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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

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

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

v.

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

RECORD ON APPEAL
Volume IV of IV

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1 (Whereupon, the jury came into open court at
2 approximately 1:50 p.m.)

3 THE COURT: Mr. Wise, you may call your next witness.

4 MR. WISE: We call Richard Brandon Lewis.

5 Richard Brandon Lewis, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Wise:

9 Q Mr. Lewis, where do you live?

10 A I live in Clinton, South Carolina.

11 Q And what address is that?

12 A 701 Cedar Street.

13 Q Who do you reside with there?

14 A I live with my grandmother and my grandfather.

15 Q How long have you been living with them?

16 A Pretty much my whole life.

17 Q I believe she is here in the courtroom?

18 A Yes, sir.

19 Q Which one is grandmother?

20 A She is the pretty blonde haired lady.

21 Q On the far end?

22 A Yes, sir.

23 Q And is your mother here?

24 A Yes sir, she is sitting right next to her.

25 Q And is your father here also?

- 1 A Yes sir, he is.
- 2 Q How did you come to live with your grandmother?
- 3 A She is pretty much who I have always preferred to
- 4 live with.
- 5 Q I believe, did your parents divorce at an early age?
- 6 A Yes sir, they did.
- 7 Q And you have lived with her since then?
- 8 A Yes sir, I have.
- 9 Q All right. Where do you, are you employed at the
- 10 present time?
- 11 A No sir, I am a student.
- 12 Q Are you an active student right now?
- 13 A Not at this particular time, no.
- 14 Q When did you last go to school?
- 15 A It was last semester.
- 16 Q And where did you go then?
- 17 A Clemson University.
- 18 Q And how did you come to go Clemson?
- 19 A I did an articulation agreement through Piedmont
- 20 Technical College and transferred in.
- 21 Q And how many hours do you have accredited into
- 22 Clemson now?
- 23 A 89, one hour shy of being a senior.
- 24 Q And when did you start Clemson?
- 25 A Only two semesters ago.

- 1 Q And that would have been when?
- 2 A That would have been the, the Spring semester of
- 3 2010.
- 4 Q About this time last year?
- 5 A Yes, sir.
- 6 Q And did you start the fall semester?
- 7 A Yes, I did.
- 8 Q Were you able to finish that semester?
- 9 A No sir, I was not.
- 10 Q And why is that?
- 11 A I was charged with the charges that I am facing here
- 12 today and I had to go before a board evaluation before I
- 13 could be reinstated.
- 14 Q And were you reinstated?
- 15 A Yes sir, I was.
- 16 Q And about how long did that process take?
- 17 A About a month.
- 18 Q And how many classes did you miss by then?
- 19 A I missed a month's worth of classes. I was taking a
- 20 full load and there are only about three months in a
- 21 semester so I missed about a third of what I would have
- 22 learned.
- 23 Q Okay. Do you have any intentions of going back to
- 24 Clemson?
- 25 A I have every intention of going back to Clemson.

1 Q Let's go back a little bit further. Where did you go
2 to high school?

3 A Clinton High School.

4 Q And when did you graduate?

5 A 2002.

6 Q What did you do after you graduated Clinton?

7 A I went to Piedmont Technical College for about a year
8 and ended up going and working out at Musgrove Golf Course
9 as a cart boy.

10 Q Going down and doing what?

11 A I was, I worked at Musgrove Mill Golf Course and then
12 after that I joined the Navy.

13 Q And when did you join the Navy?

14 A I believe it was 2005.

15 Q And how many years did you serve in the Navy?

16 A About two years.

17 Q And why did you leave the Navy?

18 A I was honorably discharged because I had a seizure in
19 Great Lakes, Illinois.

20 Q And when you came back out of the Navy what did you
21 do?

22 A I resumed my education at Piedmont Technical College.

23 Q And what field of study are you taking at Clemson or
24 will you be taking at Clemson?

25 A Turf grass management.

- 1 Q And where did that interest develop from?
- 2 A From working at Musgrove Mill Golf Course.
- 3 Q Do you have any sisters?
- 4 A Yes sir, I have one sister.
- 5 Q Tell us, if you would, how did you meet Ashley
- 6 Hepburn?
- 7 A I met her through a mutual friend of mine, Nathaniel
- 8 Calahan and Nathan and Daniel were best friends at the
- 9 time.
- 10 Q And when did you first meet her?
- 11 A I would say about four years ago I first met her.
- 12 Q And did you meet her to go out with her at that time?
- 13 A No sir, I met her under the pretenses of Mr.
- 14 Hepburn's, I believe she was his girlfriend at that time.
- 15 Q And you met her casually then?
- 16 A Yes, sir.
- 17 Q Did you have occasion to meet her later to start
- 18 dating?
- 19 A Yes sir, I did.
- 20 Q When was that?
- 21 A I believe that was in December of 2007.
- 22 Q And how did you establish contact with her at that
- 23 point?
- 24 A Through Facebook.
- 25 Q Who contacted who?

- 1 A I believe she contacted me but I could be wrong. I
2 may have contacted her.
- 3 Q Did y'all exchange some email through Facebook first?
- 4 A Yes sir, we exchanged phone numbers.
- 5 Q And did y'all start going out with each other?
- 6 A Yes, sir.
- 7 Q And how long did you go out at that point?
- 8 A I would say only for about a month.
- 9 Q And what caused that relationship to break up at that
10 point?
- 11 A She found out she was pregnant with Audrina and
12 wanted to reconcile with Daniel Hepburn.
- 13 Q And she told you that?
- 14 A Yes, sir.
- 15 Q And did you agree to that?
- 16 A Yes, sir.
- 17 Q So, what happened after that?
- 18 A After that I really didn't have any contact with her
19 at all until she started calling me when she got back to
20 South Carolina.
- 21 Q When she got back to South Carolina from where?
- 22 A From Washington State.
- 23 Q That would have been in 2009?
- 24 A Yes sir, I believe.
- 25 Q Okay. And how did she contact you then?

- 1 A By telephone.
- 2 Q How did she get your number?
- 3 A I believe she may have already had it from, my number
- 4 didn't change from the time we met in December.
- 5 Q Okay. An did y'all start going out?
- 6 A We didn't start going out immediately but yes sir, a
- 7 few months later we did.
- 8 Q And how did y'all, what did y'all, did y'all start
- 9 dating regularly or how would you describe the
- 10 relationship?
- 11 A At first it was just very casual, I was just trying
- 12 to be a friend to her. And it progressed from there.
- 13 Q About when did this relationship start?
- 14 A I would say in about January or February of 2008.
- 15 Q 2008 or 2009?
- 16 A Oh, 2009.
- 17 Q All right. When did y'all start seeing each other
- 18 kind of regularly?
- 19 A I would say we started seeing each other regularly in
- 20 March of 2009.
- 21 Q March of 2009?
- 22 A Yes, sir.
- 23 Q And you got to meet her children?
- 24 A Yes sir, I did.
- 25 Q And they were named?

- 1 A Audrina and Owen.
- 2 Q All right. And where was she living at that point?
- 3 A She was living at Cross Hill with her mother.
- 4 Q And where were you living?
- 5 A I was still living with my grandmother in Clinton.
- 6 Q And where were you going to school?
- 7 A At the time I was going to Piedmont Technical College
- 8 in Greenwood.
- 9 Q There has been some testimony about your stopping by
- 10 the house, it was on the way to and from school. Is that
- 11 correct?
- 12 A Yes sir, Monday through Thursday when I had class I
- 13 would stop by there on the way back to Clinton.
- 14 Q Would you stop by on the way to school?
- 15 A No sir, not usually on the way to school, just mostly
- 16 on the way back from school.
- 17 Q And how, what would you normally do when you would
- 18 stop by?
- 19 A I would just stop by there and hang out, I would just
- 20 stop and play with the kids or we would just hang out.
- 21 Q Did you start spending some nights there on occasion?
- 22 A Yes sir, I did.
- 23 Q And how did that, how often would you stay there at
- 24 night?
- 25 A I would probably stay there about two nights a week

1 at most.

