburn as far as providing a safe way where we
22 left off, bedtime story and then the point where she takes
23 the child and the child's head falls back. That is fair.
24 Anything before we take a quick lunch break?

25 MS. MAYES: Your Honor, also I believe a redaction

1 with Agent Kirkland has already been dealt with. There
2 was testimony about that Wednesday. I believe there was
3 one redaction on that. And then as to the second case
4 worker, Dee Deal. He interviewed Mr. Lewis. There is a
5 reference to Mr. Lewis stating that he was taking Percocet
6 and Lortabs. I will submit that to the Court, I don't
7 believe the Court has a copy of that.

8 THE COURT: I don't know that I do. Is this
9 interview taking place with the two of them together.

10 MS. MAYES: Your Honor, this is the DSS case worker,
11 Dee Deal with law enforcement. Law enforcement is asking
12 questions in the presence of Dee Deal and Mr. Lewis and he
13 is responding. And this occurred at Greenwood Hospital.

14 THE COURT: But Ms. Hepburn is not present.

15 MS. MAYES: Correct.

16 THE COURT: So this is a statement from Mr. Lewis.

17 MS. MAYES: Correct.

18 THE COURT: She has stated her boyfriend, Richard
19 Brandon Lewis was the only one up and found the child
20 unresponsive. She stated she had no idea what had
21 happened to Audrina.

22 MS. MAYES: Yes sir, Your Honor. I am sorry, I was
23 referring to the part about the Percocet and the Lortabs.
24 That portion is from Mr. Lewis.

25 THE COURT: That is a 403 analysis. I thought we

1 were dealing with Bruton on this one. Where is the
2 Percocet and Lortab.

3 MR. ABLE: From the bottom.

4 MR. WISE: Where it says case worker and detectives
5 then spoke to Brandon Lewis. So, the first part is with
6 her and the second part is with Brandon.

7 THE COURT: Were they interviewed together because
8 that is the situation.

9 MR. WISE: It doesn't read that way.

10 THE COURT: If they are being interviewed together
11 then there is not a Bruton problem. They have the ability
12 at that point and time to interject and refute what the
13 other--

14 MR. WISE: It doesn't read that way.

15 MS. MAYES: They were not together, Your Honor.

16 THE COURT: The first four lines down said she went
17 to bed around 10:30 with the other child Owen. Her mother
18 and mother's boyfriend went to bed earlier. Here is the
19 problem. She stated her boyfriend Richard Brandon Lewis
20 was the only one up and found the child unresponsive.
21 That is testimonial. She can say she stated that she had
22 no idea what happened to Audrina. We now apparently go
23 and we talk to Mr. Lewis. The part I have got a problem
24 with is the Lortab as far as Mr. Lewis' statement.

25 MR. WISE: For the record, Your Honor, those are

1 prescription medicines. I have still got a problem with
2 it.

3 THE COURT: If you want to waive it. It is a
4 prescription medication.

5 MR. WISE: I would object to it.

6 THE COURT: You don't want it coming in I am happy to
7 keep it out.

8 MR. WISE: We do.

9 THE COURT: Very good. That comes out.

10 MR. ABLE: Judge, I would raise the question, are you
11 talking about on the first page or the whole statement.

12 THE COURT: The whole thing.

13 MR. ABLE: Okay. Down the second page about the
14 middle, it says Dr. Curry also stated Audrina had a bruise
15 to the left side of face which appeared to be a finger
16 mark. I don't know that there was any testimony to that.

17 MS. MAYES: We can remove those references, Your
18 Honor.

19 THE COURT: All right.

20 MR. ABLE: And then Dr. Curry stated the only way
21 child could have gotten injuries were from shaking or blow
22 to head.

23 MS. MAYES: No objection.

24 THE COURT: Yes, those are, yes. That comes out.
25 Thank you for pointing that out. Anything else?

1 MS. MAYES: We will go ahead and make copies of the
2 new versions and provide those to the Department of Social
3 Services so they will read directly from the redated
4 versions. Your Honor, just for clarification, on the
5 first page of the last document that we handed up to the
6 Court, after the word, unresponsive, when we are talking
7 about with Ms. Hepburn, after he found the child
8 unresponsive is she stated she had no idea what happened
9 to Audrina coming in or is that redacted.

10 MR. WISE: That is redacted.

11 MR. ABLE: No, you said that was coming in.

12 THE COURT: That is coming in. She stated she had no
13 idea of what happened to Audrina. That is coming in.

14 MR. WISE: Note my objection to that.

15 THE COURT: Very good.

16 MR. WISE: She stated her boyfriend. Richard Brandon
17 Lewis was the only one up and found the child
18 unresponsive.

19 THE COURT: Objection is noted, it is coming in.
20 That is not testimonial. We will take a quick lunch
21 break.

22 (Whereupon, a lunch break was taken.)

23 THE COURT: Let's have the jury, please.

24 (Whereupon, the jury came into open court at
25 approximately 1:45 p.m.)

1 THE COURT: The record will reflect that the jury is
2 present in the courtroom. Ms. Mayes, call your next
3 witness.

4 MS. MAYES: The State calls Dee Deal to the stand.
5 Dee Deal, after being duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 By Ms. Mayes:

9 Q Mr. Deal, could you begin by telling us where you are
10 employed?

11 A With the Laurens Department of Social Services.

12 Q And what kind of work do you do with DSS?

13 A I am the foster home licensing worker, I license
14 foster homes.

15 Q How long have you been with DSS?

16 A A little over 14 years.

17 Q And throughout that time what kind of job
18 responsibilities have you had with DSS?

19 A I have worked in investigations, I have worked
20 treatment and I have worked in foster care.

21 Q And what division were you working back in October of
22 2009?

23 A I was in licensing but I was on call.

24 Q What do you mean by on call?

25 A After hours workers rotate, if something comes in

1 after hours somebody as to go out so we rotate who is on
2 call and I was on call that night.

3 Q And when you state that night you are referring to
4 the early morning hours of October 13th of 2009?

5 A Yes, ma'am.

6 Q And how did you first come alerted as a staff member
7 of the Department of Social Services that an investigation
8 for child abuse was underway?

9 A I was contacted by telephone by the Laurens County
10 Dispatch office.

11 Q And were you aware of the nature of the offense?

12 A Yes, ma'am.

13 Q And as a result what was the next step you took?

14 A I went to the Self Memorial Hospital in Greenwood.

15 Q Now, why does DSS get involved in allegations of
16 child abuse or neglect?

17 A We are managed by law to investigate any kind of
18 report on child abuse and neglect that is perpetrated by a
19 parent or caregiver.

20 Q And did you have information at this time as to
21 whether or not the abuse was alleged to have occurred at
22 the home?

23 A Yes ma'am, I was told that it did happen at the home,
24 right.

25 Q Within the confines of Laurens County?

1 A Yes, ma'am.

2 Q And do you have any information or any recollection
3 as to approximately what time you arrived at a certain
4 location in order to begin this investigation?

5 A I believe it was around 2:30 or 3:00 o'clock in the
6 morning, sometime around there.

7 Q And we would be talking about October 13th of 2009?

8 A Yes, ma'am.

9 Q And where was the location that you went to?

10 A Self Hospital in Greenwood.

11 Q What happened once you arrived at Self Hospital in
12 Greenwood?

13 A I met with two of the Laurens County Sheriffs
14 Departments detectives, Robert Plaxico and Ben Blackmon.

15 Q And what, you can't tell us what they said to you but
16 what did you do as a result of getting information from
17 the Laurens County investigators?

18 A After meeting with them then we met with the mother
19 of the child.

20 Q Are you referring to the defendant in this case,
21 Ashley Hepburn?

22 A Yes, ma'am.

23 Q When you say you met with her, where did you meet
24 with her at?

25 A There was a little hospital room back there in the

1 emergency room that we met with her at.

2 Q Would that be the family room?

3 A It wasn't a family room, it was more like, it looked
4 like to me a patient room, if I recall correctly. But she
5 was the only one in there at the time.

6 Q Who else do you recall being present when you met
7 with Ms. Hepburn?

8 A It was me, Detective Plaxico and Blackmon.

9 Q And what was the next step once you met with Ms.
10 Hepburn?

11 A She was questioned about what she remembered
12 happening that night.

13 Q And how is it that DSS became alerted that there even
14 was a situation to investigate. Who notified DSS?

15 A The hospital.

16 Q So, once you are notified by the hospital you arrived
17 and the next step is to interview the family members, is
18 that correct?

19 A Right.

20 Q And did you have the opportunity to speak with Ms.
21 Hepburn?

22 A I more or less didn't talk to her, I was just present
23 when the detectives were talking to her.

24 Q And just to clarify, was Ms. Hepburn arrested at that
25 point and time?

1 A No, ma'am.

2 Q Was she in handcuffs at that point and time?

3 A No, ma'am.

4 Q Was she speaking with you and the officers
5 voluntarily?

6 A Yes, ma'am.

7 Q At any point did you identify yourself?

8 A Yes ma'am, I told her who I was.

9 Q How did you identify yourself?

10 A I told her I was the Laurens County Department of
11 Social Services and told her who I was.

12 Q And did she understand the reason that you were
13 present at the hospital?

14 A I am not certain, I am sure she understood why DSS
15 was involved. But I don't recall explaining to her why I
16 was there. I more or less let the officers conduct the
17 interview with her.

18 Q Did she understand whether or not it dealt with the
19 injuries to Audrina?

20 A Yes, ma'am.

21 Q Do you have any notes or documentation reflecting
22 your interview with Ms. Hepburn?

23 A I have got my dictation that I wrote the next day
24 when I got back to the office.

25 Q And that dictation is based on what?

1 A My recollection of what happened that evening.

2 Q Can you start at the beginning and relate to us what
3 you do recall about your interview with Ms. Hepburn?

4 A You want me to read the whole thing?

5 Q Yes.

6 A Case worker responded to Self Regional Hospital and
7 met with Laurens County Sheriffs Department, Detective
8 Robert Plaxico and Ben Blackmon. I was informed that the
9 child had been transported to Greenville Memorial Hospital
10 due to severe brain injuries. Case worker and detectives
11 met with the child's mother, Ashley Hepburn. She stated
12 that she had put the child to bed around 10:00 p.m. and
13 the child was irritable and was crying some. She said she
14 went to bed around 10:30 with the other child, Owen. And
15 her mother and mother's boyfriend had went to bed earlier.
16 She stated she had no idea what had happened to Audrina.
17 Case workers and detectives then spoke with Richard
18 Brandon Lewis.

19 Q I need to stop you right there. The last sentence in
20 reference to Ms. Hepburn was no idea what happened to
21 Audrina, is that correct?

22 A Yes, ma'am.

23 Q And you mentioned that you also had the opportunity
24 to speak with Brandon Lewis, is that correct?

25 A I was present when he was interviewed by Ben

1 Blackmon.

2 Q And where did that interview take place?

3 A There was another room, I remember it is near the
4 exit door of the emergency room. It wasn't a patient, it
5 is kind of like a supply room. He was sitting in that
6 room.

7 Q And is this also on October 13th of 2009?

8 A Yes, ma'am.

9 Q And you said he was being interviewed by law
10 enforcement and you were present, is that correct?

11 A Yes, ma'am.

12 Q Can you tell us whether or not he was advised that
13 the people conducting the interview were law enforcement
14 officers?

15 A Yes, ma'am.

16 Q What if anything do your notes reflect concerning the
17 interview with Brandon Lewis?

18 A You want me to read what I have written?

19 Q Yes?

20 A He stated that he had arrived at the residence about
21 8:30 p.m. He said Doris Davis and David Crumley had
22 already gone to bed.

23 Q Let me stop you right there. In reference to Doris
24 Davis and David Crumley already gone to bed. What is your
25 understanding of who they are?

1 A From my understanding it was Ms. Hepburn's mother and
2 her mother's boyfriend.

3 Q Please continue.

4 A He said he was watching Monday night football and
5 Ashley put Audrina to bed around 10:00 p.m. He said she
6 was crying. He said Ashley and her other child, Owen,
7 went to bed right after that. Richard said about 11:30
8 p.m. he checked on Audrina and she was fine.

9 Q Let me stop you right there. And that was what time
10 he had checked on Audrina?

11 A 11:30 p.m. After the football game the movie Congo
12 was coming on TV and he went to wake up Ashley to see if
13 she wanted to watch it. Ashley said no and watched some
14 of the movie. He said he went back to check on Audrina
15 and found her unresponsive and EMS was called.

16 Q Anything else?

17 A EPC which is emergency protective custody was
18 discussed with the other child by Dr. Curry and Robert
19 Plaxico. Detective Plaxico stated that he did not have
20 the authority to EPC in Greenwood. Greenwood sheriffs
21 department was called and they accessed the situation and
22 felt the child was not in danger therefore Owen was not
23 EPC'd.

24 Q When you use the term, EPC, what are you referring
25 to?

1 A Emergency protective custody.

2 Q So at that point and time while Owen, the
3 two-year-old, was at Self Hospital with the family, was he
4 taken into emergency protective custody?

5 A No, ma'am.

6 Q Please continue.

7 A Owen was checked by Self Hospital for any injuries
8 and none were found. Richard Lewis did make the statement
9 that Audrina did not like him and would cry when he was
10 around. Richard Lewis was taken to Laurens County
11 Sheriffs Department for more questioning.

12 Q When you refer to Richard Lewis making this
13 statement, Audrina did not like him, can you tell us
14 whether or not that is the same as Brandon Lewis?

15 A Yes, ma'am.

16 Q Richard Brandon Lewis?

17 A Yes, ma'am.

18 Q What was the additional involvement, if any, that you
19 had in this case?

20 A That was it. I met with the case worker who was
21 going to get the case the next morning and kind of went
22 over with him what happened and the case was turned over
23 to him.

24 Q And what is that case worker's name?

25 A Calvin Hill.

1 Q Thank you.

2 CROSS-EXAMINATION

3 By Mr. Able:

4 Q Mr. Deal, Ashley Hepburn had no prior involvement
5 with DSS, are you aware of that?

6 A No, not that I am aware of, no.

7 Q Would that have been part of your job that morning,
8 the on call worker to determine this family or this young
9 lady had had any prior involvement with DSS?

10 A I wouldn't have done that, it probably would have
11 been done by Mr. Hill who took over the case the next
12 morning.

13 Q Did you know of any?

14 A I know of none, no sir.

15 Q That is all I have.

16 THE COURT: Mr. Wise.

17 CROSS-EXAMINATION

18 By Mr. Wise:

19 Q Who all was present during this interview?

20 A Which one?

21 Q The, well the one with Mr. Lewis?

22 A It was me and Detective Blackmon.

23 Q Just the two of you?

24 A Yes, sir.

25 Q And neither one of you recorded this conversation?

1 A No, sir.

2 Q What had you learned, when this interview took place,
3 what had you learned about the seriousness of these
4 injuries?

5 A The doctor had spoke to us kind of in between things
6 and from what I understood it was very serious.

7 Q And that was the allegation of shaken baby?

8 A Yes.

9 Q So, the doctor had told you they suspected it was
10 shaken baby case?

11 A Yes, sir.

12 Q And you knew that?

13 A Yes, sir.

14 Q And was Mr. Blackmon with you when that was learned?

15 A Yes, sir.

16 Q Thank you.

17 REDIRECT EXAMINATION

18 By Ms. Mayes:

19 Q Although the interviews are not recorded, how are
20 they documented if at all?

21 A I took notes at the time.

22 Q Are those notes, what do you rely on to make your
23 later dictation?

24 A My notes.

25 Q Thank you, nothing further.

1 THE COURT: You can step down. Any objection to
2 excusing Mr. Deal?

3 MS. MAYES: None from the State, Your Honor.

4 MR. ABLE: Judge, he can stay under subpoena.

5 THE COURT: You can stay under subpoena, make
6 yourself available.

7 MS. MAYES: The State calls Calvin Hill.

8 Calvin Hill, after being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 By Ms. Mayes:

12 Q Mr. Hill, where are you employed?

13 A Laurens County Department of Social Services.

14 Q And how long have you been with Laurens County DSS?

15 A Approximately four years, ma'am.

16 Q And have you had the opportunity to work as a case
17 worker or investigator at DSS?

18 A Yes, ma'am.

19 Q And does that include in the division of child
20 protective services?

21 A Yes, ma'am.

22 Q What is the role of child protective services at DSS?

23 A Basically the role of child protective services at
24 DSS is we investigate any alleged allegation of abuse.

25 Q And how did you become involved in the investigation

1 of the injuries and ultimately the death of Audrina
2 Hepburn?

3 A On October the 13th of 2009 I was assigned this case
4 by my supervisor.

5 Q So, you were assigned to work on the case on October
6 13th, is that correct?

7 A Yes, ma'am.

8 Q And at any point did your work as a case worker or an
9 investigator for DSS allow you to have contact with either
10 Ashley Hepburn or Brandon Lewis?

11 A Yes, ma'am.

12 Q Which one of those individuals did you have contact
13 with?

14 A On October the 13th I spoke with Ashley Hepburn,
15 ma'am.

16 Q And where did you speak with her at?

17 A At Greenville Memorial Hospital.

18 Q That was in Greenville?

19 A Yes, Greenville.

20 Q Do you have any notes or documentation concerning
21 your interview with Ashley Hepburn?

22 A Yes, ma'am.

23 Q And in what form or format do you as a DSS case
24 worker make notations?

25 A Every time I interview or I talk to someone I have to

1 come back in and document everything that was stated and
2 put it into a system that we call CATS.

3 Q And is that a required report?

4 A Yes, ma'am.

5 Q And before you actually enter the report into your
6 computer system how is an interview with a particular
7 person documented?

8 A Basically I would take notes, I would tell the
9 person, it was just myself and tell them why I am there to
10 talk to them. We will talk about what the alleged
11 allegation of abuse is and that is my starting process.

12 Q All right. Does your documentation reflect at what
13 time Ashley Hepburn would have been interviewed by you at
14 Greenville Hospital?

15 A My document said 1:05 p.m.

16 Q Okay. And did Ms. Hepburn understand that you were
17 an investigator or case worker with the Department of
18 Social Services?

19 A Yes ma'am, I introduced myself to her.

20 Q And can you tell us whether or not it appeared she
21 understood you were there concerning the injuries to
22 Audrina?