2 Q And would there be any particular night that you
3 would stay there?

4 A Usually it would be on a Thursday night because I
5 didn't have class the next day, if I stayed.

6 Q Where did you and Ashley go, did y'all see each other
7 on weekends?

8 A Yes, sir.

9 Q And where would y'all go?

10 A It varied, it depended on whether, if she had the
11 kids or not. We would, she would mostly come to my house
12 on the weekends, just different things.

13 Q And if she had the kids on the weekends what would
14 y'all do?

15 A If she had the kids on the weekend we would usually
16 go to my friend, Stetson Shealy's house and hang out
17 there, he was dating my sister at the time and we would go
18 and spend time with them.

19 Q And would you go any other place with the kids?

20 A We would always go to Pine Street Park right above my
21 house in Clinton.

22 Q And you would go there?

23 A Yes, sir.

24 Q All right. Now, how did you get along with the kids?

25 A I got along with them fine.

- 1 Q Did you get along with one better than the other?
- 2 A I would say I got along with Owen better.
- 3 Q Why is that?
- 4 A Because, I guess because he was a little boy and he
- 5 took up with me a lot better.
- 6 Q What would you, did you help with the children?
- 7 A Yes sir, as much as I could.
- 8 Q What would you do?
- 9 A Just anything that Ashley asked, if she needed me to
- 10 help with them, just anything.
- 11 Q Did you ever change diapers?
- 12 A Yes, sir.
- 13 Q How many times?
- 14 A Only a handful of times did I change a dirty diaper
- 15 but if she had just peed in the diaper, I mean that wasn't
- 16 uncommon for me to do that.
- 17 Q Did you ever change diapers on a baby before?
- 18 A Never before that.
- 19 Q Do you have any children?
- 20 A No sir, I have two nieces.
- 21 Q Have you ever been married?
- 22 A No, sir.
- 23 Q Do you recall the party that has been discussed on
- 24 August 22nd?
- 25 A Yes sir, I do.

1 Q Tell us about what happened then?

2 A It was my 9-year-old nieces, her name is Alisa, it
3 was her birthday at the time. I think she was turning 7.
4 And I have always had a lot to do with both of my nieces,
5 if they had a birthday I would always attend any kind of
6 event like that.

7 Q And did you discuss going to the event with Ashley?

8 A I did.

9 Q She agreed to going?

10 A Yes, sir.

11 Q All right.. And what did you do or what did y'all do
12 with that, on August 22nd event?

13 A We just went up there and ate cake and ice cream and
14 I remember they had a piñata and I let Owen, I picked him
15 up and let him hit the piñata.

16 Q Did you play with Audrina at that get together?

17 A Yes, sir.

18 Q What did you do with her?

19 A She wasn't walking at the time so I just put her in
20 the swing and I think, just hold her hand while she went
21 down the slide.

22 Q What did Ashley do at that get together?

23 A She didn't really know anyone there so I assume she
24 was kind of standoffish and she just, I guess she sat
25 there with Audrina most of the time because she wasn't

1 walking.

2 Q You said you got along better with Owen than Audrina,
3 what were some of the indications of that?

4 A Just that, he was running around, he would play with
5 me and Ashley would usually hold Audrina more. She
6 wouldn't really go to somebody she wasn't familiar with as
7 much in the house, I wouldn't think.

8 Q Who would not?

9 A Audrina.

10 Q Audrina, what do you mean wouldn't go to somebody?

11 A If I were to hold her in the room and Ashley were to
12 walk in the room she would always reach out for her mama.

13 Q What about if her mother walked in the room?

14 A Yes, Doris walked in the room she would want Doris.

15 Q Outside of that did you get along with Audrina?

16 A Yes, sir.

17 Q Let's move up right before this tragedy happened. On
18 the 12th of October did you stop by there on the way home?

19 A Yes sir, I did.

20 Q And what time did you get there?

21 A I would say around 3:30.

22 Q Was there anybody else there at that time?

23 A Ashley and the kids were there.

24 Q Anybody else?

25 A No, sir.

1 Q And how long did you stay there at that time?

2 A I stayed there until it was about time for her mother
3 to get home.

4 Q And what time would that normally be?

5 A Usually be about 5:00 o'clock.

6 Q All right. Did you and Ashley have any discussions
7 while you were there for the hour or hour and a half?

8 A Yes sir, I imagine we did.

9 Q Did y'all have a disagreement?

10 A Yes, sir.

11 Q Describe that and tell us what happened?

12 A I don't exactly recall what the disagreement was
13 about at that time. I remember she said something and I
14 playfully tapped her in the face with the pillow and then
15 she threw it across the room at me. And I said something
16 to her about it and she pretty much slapped me in the
17 face.

18 Q Did you say something kind of derogatory?

19 A I did.

20 Q And she did what?

21 A She slapped me.

22 Q What was her attitude that day?

23 A She was stressed.

24 Q Why was that?

25 A She hadn't got the job--

1 MR. ABLE: Objection, calls for speculation.

2 Q Let me rephrase the question then. What was her
3 attitude that day?

4 A I am sorry.

5 Q What was her attitude that day?

6 A It wasn't a very good attitude.

7 Q Did she tell you anything that would have indicated
8 to you that she was, had a bad attitude?

9 A Yes. She pretty much let me know that she didn't get
10 a job that she had been relying on and that she felt like
11 she really needed at the time.

12 Q Did she say anything what she had done the night
13 before?

14 A She said that she didn't have very much sleep the
15 night before.

16 Q And did, that was told to you before you left about
17 5:00 o'clock?

18 A Yes, sir.

19 Q Okay. When you left did she call you on the phone?

20 A Yes, sir.

21 Q Did you call her back?

22 A Yes sir, I did.

23 Q And did y'all have some conversations?

24 A Yes, sir.

25 Q And what was, what was she asking you to do in that

1 conversation?

2 A At the time she was wanting me to help her get a
3 little bit of money and--

4 MR. ABLE: Objection, Your Honor, relevance.

5 MR. WISE: The element of the stress he was talking
6 about.

7 THE COURT: Y'all come over here.

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

11 THE COURT: Mr. Wise, continue, please.

12 Q Did y'all have a discussion about your coming back
13 over there?

14 A Yes sir, we did.

15 Q And what was that discussion?

16 A She wanted me to come back over there, I think she
17 thought I may have had some money and she expressed to me
18 that she was tired and wanted me to help her out with the
19 kids a little bit.

20 Q I want to hand you this and ask you to identify this
21 as a copy of your phone bill from that date.

22 A Yes, sir.

23 Q And I call your attention down to the 7:20 p.m.
24 notation, do you use that?

25 A Yes sir, I do.

1 Q And whose phone number is that reflected on that
2 call?

3 A There are two numbers, there is my number and
4 Ashley's number.

5 Q That is Ashley's number. And how long did that call
6 last?

7 A 13 minutes, 6 seconds.

8 Q All right.

9 MR. WISE: I would like to introduce this as
10 defendant's 3.

11 MR. ABLE: Judge, I don't understand the relevance of
12 this. No objection.

13 THE COURT: In evidence without objection as defense
14 3.

15 (Whereupon, Defendant's Exhibit 3 was admitted into
16 evidence.)

17 Q And after that telephone conversation what did you
18 do?

19 A Shortly after that I told, after the phone
20 conversation I got in my car and rode back up to her
21 mother's house in Cross Hill.

22 Q And what time did you get back up there?

23 A I would say it was maybe 15 after 8:30, 8:30,
24 something like that.

25 Q Who was there when you got there, who was up when you

1 got there?

2 A Ashley and Audrina and Owen were all up.

3 Q Was anybody else there at the time?

4 A Yes sir, David Crumley and Doris Davis, Ashley's
5 mother and her boyfriend.

6 Q And where were they?

7 A They were already in her room asleep.

8 Q What was Ashley doing when you got there?

9 A I think she had just gotten the kids out of the bath
10 and was dressing them.

11 Q And did you assist in any of those duties?

12 A Yes sir, she put Audrina on the bed and dressed her
13 and I dressed Owen.

14 Q And anything happen after that?

15 A We just went back into the living room and watched
16 TV.

17 Q When did the incident concerning the brushing of the
18 teeth occur?

19 A That was when she was getting Owen ready for bed.

20 Q And do you know about what time that was?

21 A I think it was around 10:00 o'clock, 10:30.

22 Q All right. And what happened, well let me back up
23 for a second. Prior to that, prior to 10:00 o'clock what
24 did y'all have done that evening for the hour and a half
25 or so you had been there?

1 A We were just sitting there watching TV.

2 Q Anything else in particular?

3 A I think I was playing with Owen and he accidentally
4 hit me in the face or something and Ashley told him to say
5 that he was sorry. And he didn't, I don't think he meant
6 to do it so he didn't want to say he was sorry. And I
7 made a comment saying that, that if he didn't listen to
8 her now he wasn't ever going to listen to her. Something
9 of that nature.

10 Q And did that precipitate an argument between the two
11 of you?

12 A Yes, sir.

13 Q About 10:00 o'clock where were you when she was
14 getting ready to put Owen to bed, was Audrina in bed at
15 this point?

16 A I believe she was, I think she had already laid her
17 in her crib.

18 Q And then what happened?

19 A They walked back to Ashley's room.

20 Q When you say they, meaning?

21 A Owen and Ashley walked back to her bedroom and I
22 walked back there with them.

23 Q And the bedroom you are talking about is the back
24 bedroom on the lower left of that diagram?

25 A Yes, sir.

1 Q And tell us what happened back in that bedroom?

2 First of all, what were you doing?

3 A I was laying on the bed and Owen was crawling under
4 the bed and I would just stick my head up from under, like
5 I was, kind of under one side of the bed and he would run
6 to the other side of the bed. And we were just playing.

7 Q And then the discussion about brushing the teeth come
8 up?

9 A Yes, sir.

10 Q And what happened then?

11 A I think maybe Owen wanted to keep on playing. I
12 guess I kind of got him riled up and he didn't want to go
13 brush his teeth.

14 Q What did Ashley do?

15 A She told him repeatedly to brush his teeth and he
16 just didn't want to do it and eventually she yanked him up
17 by the arm and took him to the bathroom and gave him a
18 spanking.

19 Q Had you ever seen him doing anything like that to
20 Owen before?

21 A I had never seen him give her a spanking before then.

22 Q Well, did you see this spanking?

23 A No, I didn't actually see her give him a spanking.

24 Q Where did she take Owen?

25 A She took him into the bathroom.

1 Q And that is the bathroom right next to the bedroom
2 you were in?

3 A Yes, sir.

4 Q And what did you hear from the bathroom?

5 A I could actually hear her pop him from the room I was
6 in, from Ashley's bedroom.

7 Q More than once?

8 A More than once.

9 Q How many times?

10 A At least four or five.

11 Q Had you ever seen her spank Owen before?

12 A Never.

13 Q And did that, what was your reaction to that?

14 A I couldn't believe it.

15 Q All right. What happened next?

16 A They came back to the bedroom, I was still laying on
17 the bed and I just got up and walked back into the living
18 room to avoid her.

19 Q What was Owen doing when he came back to the bedroom?

20 A He was crying, he was sniffing.

21 Q How would you describe his crying?

22 A He was crying pretty hard.

23 Q What did you do then?

24 A I just walked back into the living room because I
25 guess I kind of felt responsible for him getting a

1 whipping by saying something to her earlier and I just
2 wanted to stay out of the way.

3 Q So you walked into the living room to do what?

4 A To watch TV.

5 Q Describe the living room for you, if you would, how
6 it is arranged. First of all, where is the living room on
7 that diagram?

8 A The living room is right there in the center of the
9 diagram.

10 Q Is that the big empty space?

11 A Yes, sir.

12 Q Describe the living room for me.

13 A It is a big living room, it kind of doubles as a
14 dining room.

15 Q I ask you to look at that picture and see if that
16 describes, do you recognize that?

17 A Yes sir, that is the live in area of the house.

18 Q Okay. And where did you go in that living room?

19 A I went to the couch that was up against the wall.

20 Q Is that the couch shown in the picture or another
21 couch?

22 A No sir, that is the couch.

23 Q That is the couch, okay, the one against the window?

24 A Yes, sir.

25 Q And what did you do?

1 A I just sat there, I believe Monday night football was
2 on.

3 Q Where was Ashley at this point?

4 A She was back in the, in her room in the bed with
5 Owen.

6 Q In the bed with Owen?

7 A Yes, sir.

8 Q And where was Audrina?

9 A She was in her bedroom in her crib.

10 Q Okay. Did you check on Ashley and Owen or anything?

11 A Yes, sir.

12 Q Tell me what happened after the football game?

13 A After the football game I went back to see if Ashley
14 wanted to come watch a movie with me, it was a movie
15 called Congo.

16 Q And did she?

17 A No sir, she didn't.

18 Q Where was Owen at that point?

19 A He was in the bed with Ashley.

20 Q So this would have been about what time then?

21 A I would say that would be around 11:00 o'clock.

22 Q All right. So you, was she asleep when you went in
23 there or was she awake?

24 A When I asked her to watch a movie I think she was
25 still awake.

1 Q And then she said no?

2 A She said no.

3 Q What did you do?

4 A I just went back in there to watch TV.

5 Q And watch the movie?

6 A Yes, sir.

7 Q Did you hear Audrina later that evening?

8 A Later in the evening, yes, I did hear. She was
9 teething at the time and I could hear her faintly cry.

10 Q All right. And did you hear anything else happen to
11 her to hear Audrina crying?

12 A Yeah, I heard Ashley get up and stomp into the room,
13 I actually felt her footsteps.

14 Q And let's go back. You were in the living room?

15 A Yes, sir.

16 Q All right. The couch was against which wall?

17 A The couch would have been against the wall that I was
18 sitting on. And that would have been right beside the
19 kids playroom.

20 Q Well, go up there and point out where the couch that
21 you were on?

22 A It was right here.

23 Q So that was a little different couch than one in that
24 picture?

25 A It is actually the same couch but it wraps around.

1 Q One couch wraps around?

2 A Yes, sir.

3 Q So it wraps around that wall and then goes around?

4 A Yes, sir.

5 Q Opposite you were on is what?

6 A I am sorry.

7 Q The opposite of the couch you were on is what?

8 A The TV.

9 Q All right. So, you were on the couch that butts up
10 to the kids room?

11 A Yes, sir.

12 Q What did you hear?

13 A I can remember hearing Ashley stomp into the room and
14 I heard her go into the room and I can remember Audrina
15 crying a little bit. And then she wasn't crying and
16 Ashley went out of the room.