23 A Yes ma'am, she understood.

24 Q Was she willing to participate in an interview with
25 you?

1 A Yes, ma'am.

2 Q And were you or did you have the opportunity, can you
3 tell us whether or not you had the opportunity to take
4 notes during the course of that interview?

5 A Yes ma'am, I did.

6 Q And ultimately the dictation that you have with you
7 today is based on what?

8 A The interview that I had with her, ma'am.

9 Q I am going to ask you, Mr. Hill, to start at the
10 beginning of the dictation that you have concerning your
11 contact with Ashley Hepburn.

12 A On October the 13th of 2009 case worker had face to
13 face visit with Ashley Hepburn at Greenville Memorial
14 Hospital. Case worker introduced himself to Ashley and
15 stated he would be investigating, he was an investigator
16 with the Department of Social Service on her daughter,
17 Audrina Hepburn case. I asked Ashley to tell me what had
18 happened that night. Ashley had stated that they had
19 dinner around 7:30, then about 9:00 p.m. she gave the kids
20 a bath. Ashley stated that Brandon came over, Mr. Brandon
21 Lewis came over around 8:30 and he helped her dress the
22 kids for bed.

23 Q Let me stop you right there. What time was it that
24 Mr. Lewis came over?

25 A It was stated around 8:30.

1 Q And what happened next?

2 A Ashley went to tell me that Audrina was a little
3 fussy but she put her in her crib approximately around
4 9:00, 9:45. Then Ms. Hepburn stated to me that she read
5 her son, Owen, a bedtime story and they fell asleep. Then
6 Ms. Hepburn told me that she grabbed Audrina and her head
7 fell back in her arm and she yelled for Audrina to wake
8 up. Ashley stated that she ran in the living room where
9 her mother gave Audrina two quick breaths. And Ashley
10 said that her mother's boyfriend, Mr. David Crumley, he
11 called 911. He was asked to call 911. Ms. Hepburn stated
12 that approximately about fifteen minutes EMS arrived and
13 Audrina was taken to Greenwood Self Regional Hospital.

14 Q All right.

15 A Ashley informed CW, I mean informed me that she was
16 told by hospital staff that Audrina was in serious
17 condition. I asked Ms. Ashley how long have her and
18 Brandon been dating. She stated to me about six months.

19 Q That was in reference to her relationship with Mr.
20 Lewis?

21 A Yes, ma'am.

22 Q Please continue.

23 A I asked Ashley how often do Mr. Lewis, how often Mr.
24 Lewis spend the night in her home. And Ms. Hepburn stated
25 about two to three nights a week but he come back every

1 day.

2 Q So two or three nights a week he would stay over, is
3 that correct?

4 A Yes, ma'am.

5 Q And in reference to what happened every day?

6 A He would stop by and visit her.

7 Q Please continue.

8 A Ashley informed me that the last two or three weeks
9 that she had noted bruises on Audrina but she didn't know
10 how she got them on her.

11 Q Let me stop you right there. When she told that,
12 that she had noticed bruises on Audrina the last two or
13 three weeks, did you question her further about that?

14 A Yes, ma'am. I asked her where, where the bruises
15 were and she stated Audrina had a fingerprint bruise on
16 her forehead.

17 Q All right. Let me stop you right there. The word,
18 fingerprint bruise on forehead, whose words were those,
19 fingerprint bruises?

20 A Ashley.

21 Q Did she describe any other bruises?

22 A And she said on chin and she had a rash around her
23 neck.

24 Q She reported a bruise on the chin?

25 A She had said a bruise on the chin, she didn't

1 describe what kind of bruise it was.

2 Q Did you question her concerning where the bruises had
3 come from?

4 A Yes, she said she had no idea how the bruises got on
5 Audrina.

6 Q Please continue.

7 A I asked Ashley had she taken Audrina to the doctor
8 and she replied yes she had taken her to the doctor about
9 the bruises. And Ashley stated that the doctor said that
10 it was not a rash around her neck, it was broken blood
11 vessels.

12 Q Let me stop you right there. So, the information
13 about it being broken blood vessels and not a rash came
14 from who?

15 A Ms. Hepburn, Ashley.

16 Q Did you question her concerning how her daughter
17 would have gotten broken blood vessels on her neck?

18 A Yes, ma'am. Ashley stated she did not know how it
19 happened.

20 Q Please continue.

21 A Then I asked her about did her son, Owen, have any
22 bruises on him and she stated, no. And I asked her how do
23 Owen and Brandon Lewis get along and she said they get
24 along fine. I asked her do she allow Brandon to
25 discipline her kids. Ashley stated no. Ashley informed

1 me that she had found Brandon at nighttime holding Audrina
2 while she asleep.

3 Q Let me stop you right there. The information about
4 Mr. Lewis holding Audrina at night. Is that referring to
5 the night in question or other nights?

6 A Other nights, ma'am.

7 Q And according to your recollection is that something
8 that she observed or discovered while she was asleep or
9 while Audrina was asleep?

10 A While Audrina was asleep. And she said she didn't
11 think anything of that at the time.

12 Q All right.

13 A I asked her who was Audrina's doctors and she said
14 Audrina went to the Children's Center in Greenwood, South
15 Carolina.

16 Q Please continue.

17 A And I asked Ashley where was her son, Owen, at the
18 moment. And she stated that Owen was with his aunt, that
19 would be with the biological father, Daniel's sister, she
20 was babysitting him at the time.

21 Q Now, based on this information, ultimately what
22 decisions were made concerning placement of Owen at?

23 A At that time the Department of Social Service stated
24 that they would like for Owen to be with alternate
25 caregiver until DSS and the police conducted an

1 investigation.

2 Q And who was the alternative caregiver that was
3 selected by DSS to take custody of Owen?

4 A The biological father.

5 Q That would be Daniel Hepburn?

6 A Yes, ma'am.

7 Q Nothing further.

8 THE COURT: Mr. Able.

9 CROSS-EXAMINATION

10 By Mr. Able:

11 Q Mr. Hill, my client had no prior involvement with
12 DSS, had she?

13 A That is correct, sir.

14 Q Now, the, I wanted to make sure and I think I
15 understood you correctly. What time did you say she put
16 Audrina in the crib, she said 9:00 to 9:45?

17 A Yes, sir. My document said she laid Audrina in her
18 crib between 9:00 and 9:45, sir.

19 Q I am looking at this, doesn't it say 9:30 to 9:45?

20 A 9:30 to 9:45.

21 Q So, it wasn't 9:00 to 9:45?

22 A No, sir. It is 9:30 to 9:45.

23 Q It should be 9:30 right here?

24 A Yes, sir.

25 Q I thought you had said 9:00 o'clock. I just want to

1 correct that. Now, when you spoke with Ms. Hepburn there
2 at the hospital you said a moment ago that Ashley had
3 found Brandon at night holding Audrina while she was
4 asleep and after she had been put in her crib?

5 A Yes, sir.

6 Q She reported she didn't think anything of it at the
7 time?

8 A Correct, sir.

9 Q And you also asked Ashley if she had any concern
10 about Owen being with the father, Daniel, in his placement
11 of custody?

12 A Correct, sir.

13 Q And she replied no?

14 A Correct.

15 Q That is all I have.

16 THE COURT: Mr. Wise.

17 CROSS-EXAMINATION

18 By Mr. Wise:

19 Q You appeared at a DSS hearing on the 18th, didn't
20 you?

21 A Yes, sir.

22 Q And I was there also?

23 A Yes sir, I think you were.

24 Q And Mr. Lewis was there?

25 A I think so, I am not sure, sir.

1 Q Well, let me refresh your memory here. Look at the
2 first few pages and let me see if that refreshes your
3 memory about Mr. Lewis being there. I call your attention
4 to the bottom of the first page.

5 A Yes, sir.

6 Q Do you remember him being there now?

7 A Yes, sir.

8 Q And he testified in that case, didn't he?

9 A Mr. Lewis?

10 Q Right.

11 A No sir, he did not testify. I would remember him
12 testifying, sir.

13 Q Just one second. See if this refreshes your memory.
14 Read page 84, lines 10 through about 15 and see if that
15 refreshes your memory.

16 MR. ABLE: Judge, what page is he talking about?

17 THE COURT: 84.

18 MR. ABLE: And lines through what?

19 MR. WISE: 10 through about 15. Actually to be
20 accurate, pages 84 through about 115 or 116.

21 THE COURT: 138.

22 MR. WISE: Look at pages 84 through 138 and see if
23 that refreshes your memory.

24 MR. ABLE: Are you asking him to read it?

25 MR. WISE: No, just asking to refresh his memory.

1 Q Does that refresh your memory about his testifying?

2 A Yes sir, I can state that he did testify, sir.

3 Q And he testified for some 50 pages of testimony?

4 A Yes, sir.

5 Q When you, Ms. Hepburn said she would find Brandon at
6 night holding Audrina and that was, did she say how he was
7 holding her or anything?

8 A No, sir.

9 Q But she didn't think anything about it?

10 A Correct. That was her words, sir.

11 Q She didn't see anything unusual about it?

12 A That is what she stated at that time, yes sir.

13 Q She didn't, if there had been something harmful to
14 Audrina she would have said something about it?

15 MR. ABLE: Objection, calls for speculation.

16 THE COURT: Sustained.

17 Q She did not mention that there was anything that she
18 thought to be harmful by Brandon when he was holding her,
19 did she?