17 Q Had you heard Audrina cry before?

18 A None before that night. I heard her cry before, yes.

19 Q Was anything different about the way she cried this
20 time?

21 A Yes sir, her, there were short pauses in between her
22 cry and it just, it sounded to me like she could have been
23 shaken.

24 Q Prior to that night or at the time that you were on
25 the sofa did the baby being shaken enter your mind?

1 A Not at all.

2 MR. ABLE: Objection, leading, Your Honor.

3 THE COURT: Sustained, can you rephrase.

4 MR. WISE: I will rephrase the question.

5 Q That night what was your opinion as to what was
6 happening to that child?

7 A That night I didn't think anything had happened to
8 her. I just thought her mom went in there and checked on
9 her.

10 Q Had you been around the children that much?

11 A Not a whole lot.

12 Q So, after Audrina quit crying what did you hear?

13 A I heard her leave the room and go back into her room.

14 Q All right. And what did you do then?

15 A I waited a minute to see if she had calmed down, I
16 just figured she had been, she was agitated so I waited
17 about ten minutes and then went and checked on Ashley and
18 asked her if she wanted anything to eat.

19 Q And what did she say?

20 A She said that she didn't want anything to eat.

21 Q All right. Now, and did you, what did you do?

22 A I fixed myself a plate of food and I ate it. It
23 wasn't a big plate so I ate it fairly quickly and threw
24 the plate away in the trash can.

25 Q We will get to that in a second. Prior to hearing

1 the footsteps going down the hall in the child's room and
2 hearing Audrina crying had you checked on Audrina earlier
3 in the evening?

4 A Yes sir, I did.

5 Q And how was she then?

6 A She seemed to be fine.

7 Q What did you do to check on her?

8 A I just, the door was already cracked so I just kind
9 of stuck my head in there and she was really a light
10 sleeper and she was just popped her head up and I let the
11 door shut back and just went back and started watching TV.

12 Q So then you, let's move forward a little bit. You
13 checked with Ashley and asked her if she wanted anything
14 to eat, is that correct?

15 A That is correct.

16 Q And you fixed a plate?

17 A I did.

18 Q What did you do after that?

19 A I went and used the bathroom and then I was getting
20 ready for bed so I opened the door to check on Audrina
21 again.

22 Q Now, is that, what is your normal routine when you
23 spend the night there about checking on Audrina before you
24 go to bed?

25 A I would just check on her usually before I went to

1 bed or if I heard her in there crying I would go in there
2 and it was usually because she had dropped her bottle or
3 something and I would give it to her, just little things.

4 Q So, you were getting ready to go to bed?

5 A Yes, sir.

6 Q And what did you find when you went in there?

7 A She was laying horizontally, her head was placed up,
8 it was against the bars and she was laying facedown, that
9 is not the way that she had slept.

10 Q And when you say horizontally, what do you mean by
11 that?

12 A I mean if she were to sleep normally in the crib she
13 would lay vertically. When I saw her she was laying
14 horizontally.

15 Q All right. And this is the crib?

16 A Yes, sir. I believe it is.

17 Q And when you say vertically you mean how?

18 A Like she was normally asleep. She would sleep like
19 that.

20 Q Come up to the diagram and show us what you are
21 talking about?

22 A Like that.

23 Q And you motion your hand up and down the length of
24 the bed?

25 A Yes, sir.

1 Q What did you see when you went in there that night,
2 at that morning?

3 A I saw that she was laying in the crib horizontally,
4 her forehead was pressed up against the bars of the crib.

5 Q Did she normally sleep with her head pressed up
6 against the bars of the crib?

7 A No.

8 Q Did, how did that appear to you?

9 A It appeared strange.

10 Q What did you do?

11 A I went to check on her and I was going to move her so
12 she could lay right and normally she would have been awake
13 by then. I noticed that, well she had blood on her mouth
14 and when I picked her up she was barely breathing. She
15 was just limp.

16 Q What did you do?

17 A I ran out of the room with her in my arms and got
18 Ashley out of bed and it struck me odd that she didn't
19 grab her from me right then. She went to the bathroom and
20 then when I handed her to her--

21 Q When did you hand her to her?

22 A In the hallway.

23 Q All right.

24 A I busted in the bathroom and she was using the
25 bathroom before she even really checked on her so I was

1 just franick, I was telling her that something is not
2 right with her. And that she was barely breathing and
3 when she finally took her from me her head just kind of
4 fell back where she couldn't support her neck.

5 Q What was your immediate reaction as to what was wrong
6 with her?

7 A I just thought she had had a seizure.

8 Q And why is that?

9 A Because I have had a seizure before and her mouth was
10 bleeding.

11 Q After Ashley took her from you what happened then?

12 A We went and woke her mama up and David and we just
13 sat her down on the floor and tried to keep her real
14 still. And EMS was called.

15 Q Did you make the suggestion before calling EMS as to
16 what to do?

17 A I thought it would be better if we just went ahead
18 and took her right then because she was just barely
19 breathing. So, I offered that I would just drive my car.

20 Q And was that done?

21 A No, sir.

22 Q So EMS comes?

23 A Yes, sir.

24 Q And how long were they there?

25 A It took them about ten minutes to get there and

1 everything was happening really fast at that point so I
2 don't think, but I don't think they were there very long
3 at all.

4 Q You don't think what?

5 A I don't think EMS was there very long at all.

6 Q EMS left?

7 A Right.

8 Q How did you get to Greenwood?

9 A I rode in one of the response vehicles with Ashley.

10 Q And y'all went to Self Hospital?

11 A Yes, sir.

12 Q How long did you stay, well, how long were you there
13 before they transferred Audrina to Greenville?

14 A I really don't have any idea how long I was there
15 before they took her to Greenville because I was in the
16 back talking to law enforcement.

17 Q You ran across law enforcement there?

18 A Yes, sir.

19 Q And you also ran across the Chaplain that testified
20 earlier?

21 A He was there when we arrived.

22 Q Did either you or Ashley see Audrina at Greenwood
23 Hospital?

24 A I am sorry.

25 Q Did you see Audrina at Greenwood Hospital?

- 1 A No, sir.
- 2 Q Do you know if Ashley did?
- 3 A I imagine she did, I am not sure.
- 4 Q Were y'all together the whole time?
- 5 A No, but we arrived there together but she went in the
- 6 back with, I assume she went back with Audrina and I
- 7 stayed in the family room.
- 8 Q You stayed in the family room?
- 9 A Yes, sir.
- 10 Q And did Ashley eventually come into the family room
- 11 with you?
- 12 A We arrived in the family room together but she, I
- 13 don't think she came back to the room.
- 14 Q When you, who was in the family room talking with you
- 15 at that point?
- 16 A I remember David Crumley was there. I remember Doris
- 17 Davis was also there. I think they had Owen with them and
- 18 I remember when Daniel and his family got there too.
- 19 Q Was any law enforcement there at that point?
- 20 A Not that I recall, I don't think.
- 21 Q When did the Chaplain come in?
- 22 A I think he came in before Doris or even David had a
- 23 chance to get there.
- 24 Q Did you have a conversation with him?
- 25 A I did.

1 Q Do you remember the questions he asked you?

2 A I really don't.

3 Q He said you made a statement to the effect of the
4 baby didn't like you but I love her. Do you recall making
5 a statement like that?