20 A No sir, she didn't state that to me.

21 Q Thank you.

22 REDIRECT EXAMINATION

23 By Ms. Mayes:

24 Q Mr. Hill, has there been one DSS hearing or more than
25 one DSS hearing?

1 A More than one hearing, ma'am.

2 Q - Nothing further.

3 THE COURT: You can step down. Any objection to Mr.
4 Hill being excused?

5 MS. MAYES: No, sir.

6 MR. ABLE: We would like to keep him on subpoena.

7 THE COURT: You are free to go. Mr. Hill to go and
8 you will remain under subpoena in case we need you again.
9 Thank you.

10 MS. MAYES: May we approach?

11 THE COURT: Please.

12 (Whereupon, a bench conference was held in the
13 presence of the jury but out of the hearing of the
14 jury.)

15 THE COURT: Ladies and gentlemen, I have a matter to
16 take up with the attorneys at this time. I will excuse
17 you from the courtroom to take a brief break. Don't talk
18 about the case. You are excused.

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

20 THE COURT: The jury is out. Ms. Mayes, you were
21 explaining to me that apparently an officer who
22 administered Miranda rights to Ms. Hepburn is for various
23 reasons no longer with the sheriffs department?

24 MS. MAYES: Yes sir, Your Honor.

25 THE COURT: And apparently, was his role solely to

1 administer the Miranda rights?

2 MS. MAYES: As far as we know, Your Honor, that was
3 what, I believe there was testimony at the Jackson v.
4 Denno that he administered the Miranda rights and then had
5 a brief conversation with Ms. Hepburn but ultimately the
6 statements that are being offered in this case are the
7 statement from the State Law Enforcement Division. And
8 then there was a subsequent interview by Investigator
9 Plaxico.

10 THE COURT: Was SLED agents present when the rights
11 were given?

12 MS. MAYES: They were not.

13 THE COURT: Mr. Able, which statement is this that we
14 are dealing with?

15 MS. MAYES: This is the interview with Ashley Hepburn
16 which was conducted on the, in the early morning hours of
17 the 13th and the Miranda form is State's exhibit 1 for ID.

18 THE COURT: Mr. Able, do you have a position on this
19 matter?

20 MR. ABLE: Judge, I was just made aware of it. I
21 don't know anything about it. I mean, I don't know if the
22 gentleman was fired, I don't know if he was criminally
23 charged or anything.

24 THE COURT: Ms. Mayes, are you saying you can't find
25 the gentleman?

1 MS. MAYES: No sir, he is here. He is here and he is
2 ready to testify.

3 THE COURT: I misunderstood. And you are basically
4 just explaining that there was a situation, you explained
5 to us at sidebar and in the event Mr. Able or Mr. Wise,
6 apparently Mr. Wise is familiar with the situation.

7 MR. WISE: I think he was allowed to resign or asked
8 to resign. There was a SLED investigation but as last I
9 heard there was no criminal prosecution.

10 MS. MAYES: Your Honor, we don't have any paperwork
11 associated with this. I just have been informed only that
12 he is no longer an employee because of an incident. And
13 the incident, I believe, involve allegations that were
14 harassment.

15 MR. WISE: Correct.

16 THE COURT: My understanding is that that is
17 subsequent to anything involved in this case.

18 MR. WISE: I think it was last November but maybe a
19 little longer.

20 THE COURT: I will give you five minutes to try to
21 figure out what you want to do with that information, Mr.
22 Able.

23 MR. ABLE: Sir?

24 THE COURT: Do you need a little bit of time to think
25 about how you want to use that information or if you want

1 to use it?

2 MR. ABLE: Yes, just a few minutes.

3 THE COURT: We will take a brief recess.

4 (Whereupon, a short break was taken.)

5 THE COURT: Are we ready to proceed?

6 MS. MAYES: Your Honor, Mr. Able and I were
7 discussing the fact that after Mr. Franklin and will be
8 Casey Kirkland, she is the agent from the State Law
9 Enforcement Division that took a statement that was
10 previously submitted to the Court last Wednesday. And we
11 just wanted to make sure everyone is straight on the
12 redactions for this particular statement.

13 THE COURT: Do you have a marked up copy similar to
14 the ones that have been previously introduced into
15 evidence.

16 MS. MAYES: We are in the process of making one. We
17 just need to make sure that ours coincide with what the
18 Court had instructed to be the redaction. I am not sure
19 if the Court has its copy.

20 THE COURT: I do have my copy in front of me. The
21 first portion of the redaction I see is on the second
22 page, starting with six lines down. Ashley stated that
23 Brandon asked her if she wanted to watch Congo and if she
24 wanted any food that his grandmother made and she fell
25 asleep again. The following passage is okay. Ashley

1 stated that the next thing she remembers is she was
2 standing in the hallway. Bruton kicks in at this point
3 and Brandon saying, "something was wrong with Audrina".
4 The next sentence is okay ending in properly. The next
5 sentence is okay ending in hear, h-e-a-r. The next
6 sentence is okay ending in during any of this. This
7 sentence is problematic under Bruton. Ashley stated that
8 Brandon told her, "he thought she had a seizure". Ashley
9 stated that Brandon told her that, "he found Audrina
10 laying horizontal face down not moving, was up against the
11 side of the crib. The portion stating Ashley stated that
12 she does not put it past Audrina's father to do something
13 like this to Audrina because he has aggressive behavior."
14 we determined was okay. And then three lines from the
15 bottom. Ashley stated her boyfriend Brandon was watching
16 television in the living room. Here is the Bruton
17 problem, and was probably surprised she fell asleep. That
18 is what I have got. What do y'all have. And we can
19 substitute a marked up copy.

20 MS. MAYES: Your Honor, Ashley said that Brandon
21 asked her if she wanted to watch Congo and if she wanted
22 any food that his grandmother made and she fell asleep
23 again. Ashley stated that the next she remembers she is
24 standing in the hallway. We would end there.

25 THE COURT: Correct. And you pick up with, Ashley

1 stated that they ran into the living room and you would
2 end, it will come in, you will end with the final sentence
3 in that phrase, Ashley stated that Owen did not wake up
4 during any of this. The Bruton problem with the next
5 three lines. This portion is okay, Ashley stated that she
6 does not put it past Audrina's father. That is all right.
7 Keep on going down. And then it is not Bruton but she
8 says that Brandon was watching TV and was probably
9 surprised she fell asleep. That is not a Bruton issue but
10 it is not coming in for evidentiary reasons that have
11 already been discussed.

12 MR. ABLE: Judge, verifying all of that, I want to
13 renew my motion. I know we are not to that witness yet.

14 THE COURT: Correct.

15 MR. ABLE: I will go ahead and renew it now and we
16 would like all of it to come in. I understand the Court's
17 earlier ruling. And I will anticipate your ruling to be
18 the same at this time as it has been for the past week.

19 THE COURT: I note your objection and I appreciate
20 that. The ruling remains as previously given by the Court
21 for the reasons that I have given.

22 MR. WISE: And, again, I should have mentioned this
23 after Office Moody testified but from my cross-examination
24 of Officer Moody, I think necessitates again my request
25 for a severance and another example of why these cases

1 should have been tried separately. Not to mention the
2 problems that we have had with these past few statements.

3 THE COURT: The motion for severance has been denied
4 and will continue to be denied unless something really
5 more than that has happened.

6 MR. ABLE: I would ask for my objections to be
7 noted--

8 THE COURT: Your objections are noted, gentlemen, you
9 do not have to object contemporaneously when the
10 statements are read in the presence of the jury. Both of
11 your objections are noted. Your next witness will be Mr.
12 Franklin, Ms. Mayes?

13 MS. MAYES: Yes sir, Your Honor. I just want to ask
14 for a determination as to whether or not any specifics are
15 going to be addressed. The State would ask that it be
16 limited to the fact that he is no longer employed there.
17 That if he was terminated that he was terminated without
18 getting into the details of the allegation.

19 MR. WISE: I frankly have no intent to go into it at
20 all.

21 THE COURT: Do you plan on going there?

22 MR. ABLE: No, sir.

23 (Whereupon, the jury came into open court at
24 approximately 3:05 p.m.)

25 THE COURT: The record will reflect that the jury is

1 in the courtroom. Ms. Mayes, call your next witness.

2 MS. MAYES: The State calls Raymond Franklin to the
3 stand.

4 Raymond Franklin, after being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 By Ms. Mayes:

8 Q Mr. Franklin, can you tell us whether or not you were
9 employed by law enforcement in October of 2009?

10 A Yes ma'am, I was a lieutenant for Laurens County
11 Sheriffs Office in the investigations department.

12 Q All right. How is that you became involved in the
13 investigation concerning injuries to Audrina Hepburn?

14 A Lieutenant Jim Burns and I was in his office when
15 they asked her to come in and speak with her and advise
16 her of her rights and ask her a few questions.

17 Q All right. And I am going to show you a document and
18 ask you whether or not you recognize this document?

19 A Yes ma'am, this is the standard advisement of rights
20 form that we use to, on any subject, victim or suspect or
21 any person that we do ask questions to.

22 Q And on what date was Ms. Hepburn advised of her
23 Miranda rights?

24 A This was on 10/13/2009.

25 Q Does the rights form indicate at what time she would

1 have been advised her Miranda rights?