6 A I don't recall making that statement but it is
7 possible.

8 Q When did you first talk to law enforcement later?

9 A Shortly after they took Audrina back. I could
10 remember Doris saying something about they suspected it
11 could have been child abuse and the next thing I remember
12 was, I think it was the Chaplain who asked me to go back
13 and I think from there some police officers wanted to
14 speak to me.

15 Q Do you remember seeing Officer Blackmon around at
16 that point?

17 A Yes sir, I think he was.

18 Q All right. Did they ask you any questions there at
19 the Greenwood Hospital?

20 A Yes, sir.

21 Q Was Mr. Deal in that room at that point?

22 A I don't remember him being there but I guess at some
23 point he walked in the room. I didn't remember seeing
24 him.

25 Q But it is obvious he was in the room at some point?

1 A Yes, sir.

2 Q What did law enforcement tell you at that point?

3 MR. ABLE: Objection, calls for hearsay.

4 MR. WISE: Your Honor, I think it goes to show of the
5 context of some of his answers, we are not admitting it
6 necessarily for the truth of the matter asserted but just
7 to show what he heard in relation to some comments
8 earlier.

9 MR. ABLE: It is hearsay, Judge.

10 MR. WISE: It is an exception if it is not hearsay,
11 we are not offering for the truth.

12 THE COURT: You are not offering to demonstrate what
13 the officer said or the truth of what the officer said?

14 MR. WISE: Right.

15 MR. ABLE: Well, I think then he said what law
16 enforcement, he needs to clarify.

17 THE COURT: Back up a little bit.

18 Q Do you remember which law enforcement officer was
19 talking to you or was asking you questions?

20 A I think it was Officer Ben Blackmon.

21 Q All right. Do you remember what he said to you about
22 what they believed or what they suspected?

23 MR. ABLE: Objection.

24 THE COURT: Overruled, I think I understand where he
25 is going, proceed.

1 A I remember them saying that she had some type of
2 trauma to her head and they were also saying that it was
3 possible shaken baby syndrome.

4 Q Were you familiar with that term before that night?

5 A It was the first time I had ever heard it.

6 Q All right. How long did you stay in Greenwood?

7 A I think I stayed there for every bit of two hours, I
8 guess.

9 Q Where did you go when you left Greenwood Hospital?

10 A One of the officers, I didn't drive so one of the
11 officers there offered to give me a ride to the annex
12 building in Laurens.

13 Q Had they said anything to you about talking to you?

14 A Yes, sir.

15 Q So you rode to Laurens how?

16 A I rode in a police car.

17 Q Do you remember which officer was driving that car?

18 A I think it was Officer Garrison.

19 Q Did you ride in the front seat or back seat?

20 A I think I rode in the back seat.

21 Q Okay. So the officer took you to Laurens. About
22 what time did you get to Laurens?

23 A It is hard to say, really, I think it was about 5:00
24 in the morning.

25 Q Where did they take you?

- 1 A They took me upstairs to a, I think it was Ben
2 Blackmon's office.
- 3 Q Before you went to Laurens did you call anybody?
- 4 A Yes, sir. I made a call to my grandmother.
- 5 Q All right. Do you remember about what time that was?
- 6 A I think that was about 3:00 in the morning.
- 7 Q You briefly described to her what happened?
- 8 A Yes, sir.
- 9 Q So you get to Laurens about what time?
- 10 A I think it was about 5:00 or 5:30 in the morning.
- 11 Q And where did you go then?
- 12 A I went upstairs to Officer Ben Blackmon's office to
13 answer some questions.
- 14 Q Was anybody else there?
- 15 A Yes sir, there were quite a few other officers. I am
16 not familiar with all of their names.
- 17 Q Did you have a discussion with Office Blackmon about
18 this case?
- 19 A I did.
- 20 Q And how long did that conversation last?
- 21 A It lasted for about an hour.
- 22 Q Total?
- 23 A No, not total. I spoke with various law officers up
24 there for, I would say for about five hours.
- 25 Q And they wrote, they advised you of I guess of what

- 1 we particularly call Miranda rights?
- 2 A Yes, sir.
- 3 Q And you were willing to talk to them?
- 4 A I was.
- 5 Q You didn't have any problem about it?
- 6 A No, I didn't have any problems.
- 7 Q Did you eventually give Officer Blackmon a statement
- 8 at about 6:42 that morning?
- 9 A Yes, sir.
- 10 Q And State's exhibit 30, is that the statement you
- 11 gave Officer Blackmon at that point?
- 12 A Yes, sir.
- 13 Q In that statement did you tell Officer Blackmon
- 14 everything that you knew?
- 15 A No sir, I didn't.
- 16 Q Did you withhold some information?
- 17 A Yes sir, I did.
- 18 Q Why is that?
- 19 A I just, I didn't want to get her in any trouble.
- 20 Q Get her, meaning who?
- 21 A Ashley.
- 22 Q Why?
- 23 A I wanted to make sure that it was really, I guess, a
- 24 child abuse case before I gave any information that would
- 25 have gotten her in trouble.

1 Q As you were sitting there in that annex, upstairs in
2 the annex did you believe that anything that Ashley
3 Hepburn did that night could have hurt that child?

4 A I honestly didn't.

5 Q Did you believe she would do anything to hurt the
6 child?

7 A I couldn't imagine her doing anything like that.

8 Q So, what did you leave out of that statement, the
9 first statement you gave to the police?

10 A I left out that we had gotten into an argument, I
11 left out that she had slapped me in the face, I left out
12 that I heard her going to Audrina's room.

13 Q Did you leave the annex after giving that statement?

14 A No, sir.

15 Q Did anybody come down there to see you that you knew?

16 A Yes, sir.

17 Q And who was that?

18 A My grandmother.

19 Q And did your grandmother talk to you in the room?

20 A Yes sir, she did.

21 Q Talk to you very long?

22 A Not very long.

23 Q After your grandmother talked to you what did you do?

24 A I gave them another statement.

25 Q And I hand you what has been marked as defendant's

1 exhibit 2 for identification and ask you if you recognize
2 that?

3 A Yes sir, I do.

4 Q Is that the second statement you gave them?

5 A Yes, sir.

6 MR. WISE: Your Honor, I would move to introduce this
7 one.

8 MS. MAYES: No objection.

9 MR. ABLE: Judge, I think he can testify about the
10 statement, I don't think he can introduce it at this time.

11 MR. WISE: Under the rule of completeness in the
12 State's case a portion of it was, I think we should be
13 allowed to introduce this in its entirety.

14 THE COURT: I will allow it into evidence. It will
15 be defendant's 2 into evidence.

16 (Whereupon, Defendant's Exhibit 2 was admitted into
17 evidence.)

18 Q After you gave that statement to the police what did
19 you do?

20 A Which statement are you referring to?

21 Q Excuse me, after you gave the second statement, the
22 one that has been marked as number 2, the typed statement.

23 A I went home.

24 Q You went home. How did you get home?

25 A My grandmother gave me a ride home.

- 1 Q She stayed until the statement was complete?
- 2 A Yes, sir.
- 3 Q And when you actually gave that statement was she in
- 4 the room?
- 5 A No, sir.
- 6 Q She stayed around until you got through?
- 7 A Yes, she did.
- 8 Q And you gave that statement to Officer Plaxico?
- 9 A It was actually Sergeant Moody.
- 10 Q Sergeant Moody. Okay. You answered all of Sergeant
- 11 Moody's questions when you gave that statement?
- 12 A Yes, sir.
- 13 Q You were willing to answer any questions he asked?
- 14 A I think I answered every question anybody asked.
- 15 Q Then you went home with your grandmother?
- 16 A Yes, sir.
- 17 Q Several days later did Officer Plaxico come by your
- 18 house?
- 19 A Yes sir, he did.
- 20 Q And did you talk to him initially?
- 21 A No, I didn't.
- 22 Q And what did you do?
- 23 A I left out of my house and ran to my friend, Mandy's,
- 24 house.
- 25 Q And what did your grandmother do?