2 A Yes ma'am, it was 15:54 which would be 3:54 in the
3 evening.

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

5 A Yes, ma'am.

6 Q Now, when you are advising someone of their rights,
7 how do you go about doing that?

8 A The rights are on this form and I read them off to
9 them and then I ask do they understand them. Would you
10 like for me to read this?

11 Q Well, let me ask you this. Do you recognize that
12 document as to whether or not as it pertains to Ashley
13 Hepburn?

14 A Yes, ma'am. It has my signature on it.

15 Q And does it have anyone else's signatures on it?

16 A It has Lieutenant Jim Burns.

17 Q Anyone else?

18 A It has Ms. Hepburn's signature also.

19 Q And is that document the original document concerning
20 the date in question?

21 A Yes, ma'am.

22 MS. MAYES: Your Honor, this would be State's exhibit
23 1 for evidence.

24 THE COURT: Any objection for State's 1 to be
25 admitted?

1 MR. ABLE: No, sir.

2 MR. WISE: No objection.

3 THE COURT: State's 1 is in evidence without
4 objection.

5 (Whereupon, State's Exhibit 1 was admitted into
6 evidence.)

7 Q Now, if you could go back to the front of the
8 document and share with us the information that Ms.
9 Hepburn would have been advised of in the early morning
10 hours of October 13th.

11 A In the evening hours.

12 Q I am sorry, in the afternoon hours of October 13th.

13 A All right. Before we ask you any questions you must
14 understand your rights. You have the right to remain
15 silent. Anything you say can, anything you say can be
16 used against you in the court. You have a right to talk
17 to an attorney for advice before we ask you any questions
18 and have him or her with you during these questioning. If
19 you have no money to pay a lawyer's fee the Court will
20 appoint one to represent you without any cost to you if
21 you wish. If you decide to answer any questions now
22 without a lawyer present you still have the right to stop
23 answering any questions at any time. You have the right
24 to stop answering at any time until you talk to a lawyer.
25 And I asked Ms. Hepburn, do you understand the rights I

1 have explained to you. She said, yes. So I marked the
2 appropriate box. I said, do you want a lawyer. She said,
3 no. I marked the appropriate box. And I asked her, do
4 you want to answer any questions now. She said, yes. I
5 marked the appropriate box. I had Ms. Hepburn to sign it
6 and I asked her to put the time and date. She just put
7 the time in but the date is at the top as I have already
8 stated. And then I signed it as a witness and Lieutenant
9 Burns also signed it as witnessing it.

10 Q And at that point and time was Ashley Hepburn under
11 arrest?

12 A No, ma'am.

13 Q Was she in law enforcement custody?

14 A She was there just to talk, she was not in custody or
15 under arrest or anything at that time.

16 Q What is your understanding of how she had arrived at
17 the Laurens County Sheriffs Department?

18 A My understanding is her father had brought her up.

19 Q And was she coerced or threatened in any way in order
20 to obtain a statement in participation of an interview?

21 A No, ma'am.

22 Q Was she promised anything in exchange for a statement
23 or interview?

24 A No, ma'am.

25 Q Did she appear to understand the rights that were

1 read to her?

2 A Yes, ma'am.

3 Q Did it appear that her waiver or her Miranda rights
4 were given freely and voluntarily?

5 A Yes, ma'am.

6 Q And does that document contain her signature?

7 A Yes, ma'am.

8 Q Nothing further.

9 THE COURT: Mr. Able.

10 MR. ABLE: No questions.

11 MR. WISE: No question.

12 THE COURT: Sir, thank you for coming and you can
13 step down. Any objection to release this witness?

14 MS. MAYES: No objection.

15 MR. ABLE: No objection.

16 MR. WISE: No objection.

17 THE COURT: You are free to go and thank you very
18 much for coming. Ms. Mayes, call your next witness.

19 MS. MAYES: The State calls Casey Kirkland.

20 Casey Kirkland, after being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 By Ms. Mayes:

24 Q Investigator or Agent Kirkland, where are you
25 employed?

1 A South Carolina Law Enforcement Division, SLED.

2 Q And how long have you been with the State Law
3 Enforcement Division?

4 A Three years in April of this year.

5 Q All right. Now, how does the State Law Enforcement
6 Division become involved in cases that involve a child
7 fatality or that appear to potentially be a case involving
8 a child fatality?

9 A Normally the coroner's office will contact us within
10 24 hours of a child passing away. And in this case, I had
11 worked a case previously with Lieutenant Plaxico of the
12 Laurens County Sheriffs Office. He contacted me and asked
13 me on October 13th would I come up to Greenville Memorial
14 Hospital and help, assist him with this case and also
15 photograph the child at Greenville Memorial Hospital. And
16 from then on I was in the case.

17 Q And specifically what role or jurisdiction does the
18 State Law Enforcement Division have when it concerns
19 investigations into homicides that involve children.

20 A Statewide.

21 Q And does that include cases of child abuse?

22 A Yes, ma'am.

23 Q And prior to this date have you had the occasion to
24 work or be involved with investigations concerning
25 homicides by child abuse?

1 A Yes, ma'am.

2 Q What, if any, division were you assigned to at the
3 State Law Enforcement Division?

4 A Special Victims Unit with, in the Special Victims
5 Unit you have vulnerable adult, vulnerable adult
6 exploitation and child fatalities.

7 Q Now, when did you first become involved in this
8 investigation?

9 A October 13th at 9:45 in the morning I received a call
10 from Lieutenant Plaxico.

11 Q And that would be Lieutenant Plaxico with the Laurens
12 County Sheriffs Office?

13 A Yes, ma'am.

14 Q And what, if anything, happened next?

15 A I went to my lieutenant and from there went to my
16 captain of the unit and informed them of the case, what he
17 had told me. Myself and Agent Sarah Hurt went to
18 Greenville Memorial at that time. We met with Lieutenant
19 Plaxico, some of the physicians and we photographed the
20 child, Audrina Hepburn in the hospital. From there we
21 spoke with the biological father, Daniel Hepburn. And
22 went back and spoke to DSS and Laurens County Sheriffs
23 Office at that time asked that the defendant, Ashley
24 Hepburn, if she would be willing to go back to Laurens
25 County Sheriffs Office to speak with investigators.

1 Q The photographs that have already been presented in
2 this case, photographs taken of Audrina when she was at
3 the hospital, who took those photographs?

4 A Agent Hurt took those.

5 Q And was that done in your presence?

6 A Yes, ma'am.

7 Q Were you able to observe Audrina in the hospital?

8 A Yes, ma'am.

9 Q And you mentioned that Ms. Hepburn, Ashley Hepburn
10 was asked to participate in an interview. At whose
11 request was she asked to participate?

12 A Laurens County Sheriffs Office.

13 Q And where was the interview to be conducted?

14 A At Laurens County Sheriffs Office in Laurens County.

15 Q So, y'all were at Greenville Hospital, is that
16 correct?

17 A Yes, ma'am.

18 Q And Ms. Hepburn as well?

19 A She was there, I didn't see her at that time.

20 Q And from Greenville Hospital you went where?

21 A I went to Laurens County Sheriffs Office.

22 Q And is it your understanding that Ms. Hepburn left
23 Greenville Hospital and went where?

24 A To Laurens County Sheriffs Office.

25 Q Can you tell us whether or not your contact with Ms.

1 Hepburn during the same timeframe that Mr. Franklin had
2 read her her Miranda rights?

3 A Yes.

4 Q What was your understanding in that regard,
5 concerning her Miranda rights?

6 A That she did not have an attorney, that she was
7 willing to speak at that time.

8 Q So, who spoke with her after she waived her Miranda
9 rights?

10 A I want to say Burns and Franklin from the Laurens
11 County Sheriffs Office.

12 Q All right. Raymond Franklin who we just heard from,
13 who advised her of her Miranda rights?

14 A Yes, ma'am.

15 Q After they had contact with Ashley Hepburn who spoke
16 with her next?

17 A Agent Sarah Hurt and myself.

18 Q And Agent Hurt is with what division?

19 A Special Victims Unit with SLED.

20 Q For what purpose were you and Agent Hurt making
21 contact with Ashley Hepburn?

22 A We were trying to get the events of the day before as
23 well as the early morning hours before she was brought to
24 the hospital. More details as to the daily activity,
25 every move, anybody that was with the child, how she was

1 acting, any of her previous medical at that time.

2 Q And can you tell us whether or not Ms. Hepburn agreed
3 to speak with you?

4 A She did.

5 Q Did you or Agent Hurt threaten or coerce Ms. Hepburn
6 in any way in order for her to participate in an
7 interview?

8 A No, we did not.

9 Q Did you or Agent Hurt promise Ms. Hepburn anything in
10 exchange for an interview?

11 A No, we did not.

12 Q At any point did she ask to stop the interview and
13 request an attorney?

14 A No.

15 Q Did the participation in the interview appear to be
16 free and voluntary?

17 A Yes, ma'am.

18 Q Do you have with you any notes or the memorandum
19 concerning your interview with Ms. Hepburn?

20 A I have my handwritten notes as well as my memorandum
21 typed from my handwritten notes.

22 Q Now, when you say you have handwritten notes, what is
23 the process or procedure for taking handwritten notes
24 during an interview?

25 A I take handwritten notes as we are going through the

1 interview so that I can, if we do not get a written
2 statement we can always go back and have a typed
3 memorandum of the interview based off of our handwritten
4 notes.

5 Q Can you tell us whether or not your notes are taken
6 contemporaneous or during the course of the interview?

7 A They are taken during the course of the interview.

8 Q And did you also have the opportunity to prepare a
9 memorandum following the interview?

10 A Yes, I did.

11 Q And that memorandum was based on what?

12 A My handwritten notes from the afternoon or evening of
13 October 13th where I interview Ashley Hepburn.

14 Q All right. We are talking about sometime after 3:54
15 p.m., correct?

16 A Yes, ma'am.

17 Q Did Ms. Hepburn understand that you were a law
18 enforcement officer?

19 A Yes, she did.

20 Q What is the time according to your documentation or
21 notes of your interview with Ms. Hepburn?

22 A It began at 6:00 p.m. on October 13th.

23 Q I am going to ask you to start at the beginning of
24 the memorandum that you have told us about and relate any
25 information that you received from Ms. Hepburn.

1 A To clarify the name in here it is going to be
2 Baccomo, I am now Kirkland.

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

1 that she gave both Audrina and Owen a bath and there were
2 toys in the bathtub.

3 Q All right, let me stop you right there. Please
4 continue. (Ms. Mayes writing on display sheet.)

5 A Ashley stated that Brandon came back over about the
6 time she was getting the kids out of the bathtub. Ashley
7 stated that Brandon dressed Owen and she dressed Audrina.
8 Ashley stated that she gave Audrina a bottle around 9:00
9 p.m. because she was fussy, not tired and did not want to
10 go to bed.

11 Q All right. Let me stop you right there. She gave
12 her a bottle at what time?

13 A 9:00 p.m.

14 Q Please continue.

15 A Ashley stated that Brandon, Owen, Audrina and herself
16 watched football for a while. Ashley stated that she put
17 some Orajel on Audrina's gums because she was teething.
18 Ashley stated that she popped Owen on the butt because he
19 would not brush his teeth. Ashley stated that she then
20 went to her room to read two books to Owen and they both
21 fell asleep in her bed.

22 Q Let me stop you right there. Do you know what room
23 they all four watched TV together in, that would be
24 Brandon, Ashley, Owen and Audrina?

25 A I do not have it written in my notes.

1 Q And did she say what room she gave her the Orajel in?

2 A No, ma'am.

3 Q And did she state what happened after she gave
4 Audrina the Orajel?

5 A She popped Owen on the butt because he would not
6 brush his teeth.

7 Q All right. And did she state what room she read
8 books to Owen in?

9 A In her bed.

10 Q That would be her room, is that your understanding?

11 A Yes, ma'am.

12 Q And what happened next.

13 A Ashley stated that Brandon asked her if she wanted to
14 watch Congo and if she wanted any food that his
15 grandmother made and she fell asleep again.

16 Q Let me stop you right there. Please continue.

17 A Ashley stated that the next thing she remembers is
18 she was standing in the hallway. Ashley stated that they
19 ran into the living room with Audrina and Audrina was not
20 breathing properly. Ashley stated that if something would
21 have happened or she was crying that she would have been
22 able to hear. Ashley stated that her mother tried to
23 breathe for Audrina and 911 was called. Ashley stated
24 that Owen did not wake up during any of this.

25 Q Let me stop you right there. She stated that Owen

1 did not wake up. What room, based on the interview, what
2 room was Owen in?

3 A Her bedroom, Ashley's bedroom.

4 Q And you mentioned previously that she stated that if
5 Audrina, if something would have happened or she was
6 crying that she would have been able to hear. Did she
7 indicate that she ever heard any sounds or the sound of
8 Audrina crying?

9 A No, ma'am.

10 Q What next.

11 A Ashley stated that she does not put it past Audrina's
12 father to do something like this to Audrina because he has
13 aggressive behavior. Ashley stated that Brandon was
14 watching TV during all of this. Ashley later stated that
15 Audrina was put to bed around 10:30 and that it took her
16 thirty minutes to get Owen to go to sleep that night.

17 Q Let me stop you right there. She put Audrina to bed
18 at 10:30 and it took 30 minutes for Owen to go to bed,
19 that would have her going to bed at what time?

20 A 11:00.

21 Q Please continue.

22 A Ashley also stated that she thought she was so tired
23 that she probably couldn't sleep and she ended up falling
24 asleep. Ashley stated that she never saw her mother or
25 her mother's boyfriend come out of their bedroom. Ashley

1 stated that her boyfriend, Brandon, was watching
2 television in the living room. Ashley stated later that
3 Audrina was whining, cried all the time and was different
4 than her son. Ashley also stated that there was a slight
5 bruise on Audrina's chin and a bruise on Audrina's
6 stomach.

7 Q Let me stop you right there. So at this point Ms.
8 Hepburn has indicated that Brandon was in one area of the
9 home?

10 A The living room.

11 Q And she was in what area of the home?

12 A She was in the bedroom.

13 Q Her bedroom?

14 A Yes.

15 Q And what about her mother and Mr. Crumley?

16 A They were in their bedroom.

17 Q That would be the master bedroom?

18 A Yes.

19 Q Was there ever any indication during the interview
20 that Mr. Crumley or her mother were awake at any point
21 prior to the child being injured?

22 A No, ma'am.

23 Q You mentioned that you asked her about bruises, any
24 knowledge about bruises she had, what did she relate in
25 that regard?

1 A There was a slight bruise on Audrina's chin and a
2 bruise on Audrina's stomach.

3 Q And she stated during this interview on October 13th
4 that those were the bruises that Audrina had. Can you
5 tell us whether or not that is correct?

6 A That is correct.

7 Q Did she state to you where those bruises had come
8 from?

9 A No, ma'am.

10 Q Did she acknowledge information about any more
11 bruises on Audrina other than the chin and the stomach?

12 A No, ma'am.

13 Q Did she discuss with you anything about the
14 fingerprint bruise that had been discussed with Mr. Hill?

15 A No, ma'am.

16 Q Any additional information in the interview?

17 A Ashley stated that when Audrina would fall she did
18 not cry.

19 Q When she would fall she would not cry?

20 A Yes.

21 Q And what if any other action did you take in the
22 course of this investigation after your interview with Ms.
23 Hepburn?

24 A I also interviewed numerous medical personnel to
25 include all the ER physicians, ER nurses that were

1 involved, EMS workers, the Chaplain, family members and
2 friends of the defendant.

3 Q And what, who interviewed Ms. Hepburn after you did,
4 if anyone?

5 A Lieutenant Plaxico.

6 Q With the Laurens County Sheriffs Department?

7 A Yes, ma'am.

8 Q And did, can you tell us whether or not SLED
9 maintained work in this case following that date?

10 A Yes, we did.

11 Q How so?

12 A The interviews that were conducted collected all the
13 medical documents, pediatrician records, hospital records,
14 numerous interviews.

15 Q All right. And did Laurens County also remain
16 involved in the case?

17 A They did, off and on.

18 Q And ultimately on what date was Ms. Hepburn arrested?

19 A Laurens County Sheriffs Office arrested her on, I
20 believe the 16th.

21 Q October 16th of 2009?

22 A I would have to look in my file. The arrest warrant
23 for abuse to inflict great bodily injury upon a child was,
24 she was arrested on October 16th of 2009. Those charges
25 were upgraded to murder/homicide by child abuse on October

1 18th, 2009.

2 Q In other words, when she was initially arrested that
3 was prior to Audrina's death?

4 A Yes, ma'am.

5 Q And ultimately were you involved in this case
6 concerning the arrest of Brandon Lewis?

7 A Yes. I arrested Richard Brandon Lewis, he was
8 charged with murder/homicide by child abuse on September
9 17th, 2010. He was also charged with murder/homicide by
10 child abuse aiding and abetting.

11 Q And just to clarify, homicide by child abuse is a
12 different charge than murder?

13 A Yes.

14 Q And in this particular case who was the arresting
15 agency at that point?

16 A SLED.

17 Q Now, did you have any other participation in this
18 case concerning the autopsy?

19 A I attended the autopsy on October, I think it was the
20 19th. And also photographed Audrina Hepburn during the
21 autopsy.

22 Q And have you had the opportunity to speak personally
23 with Dr. Ward in this case, that would be Dr. Ward, the
24 forensic pathologist who had testified previously?

25 A Yes.

1 Q Prior to today's date are you aware of information
2 from Dr. Ward that fingernails could be the cause of some
3 of the abrasions to Audrina?

4 A Yes.

5 Q And as a result of that what, if any, attempts were
6 made to determine if at all, if it could be determined
7 whether anyone had fingernails on the date of the alleged
8 incident?

9 A We went back and tried to find if there was any
10 photographs depicting around the time of the incident. If
11 there was any that either one of the defendants had
12 fingernails.

13 Q And can you tell us whether or not there was anything
14 definitive learned from that during the investigation?

15 A From the photos?

16 Q Right.

17 A There was, I believe, one photo that showed what,
18 fingernails but we couldn't tell exactly how long.

19 Q And that was as to who?

20 A Ashley Hepburn.

21 Q And then at the date that Mr. Lewis was arrested
22 what, if any, observations did you make in that regard?

23 A He didn't have long fingernails when we arrested him.

24 Q Did he have fingernails?

25 A Yes.

1 Q Was anything else definitive learned in the aspect of
2 any type of forensic evidence submitted to the State Law
3 Enforcement Division?