- 1 A She sent my mama to come get me.
- 2 Q And did you come back?
- 3 A Yes, I did.
- 4 Q Did you know what Officer Plaxico was there for?
- 5 A He was there to talk to me.
- 6 Q Did you know before he talked to you what he was
- 7 there for?
- 8 A No, I didn't.
- 9 Q Had you ever been through anything like this before
- 10 in your life?
- 11 A Never.
- 12 Q Did you talk to Officer Plaxico at that point?
- 13 A Yes sir, I did.
- 14 Q Did you answer any questions he had at that point?
- 15 A I did.
- 16 Q You always were willing to answer his questions?
- 17 A Yes, sir.
- 18 Q Did he arrest you at that point?
- 19 A No, sir.
- 20 Q Was there a Department of Social Services action
- 21 filed against you and Daniel Hepburn and Ashley Hepburn?
- 22 A Yes sir, there was.
- 23 Q And that was over in Family Court?
- 24 A Yes, sir.
- 25 Q And as a result of that did you hire an attorney?

- 1 A Yes sir, I hired you.
- 2 Q And did we attend a hearing over there, let me back
3 up. Prior to the hearing with the Department of Social
4 Services, prior to the DSS hearing on May 28th of 2010 had
5 you been given a subpoena to come and make a statement in
6 this case?
- 7 A Yes sir, I was.
- 8 Q And who issued that subpoena to you?
- 9 A The Laurens County Police.
- 10 Q Do you know who it was on behalf of?
- 11 A It was on behalf of the State, I assume.
- 12 Q Did you do a deposition in this case?
- 13 A Yes, sir.
- 14 Q And I believe that was on May or March the 4th of
15 2010?
- 16 A Yes, sir.
- 17 Q And who was present at that deposition?
- 18 A Ashley Hepburn, Daniel Hepburn and Bryan Able and
19 myself and you.
- 20 Q And I was there. And where was that deposition held?
- 21 A That was here at the Court House.
- 22 Q Here at this Court House?
- 23 A Yes, sir.
- 24 Q And do you remember where the room is?
- 25 A I don't remember exactly where it is.

1 Q All right. Was it, describe the room.

2 A It was just a really small room. It wasn't in a
3 courtroom, it was just like in an office.

4 Q What kind of table was there?

5 A Just a table similar to the ones sitting in front of
6 me.

7 Q You sat on one side of the table?

8 A Yes, sir.

9 Q And who was on the opposite side of the table?

10 A Bryan Able, Ashley Hepburn and Daniel Hepburn.

11 Q And about how long did this deposition last?

12 A For about three hours, I think.

13 Q Who asked the questions?

14 A Bryan Able.

15 Q Did you answer his questions?

16 A Yes, sir.

17 Q Did you ever refuse to answer any of his questions?

18 A No, sir.

19 Q Did you ever intend to refuse to answer any of his
20 questions?

21 A I did not.

22 Q And that went on for three hours, roughly?

23 A Yes, sir.

24 Q Subsequent, on March the 4th, on May 18th of 2010 did
25 you come back to the Court House for a DSS hearing?

- 1 A Yes, sir.
- 2 Q And who was there at that DSS hearing representing
- 3 you?
- 4 A You were.
- 5 Q And this is the DSS hearing involving you and Ms.
- 6 Hepburn and Mr. Hepburn?
- 7 A Yes sir, it was.
- 8 Q And at this, who was representing the Department of
- 9 Social Services?
- 10 A I think the name was Houck, something like that.
- 11 Q And let me just show you something and see if it
- 12 refreshes your memory. Look at that and see if that
- 13 refreshes your memory of the name of the attorney for the
- 14 Department of Social Services?
- 15 A Yes sir, it was Laura Houck.
- 16 Q How do you spell the last name?
- 17 A H-O-U-C-K.
- 18 Q Okay. Did you testify in that case?
- 19 A Yes sir, I did.
- 20 Q Who called you as a witness in that case?
- 21 A I assume the State.
- 22 Q Laura Houck?
- 23 A Yes, sir.
- 24 Q And she asked you the questions?
- 25 A Yes, sir.

1 Q Did you answer her questions?

2 A Yes, sir.

3 Q Did you ever refuse to answer her questions?

4 A No, sir.

5 Q Did you answer her questions truthfully?

6 A Yes, sir.

7 MR. ABLE: Objection. Judge, we were in a different
8 courtroom and I don't know if it is something for the jury
9 to determine, it is not what he was answering then, it is
10 what he is answering today.

11 THE COURT: I think that is bolstering somewhat, Mr.
12 Wise. The last question was--

13 Q Did you answer her questions?

14 A Yes, sir.

15 Q Did you ever refuse to answer any questions?

16 A No, sir.

17 Q Was Mr. Able there?

18 A Yes, sir.

19 Q Did he ask you questions?

20 A Yes sir, he did.

21 Q Did you answer his questions?

22 A Yes sir, I did.

23 Q Brandon, on the early morning hours of the 13th of
24 October of 2009 did you ever inflict any harm to the
25 child, Audrina?

1 A No, sir.

2 Q Did you?

3 A No, sir.

4 Q Did you ever pick her up and shake her?

5 A No, sir.

6 Q Did you ever strike her upside the head?

7 A No, sir.

8 Q What hand do you use as your predominant hand?

9 A I am right handed.

10 Q Did you even know she was being hurt that night?

11 A No, sir.

12 Q If you had known that she was being hurt that night

13 would you have done something?

14 A I wouldn't have--

15 MR. ABLE: Objection, leading.

16 THE COURT: Overruled.

17 Q If you had known she was being hurt that night would

18 you have done anything?

19 A I would have stopped her.

20 Q Thank you. Answer any questions they may have.

21 THE COURT: Ms. Mayes.

22 MS. MAYES: Yes sir, may we approach?

23 (Whereupon, a bench conference was held in the

24 presence of the jury but out of the hearing of the

25 jury.)

1 THE COURT: Ladies and gentlemen of the jury, we are
2 going to take a brief break. We will have you back in
3 about five minutes. Don't discuss the case. We will see
4 you in a few minutes.

5 (Whereupon, the jury was excused from open court for
6 a break.)

7 THE COURT: The jury is out. At the sidebar Ms.
8 Mayes informed me that she intended to go into the V.A.
9 record issue. Mr. Wise, you want to be heard on that
10 before we go down that road?

11 MR. WISE: Yes, Your Honor. I think, one, I think
12 certainly more prejudice from probative because if she
13 goes into the record it is come out with all of -- if she
14 can represent to the Court that something so grossly
15 inconsistent with what he said on the stand or any of the
16 other times he has testified then she may have a somewhat
17 decent argument. But I don't think there is anything in
18 there that is so grossly inconsistent with anything he
19 said. It is certainly not an admission on his part of
20 causing any harm to this child.

21 THE COURT: Ms. Mayes.

22 MS. MAYES: Yes, Your Honor. I would certainly
23 classify it as a gross inconsistency. According to the
24 records of Dr. Hill he reported that he saw the
25 codefendant stomp from her room into the room where the

1 baby was fussing. And then after a few minutes she went
2 back to her room, he reported checking on the baby and the
3 baby was lifeless. He certainly has never reported before
4 that he saw her stomp from her room into the child's room.