4 A There was, as far as the DNA?

5 Q Yes.

6 A The victim's DNA was matched with the blood that was
7 found in the crib, on some of the materials in the crib.

8 Q So, just to clarify, was anything definitive learned
9 in relation to the fingernails?

10 A No.

11 Q Nothing further.

12 THE COURT: Mr. Able.

13 CROSS-EXAMINATION

14 By Mr. Able:

15 Q And saying nothing definitive was learned, you are
16 saying you don't know whose fingernails caused these
17 injuries?

18 A Correct.

19 Q And it was almost a year after the death of this
20 child that Mr. Lewis was arrested, correct?

21 A Correct.

22 Q So you are saying a year later you look at these
23 fingernails and he didn't have any. He had fingernails
24 but he didn't have fingernails of any length?

25 A Correct.

1 Q So, you don't know what his fingernails looked like
2 on the early morning hours of October 13th of 2009?

3 A Correct.

4 Q So, you don't know whose fingernails they are?

5 A Correct.

6 Q Now, in your written report you had down toward the
7 bottom of the second page, Ashley later stated that
8 Audrina was put to bed around 10:30 p.m. and that it took
9 thirty minutes to get Owen to go to sleep that night.
10 Correct?

11 A Yes.

12 Q Now, your written notes said 10:30, put to bed.
13 Tried to put Owen to bed, read, no sounds from Audrina,
14 thirty minutes to get him to sleep. You didn't include
15 the part about no sounds from Audrina in your written
16 report, did you?

17 A No, I didn't.

18 Q So, she reported to you that she was in the other
19 room with Owen reading a book or reading books and she
20 didn't hear Audrina crying or making any sounds?

21 A Correct.

22 Q Now as far as the portion of your report down at the
23 very bottom saying, Ashley also stated that there was a
24 slight bruise on Audrina's chin and a bruise on Audrina's
25 stomach?

1 A Yes.

2 Q Did you meet Ashley at Greenville Memorial Hospital?

3 A No, sir. I do not remember.

4 Q Prior to her coming down to the sheriffs office in
5 Laurens County she was up there with her child?

6 A Yes.

7 Q You were there, correct?

8 A At Greenville?

9 Q Yes.

10 A Yes.

11 Q And but you didn't see her there?

12 A No, sir.

13 Q But it is your understanding that she was there to be
14 with Audrina or she was in Greenville with Audrina?

15 A Yes, sir.

16 Q And you heard the earlier testimony that she was
17 allowed back to see Audrina?

18 A Yes, sir.

19 Q And she would have seen the same thing that you and
20 your coagent saw that day, correct?

21 A Yes, sir.

22 Q As far as the bruises?

23 A Correct.

24 Q And you stated in your report that Ashley stated
25 there was a slight bruise on Audrina's chin and a bruise

1 on Audrina's stomach. Well, those were evident in
2 Greenville, weren't they?

3 A Yes, sir.

4 Q So, the bruise to Audrina's chin and the bruise on
5 her stomach could have been what she had seen at the
6 hospital?

7 A Correct.

8 Q Your written notes do not reflect that she was saying
9 there was a bruise to her chin or a bruise to her stomach
10 the night before, does it?

11 A No, sir.

12 Q Thank you.

13 THE COURT: Mr. Wise.

14 CROSS-EXAMINATION

15 By Mr. Wise:

16 Q Just a few questions. Ashley told you that the next
17 thing she remembered is she was standing in the hallway,
18 she didn't remember being awakened from her bed and going
19 into the hallway?

20 A Correct.

21 Q Did you find that statement a little strange?

22 A I can't speculate on that.

23 Q Okay. Did you ask any followup questions of that?

24 A Yes.

25 Q You also said that she said that if she, if Audrina

1 had been crying she would have been able to hear.

2 A Correct.

3 Q And that is not unusual for a mother, is it?

4 A I am not a mother.

5 Q You are not a mother, okay. I am not either. Then
6 she turned to talk about her husband, estranged husband
7 and said that she wouldn't put it past him to do something
8 like that. Is that correct?

9 A Yes.

10 Q Did you ask her any followup questions about that?

11 A I did. From my handwritten notes to here there is a
12 sentence left out as to why I thought, why did she think.

13 Q You asked her why did she think that?

14 A The answer would have been right here and it is not
15 on here. Can I say from my handwritten notes.

16 Q My frank opinion is that you can answer it.

17 THE COURT: Hold on one second.

18 MS. MAYES: What is the question again?

19 THE COURT: It relates to the question as to how the
20 child's father was excluded. May I see the notes?

21 MR. WISE: All right.

22 THE COURT: I would like to let Ms. Mayes take a look
23 at it since the Court has and Mr. Able has and Mr. Wise
24 has.

25 MR. WISE: You can give an answer.

1 THE COURT: You can answer that.

2 Q Why did she think that?

3 A Said the dad has resented her for the divorce.

4 Q And then she said, told you that Audrina was whining?

5 A Yes, sir.

6 Q Did you ask her if Audrina was whining?

7 A I didn't, I asked if she was fussy.

8 Q And she said she was whining?

9 A Yes, sir.

10 Q And then she said she cried all the time. Did you
11 ask her if Audrina cried all the time?

12 A That was a followup from she was whining and she
13 cried all the time.

14 Q That was a follow-up to the whining?

15 A Yes.

16 Q And then you said, you put this in quotations marks
17 that, "Audrina was different from her son". Did you ask
18 her if Audrina was different from her son, Owen?

19 A I Can't tell you the exact question. I put different
20 than my son because that is how she said it and I put it
21 in quotes.

22 Q Did you follow-up on that any?

23 A No, sir.

24 Q Did she say in what manner she was different from her
25 son?

1 A No, sir.

2 Q Did she say if she favored one over the other or
3 anything like that?

4 A No, sir.

5 Q Thank you very much.

6 REDIRECT EXAMINATION

7 By Ms. Mayes:

8 Q How do you go about, not just in this case but in any
9 case. How do you go about determining a potential suspect
10 when a child has received injuries that involve abusive
11 head trauma?

12 A We look for anybody that had contact with the child
13 in the last couple of hours, who would have been up around
14 the time that the injuries, you have to talk to everybody
15 that was in the home at the time the child was last seen
16 alive or conscious, not in the hospital.

17 Q And in a case such as this that involves abusive head
18 injury with the symptoms that have been previously
19 described by doctors such as the subdural hematoma, the
20 retinal hemorrhages and the diffuse axonal injury, why do
21 you focus on the last few hours?

22 A Based on my experience, when the injuries that were
23 as great as Audrina's were, it is normally within the last
24 few hours. You want to know when she was last acting
25 normal. When was she last seen playing with her toys,

1 interacting with people.

2 Q And why is it important to know when she was last
3 seen acting normal or interacting with people.

4 A Because with those type of head injuries most
5 children are not acting normal, playing with their toys.
6 And the people that are last around, you need to start
7 ruling people out.

8 Q And so, if I understand Mr. Wise's question
9 correctly, how is it that you were able to rule out other
10 people such as the father, Daniel Hepburn.

11 MR. WISE: Your Honor, I don't believe she was ruling
12 out anybody, I only have, I just asked if Ms. Hepburn made
13 the accusation. I didn't ask about ruling anybody out.

14 MS. MAYES: That is my question, Your Honor.

15 THE COURT: I believe that what Ms. Mayes is getting
16 at is perhaps an implication involved here with the line
17 of questioning. I will permit you--

18 MR. WISE: Can we approach for one second?

19 THE COURT: Yes.

20 (Whereupon, a bench conference was held in the
21 presence of the jury but out of the hearing of the
22 jury.)

23 Q So, as a result of information that you said
24 perviously you spoke with medical personnel in this case?

25 A Yes, ma'am.

1 Q Is it possible to estimate how many different members
2 of medical personnel you spoke with?

3 A Prior to Ashley Hepburn's interview?

4 Q Right.

5 A Three or four.

6 Q Is it possible to estimate how many medical personnel
7 you spoke with about Audrina's case prior to today?

8 A Twenty, twenty-five.

9 Q And based on your understanding of the evidence in
10 this case was there a need to focus on any other
11 individuals?

12 A No, ma'am.

13 Q Was there ever any indication of an intruder on the
14 night of October 12th of 2009 in the home at Cross Hill?

15 A No, ma'am.

16 Q Or the early morning hours of October 13th of 2009 at
17 the home in Cross Hill?

18 A No, ma'am.

19 Q Was there ever any indication that Daniel Hepburn,
20 the biological father had been inside the home within the
21 last four days?

22 A No, ma'am.

23 Q Or can you tell us whether or not there would be any
24 indication that Daniel Hepburn or Rita Hepburn or any
25 other member of the Hepburn family had contact with

1 Audrina Hepburn in the last four days?

2 A No, they did not.

3 Q Now, I want to refer you to the question that Mr.
4 Wise or Mr. Able was asking you about the bruises that you
5 spoke with Ashley about. Do you have with you notes
6 regarding that?

7 A Yes, ma'am.

8 Q What was the context in which you questioned Ms.
9 Hepburn about the bruises, about any possible bruises on
10 Audrina?