5 MR. WISE: I guess the question comes, how do we, I
6 don't think it is that major of a difference at all to be
7 frank with the Court.

8 THE COURT: Again what is the distinguishing
9 characteristics between the two statements, Ms. Mayes, one
10 stomping and the other seeing and hearing?

11 MS. MAYES: Seeing, Your Honor. He has, initially he
12 had maintained that he had no information to add at all
13 and then the second statement that has been provided to
14 law enforcement that he has testified to about today is
15 that he heard her footsteps stomping into the child's room
16 from the den area. This statement to the psychiatrist is
17 that he saw her stomp from her room into the child's room.

18 THE COURT: Does the law require it to be a gross or
19 substantial inconsistent statement or merely an
20 inconsistent statement. My understanding was the law
21 merely requires it to be an inconsistent statement for
22 purposes of impeachment. I agree it is not day and night
23 different. It is 11:00 and 11:30 different.

24 MR. WISE: It is not like I walked in there and saw
25 her shaking the baby which would be a little day and night

1 difference. I just think it gets into the problem of the
2 privilege. It creates more problems than it solves in my
3 frank opinion, for the minute probative value it may have.

4 THE COURT: I understand and if the State wants to
5 travel that road they do it at their peril. I realize
6 that could very well be incorrect in my understanding that
7 we had last week of what the law was concerning these
8 records.

9 MR. WISE: Then my other question would be, how do we
10 approach the subject that he was at the V.A. Hospital.
11 Now, it can be addressed in ways without getting into the
12 idea of a suicide just by simply saying that he was seeing
13 doctor so and so about this case.

14 THE COURT: You intend to go into the suicide, Ms.
15 Mayes, Mr. Able?

16 MR. ABLE: Yes, sir.

17 MR. WISE: I know Mr. Able does.

18 THE COURT: Right. I believe I was pretty clear, was
19 there any misunderstanding as far as my ruling last week,
20 the State could not use the suicide in the case-in-chief.
21 It is a different matter entirely if he took the stand.

22 MR. WISE: Only if he opens the door and he has done
23 nothing to open the door.

24 MR. ABLE: No, no, that wasn't the understanding,
25 Judge, the ruling was if he took the stand.

1 THE COURT: Mr. Wise, the reason for me prohibiting
2 the evidence of suicide was the 403 analysis. The danger
3 of prejudice to your client or the prejudicial effect to
4 your client of eluding that suicide was outweighed by the
5 probative value especially in light of your failure to
6 rebut the inference or the guilty inference from the
7 suicide with the records from the V.A. in light of the
8 Bruton issues because it was impossible to allow you to
9 then, Ms. Mayes had brought out the suicide and you could
10 not subsequently explain, he consistently told the doctor,
11 A, B, C, D, E, F, G, however many or however many other
12 hospital personnel. He consistently told them the same
13 story, that was implicating Ms. Hepburn. So that was the
14 reason for that. I realize you have rested. I will allow
15 you, if you want to, with that understanding, Mr. Able is
16 going to be able to tackle that, I will let you reopen and
17 ask him a few additional questions if you want to do it on
18 direct.

19 MR. WISE: I don't want to deal with it on direct. I
20 will, I think the State has the psychologist here or the
21 psychiatrist and I may just end up calling that witness.
22 And I can reask him on redirect too.

23 THE COURT: I didn't mean to overlook you, Mr. Able,
24 you have been standing.

25 MR. ABLE: No sir, I am just standing.

1 THE COURT: Did you have anything else, Ms. Mayes?

2 MS. MAYES: No sir, Your Honor. I do need to speak
3 briefly with Dr. Hill, I do believe she is here, to advise
4 her on the privilege issue. I have spoken with their
5 attorney. My understanding was that the employees at the
6 V.A. Hospital would not invoke from the privilege if they
7 were subpoenaed. And I just need to reaffirm that is her
8 position.

9 THE COURT: Right. And under the code of federal
10 regulations I think it is court ordered to obtain medical
11 records and then subpoena to obtain testimony. We will be
12 at ease a few minutes. Mr. Lewis, please step down and
13 you can't talk to your lawyer, you can talk to your
14 lawyer, just don't talk about your testimony. We will be
15 at ease.

16 MR. WISE: Out of abundance of caution we will not
17 have a conversation.

18 (Whereupon, a short break was taken.)

19 THE COURT: Let's bring the jury in, please.

20 (Whereupon, the jury came into open court at
21 approximately 3:10 p.m.)

22 THE COURT: The record should reflect the jury is
23 back and we will resume with the examination of Mr. Lewis.
24 Ms. Mayes, you can cross.

25 MS. MAYES: Yes sir, Your Honor.

1 CROSS-EXAMINATION

2 By Ms. Mayes:

3 Q Now, Mr. Lewis, if I understand your testimony
4 correctly, you first met Ms. Hepburn in 2007, is that
5 correct?

6 A Yes, ma'am.

7 Q And you dated briefly for that period of time, for
8 about a month or so?

9 A Yes, ma'am.

10 Q And then she discovered that she was pregnant with
11 Audrina and as a result of that she made the decision to
12 reconcile with her husband, Daniel Hepburn, correct?

13 A Yes, ma'am.

14 Q So, prior to learning that she was pregnant with
15 Audrina she was seeing both you and Daniel at the time?

16 A To my knowledge it wasn't at the same time.

17 Q Well, how did you know that the baby was Daniel's and
18 not your baby?

19 A She told me she was about eight weeks into the
20 pregnancy and we had not had sexual relations during that
21 time period.

22 Q All right. In other words, you had had sexual
23 relations with her closer or not as long as eight weeks
24 prior?

25 A That is right.

1 Q Okay. So she and Daniel reconcile and then
2 ultimately when their marriage did not work out you and
3 she started seeing each other again in March of 2008,
4 correct, I am sorry, March of 2009, correct?

5 A Yes, ma'am.

6 Q And for about that six month period when y'all dated
7 it was normal for you to spend several nights a week at
8 her home?

9 A Yes, ma'am.

10 Q And to drop by during the day when she was there with
11 the kids and her parents were at work?

12 A Yes, ma'am.

13 Q And it wasn't unusual according to your direct
14 testimony to help out with the kids, correct?

15 A That wasn't unusual, no.

16 Q That might include giving them a bottle?

17 A Yes, ma'am.

18 Q Helping with their dinner?

19 A Yes, ma'am.

20 Q Or their lunch?

21 A Yes, ma'am.

22 Q Changing diapers I believe was your testimony?

23 A Yes, ma'am.

24 Q And I believe on this particular night you even
25 helped Owen get dressed after his bath, correct?

1 A That's correct.

2 Q So you helped Owen get dressed and she helped Audrina
3 get dressed?

4 A Yes, ma'am.

5 Q And on previous occasions, I believe your testimony
6 was, that she, you would go into her room?

7 A Yes ma'am, sometimes.

8 Q For what purpose?

9 A If I heard her cry.

10 Q And then what would happen?

11 A I would assist why she was crying and either take her
12 to her mother or give her a bottle or something. It was
13 usually if she had dropped her bottle from the crib I
14 would just give it to her.

15 Q So in other words if she had a bottle with her in the
16 crib and she tossed it to the floor you would go in and
17 take the bottle and then hand it back to her?

18 A Yes, ma'am. If I heard her cry or anything.

19 Q Is that something that would make her cry?

20 A Yes, ma'am.

21 Q What are other things that would make her cry?

22 A I remember that she started teething, that was about
23 the only other thing that I knew that would make her cry.

24 Q When she was teething, how many nights had you been
25 over there when she was teething?

1 A Honestly I didn't know that she was teething until
2 Ashley informed me and that was about around the beginning
3 of October that she mentioned that she would be fussy.