11 A Had she had any previous bruising, injuries.

12 Q And what did she indicate?

13 A She had a slight bruise on the chin, bruise on the
14 stomach. And asked, you know, did she cry when she would
15 fall and she said that she does not cry when she falls.

16 Q Why were you asking if she cries when she falls?

17 A To see if she was injured previously would she cry if
18 she fell.

19 Q Based on the context of your notes what is your
20 understanding the conversation with Ms. Hepburn concerning
21 the chin bruise and the stomach bruise?

22 A Can you repeat that?

23 Q What is the context in which you were discussing the
24 chin bruise and the stomach bruise with Ms. Hepburn?

25 A Were there any bruises previously.

1 Q Nothing further.

2 RE CROSS-EXAMINATION

3 By Mr. Able:

4 Q Now, where does it say there were bruises previously,
5 it doesn't say that, does it?

6 A No, sir.

7 Q Just says slight bruise on chin, bruise on stomach?

8 A I write the answers.

9 Q Correct. That is what it says, it doesn't say--

10 A It says slight bruise on chin, bruise on stomach and
11 does not cry when she falls.

12 Q Okay. So, it doesn't say anything in your
13 handwritten notes from that day, does not say what context
14 the question was asked in?

15 A Correct.

16 Q And your question is not written on here, is it?

17 A Correct.

18 Q And as I stated earlier, she was at the hospital and
19 would have seen these bruises on the child?

20 A I was never in there when she saw the child.

21 Q Nothing further.

22 THE COURT: Ma'am, you can step down. Thank you very
23 much. Ms. Mayes, Mr. Able, Mr. Wise, y'all approach real
24 quick, please.

25

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: Ms. Mayes, call your next witness.

5 MS. MAYES: The State calls Janice Bryson to the
6 stand.

7 Janice Bryson, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 By Ms. Mayes:

11 Q Agent Bryson, where are you employed and in what
12 regard?

13 A I am employed by the South Carolina Law Enforcement
14 Division. I am a forensic technician in the evidence
15 processing unit of the DNA department.

16 Q And how long have you been with the State Law
17 Enforcement Division?

18 A 21 years.

19 Q And what type of work do you do there?

20 A I work in the evidence processing department. And
21 whenever items of evidence are submitted to the law with a
22 request to look for hair, fiber, blood or semen it is my
23 responsibility to collect the evidence and make sure it is
24 sent to the appropriate departments.

25 Q All right. And can you tell us some information

1 concerning your educational background and training?

2 A I have a two year degree in secretarial science.

3 While at SLED I trained under court qualified forensic
4 experts in the areas of serology, trace and DNA. And SLED
5 is nationally accredited by the American Society of Crime
6 Laboratory Directors. And it is a requirement of ASCLD
7 that each analyst and technician be certified and I have
8 been certified in the collection of hair, fiber, blood and
9 semen.

10 Q Have you testified previously in a South Carolina
11 Court concerning evidence processing?

12 A Yes, I have.

13 Q Is it possible for you to estimate how many such
14 times you have testified?

15 A Approximately 75.

16 MS. MAYES: Your Honor, at this time the State would
17 offer Janice Bryson as an expert in the field of evidence
18 processing.

19 THE COURT: Any objection?

20 MR. ABLE: No objection.

21 MR. WISE: I don't know if that is an expert field to
22 be frank with the Court. But I have no objection if that
23 is what she is going to testify to.

24 THE COURT: So you don't have an objection to her
25 being qualified as an expert in this field, Mr. Wise?

1 MR. WISE: I guess I really don't.

2 THE COURT: Ladies and gentlemen of the jury, the
3 State and the attorneys have stipulated that Ms. Bryson is
4 an expert in the field of evidence processing. Again, as
5 I have explained to you with the previous expert
6 witnesses, that means she possesses a certain training for
7 expertise with her education which would allow her to give
8 an opinion in her field. Normally witnesses aren't
9 permitted to do that when one testifies, they can only
10 testify as to their senses. You are free to accept it or
11 reject it based upon your view of the evidence as a whole.
12 Ms. Mayes, you may continue.

13 MS. MAYES: Yes sir, Your Honor.

14 Q Agent Bryson, can you tell us whether or not evidence
15 was submitted in this particular case which involved the
16 death of Audrina Hepburn?

17 A Yes, it was.

18 Q And do you have with you the information concerning
19 how the evidence was submitted?

20 A Yes, I do.

21 Q What can you tell us about any efforts made to secure
22 or preserve evidence as it is originally found?

23 A Whenever evidence are brought into the lab the
24 technician in the evidence control department, they
25 operate on a safe to contain basis. So, they have the

1 officers seal the evidence and initial it and date it and
2 they enter the information into the computer and they
3 assign a lab number and that lab number will follow that
4 evidence throughout the lab.

5 Q And in this particular case can you tell us what
6 items were submitted to the State Law Enforcement Division
7 for forensic analysis?

8 A You want me to list the items that I tested?

9 Q Yes.

10 A A fitted crib sheet, a small towel, a blanket, two
11 blankets, a bumper pad from the crib and a onesie.

12 Q I am going to show you some items and ask you whether
13 or not you recognize them?

14 A Yes, I do.

15 Q And how do you recognize them?

16 A Well, at the time the pictures were taken I put my
17 initials on the items but it matches the description on my
18 worksheet.

19 Q I am going to show you some additional photographs
20 and ask you if you recognize them?

21 A Yes, I do.

22 Q And how so?

23 A This was processed in my evidence room at the lab.

24 Q And what is the procedure for taking a photo such as
25 these at the SLED lab in order to document evidence as it

1 is being processed?

2 A It gives you a good description of the items of the
3 evidence before I make my cuttings.

4 MS. MAYES: Your Honor, at this time the State would
5 offer these items as exhibits and I do not have the
6 numbers.

7 MR. WISE: No objection.

8 MR. ABLE: No objection.

9 THE COURT: Without objection that will be State's 52
10 through 58 admitted.

11 (Whereupon, State's Exhibits 52 - 58 were admitted
12 into evidence.)

13 Q Do you have with you your records concerning which
14 items were initially processed?

15 A Yes, I do.

16 Q All right. I am going to show you a photograph and
17 ask you what we are looking at in this photograph?

18 A I processed the blanket that was pink in color. The
19 brand name is George.

20 Q And according to your report was there any evidence
21 of evidentiary value found in this particular item?

22 A I had written on my worksheet there was no visible
23 blood and I took one cutting that was possible saliva.

24 Q And this particular items, State's exhibit 53.

25 A Okay. This is item 4, it is a blanket, it was pink

1 floral on one side and the opposite is pink. And the
2 brand name is Starting Out.

3 Q And any information of serological value?

4 A I took one cutting that was possible saliva from the
5 pink side.

6 Q And this is State's exhibit 54. What are we looking
7 at in this photograph?

8 A That appears to be the fitted sheet, it was pink,
9 green, yellow and white in color.

10 Q This is State's exhibit 57. What are we looking at
11 in this photo?

12 A That is a bumper pad from the crib.

13 Q State's exhibit 55, what are we looking at?

14 A It is the opposite side of the bumper pad.

15 Q State's exhibit 58?

16 A It is a small towel.

17 Q All right. Now, this particular item, the towel,
18 what if anything of serological value was discovered?

19 A I took two cuttings that was positive for the
20 presumptive test of blood and also possible saliva.

21 Q So two cuttings was possible blood from this white
22 towel?

23 A That is correct.

24 Q And what if any other items of serological value were
25 discovered?

1 A On what item?

2 Q As to blood or possible blood?

3 A The small towel, the bumper pad from the crib and the
4 onesie.

5 Q And what is the description of the bumper pad from
6 the crib that contained the possible blood?

7 A It is SLED's item number 5, it is a bumper pad from
8 crib, pink, tan, beige and brown in color. The brand name
9 is George.

10 Q Does that appear to be the item?

11 A Yes, ma'am.

12 Q When or at the point that you discovered possible
13 blood what if anything was done next?

14 A I do the presumptive test for blood which is the
15 screening for blood. And I cut that area out, give it a
16 subitem number, place the cutting in a heat sealed, in a
17 small coin envelope. I label it and then I seal the
18 envelope, put it in a heat sealed pouch, seal it, initial
19 it and date it and send it to the DNA department for
20 further analysis.

21 Q All right. And was that done in this particular
22 case?

23 A Yes, it was.

24 Q Are cuttings made?

25 A Yes.

1 Q And for what purpose?

2 A To send it to the DNA department for further
3 analysis.

4 Q I am going to show you some items and ask you whether
5 or not you recognize them.

6 A Yes, I do.

7 Q How so?

8 A This is the heat sealed pouch I generated to send the
9 cuttings to the DNA department. And this is the heat
10 sealed pouch I generated to send one cutting to the trace
11 department.

12 Q All right.

13 A And this was also the heat sealed pouch I generated
14 to send to the DNA department. It has my name, SLED lab
15 number and where I date and seal the heat sealed pouches.

16 MS. MAYES: Your Honor, at this time these three
17 items would be for evidence.

18 THE COURT: Any objection, Mr. Able or Mr. Wise?

19 MR. ABLE: No objection.

20 MR. WISE: No objection.

21 THE COURT: Without objection those should be 59, 60
22 and 61?

23 COURT REPORTER: Yes, sir.

24 (Whereupon, State's Exhibit 59 - 61 were admitted
25 into evidence.)