4 Q So about two weeks before this?

5 A Yes, ma'am.

6 Q She had been fussy since she was teething and was
7 that keeping her up some nights?

8 A Yes ma'am, I believe.

9 Q To where she didn't want to go to sleep?

10 A Do you mean Audrina?

11 Q Right.

12 A Yes, I would imagine so.

13 Q Well, what did you observe, was she crying more than
14 usual?

15 A As far as I was concerned not really.

16 Q Had you seen Ms. Hepburn give her Orajel on any
17 previous occasion?

18 A Not that I recall specifically.

19 Q Now, your testimony on direct examination was that
20 according to you Ashley was stressed that day?

21 A Yes, ma'am.

22 Q And your testimony was that she was stressed because
23 she didn't get the job at Sykes?

24 A Yes, ma'am.

25 Q But you also had applied for a job at Sykes that same

1 week, correct?

2 A I did.

3 Q And you didn't get the job either, correct?

4 A No ma'am, I never got a call back from them.

5 Q Okay. So is it safe to say that both of you were
6 stressed about that situation?

7 A I guess it is safe to say that, yes.

8 Q And then to add to that there had been an argument
9 earlier in the day that caused her to slap you, correct?

10 A Yes, ma'am.

11 Q You used the word, slap, what do you mean by that?

12 A She slapped me in the face, openhanded.

13 Q Which hand?

14 A It was her left hand, she was predominantly left
15 handed.

16 Q And what was it that you had done to cause her to
17 slap you in the face?

18 A At first we were just playing around and then she hit
19 me kind of hard with a pillow and I said something to her
20 that she didn't particularly like. I guess you want to
21 know what I said?

22 Q Yes.

23 A I called her a bitch.

24 Q And then she slapped you with her left hand?

25 A Yes, ma'am.

- 1 Q Did it leave a mark?
- 2 A Briefly, it didn't leave a mark for very long.
- 3 Q And then what happened next?
- 4 A I went home.
- 5 Q So you were in an argument it is safe to say?
- 6 A Yes, ma'am.
- 7 Q That ends in you calling her a bitch and her slapping
- 8 you in the face?
- 9 A Yes, ma'am.
- 10 Q And so you leave?
- 11 A Yes, ma'am.
- 12 Q And y'all talked on the phone a few times throughout
- 13 the day, correct?
- 14 A Correct.
- 15 Q And later on you come back to the house that evening?
- 16 A Yes, ma'am.
- 17 Q And when you get there David Crumley and her mom,
- 18 Doris Davis, were already in bed, right?
- 19 A Yes, ma'am.
- 20 Q In fact, you never saw them at any point during the
- 21 night?
- 22 A No, ma'am.
- 23 Q And there is no question that Audrina appeared okay?
- 24 A Yes, ma'am.
- 25 Q She was her normal self?

- 1 A Yes ma'am, during the day she was her normal self.
- 2 Q Well you saw her that night too when you got there,
- 3 didn't you?
- 4 A Yes, ma'am.
- 5 Q And when you got there you and Owen and Audrina, you
- 6 played around a bit?
- 7 A Yes, ma'am.
- 8 Q And do you remember watching TV with the kids?
- 9 A Yes ma'am, I do.
- 10 Q And everything seemed fine with them?
- 11 A Yes, ma'am.
- 12 Q Do you remember seeing Ashley give Audrina a bottle?
- 13 A Not particularly, no, I don't.
- 14 Q Do you remember seeing a bottle for Audrina?
- 15 A I assume she had a bottle, she always did.
- 16 Q On that particular night you don't recall seeing her
- 17 have a bottle?
- 18 A No, ma'am.
- 19 Q You don't recall Ashley giving Audrina a bottle?
- 20 A No, ma'am.
- 21 Q So what is the next thing you remember after you and
- 22 the kids were playing around?
- 23 A I just remember she was getting Audrina and Owen
- 24 ready for bed.
- 25 Q Getting them ready for bed and is that when,

1 according to your earlier testimony, she spanked Owen,
2 correct?

3 A Yes, ma'am.

4 Q And you didn't see that, your testimony is that you
5 heard it from another room?

6 A I saw her yank him up by the arm and take him into
7 another room.

8 Q What do you mean by yank him up by the arm?

9 A She jerked him up by the arm and took him into the
10 bathroom.

11 Q Well, show us what you mean?

12 A She just jerked him up by the arm and dragged him
13 into the bathroom, I don't really know how to demonstrate
14 that.

15 Q All right. Is that something you had witnessed
16 before?

17 A Never.

18 Q Now, according to your testimony, after that occurred
19 she then was in the room with Owen?

20 A Yes, ma'am.

21 Q And Audrina was in her room in the crib?

22 A Yes, ma'am.

23 Q And then you went back to the living room to watch
24 Monday night football, correct?

25 A Yes, ma'am.

1 Q We are talking about this living room here, this is
2 State's exhibit 32. Where were you watching TV from?

3 A Would you like for me to point on the screen?

4 Q Yes. So, you are right here on this couch, the L
5 shaped couch, correct?

6 A Yes, ma'am.

7 Q Now, directly behind the couch is a wall?

8 A Yes, ma'am.

9 Q What is behind this wall?

10 A The kids play room.

11 Q The kids play room?

12 A Well, their room.

13 Q Their room, you mean the room that Audrina was
14 sleeping in?

15 A Yes, ma'am.

16 Q All right. Let's take a look at the diagram to be
17 sure that we are clear. This is Audrina's room, correct?

18 A Correct.

19 Q And this is Ashley's room?

20 A That is right.

21 Q This is the kitchen?

22 A Yes, ma'am.

23 Q And then here is the living room, den area where you
24 were watching television, correct?

25 A Yes, ma'am.

1 Q So, right here in this L shaped is the L shaped couch
2 which backs up directly to Audrina's room, correct?

3 A Yes, ma'am.

4 Q So that is where you were located?

5 A Yes, ma'am.

6 Q Now, is that the first time you had ever watched TV
7 here on this couch?

8 A No, ma'am.

9 Q There had been many other occasions, correct?

10 A Yes, ma'am.

11 Q And all of those other occasions you could hear
12 Audrina when she was crying?

13 A Not all of them, I guess.

14 Q Were there occasions where you could hear her crying
15 when you were on the couch?

16 A Yes, ma'am.

17 Q All right. Now, your testimony is as you continued
18 to watch Monday night football you then heard footsteps,
19 correct?

20 A Yes, ma'am.

21 Q Well, did anything happen between then, between when
22 you heard the footsteps and when you had first appeared on
23 the couch?

24 A I had checked on Audrina at one point before then but
25 nothing else really.

1 Q Let's talk about that. When you say you checked on
2 Audrina, Ashley is in her room with Owen, correct?

3 A Correct.

4 Q And Audrina had been put down in her crib, I refer
5 you to State's exhibit 35. This is Ashley's room looking
6 directly across the hall into Audrina's room?

7 A Yes, ma'am.

8 Q So on, for what purpose had you checked on Audrina
9 earlier in the night?

10 A It was just something that I did. I think I used the
11 bathroom or something and I just stopped and looked in the
12 room to make sure she was okay.

13 Q So the door to her room was open?

14 A It was cracked.

15 Q Well when you say you stopped to look into her room
16 what does that require you to do?

17 A I would have to push the door open a little bit.

18 Q So, your understanding is that Audrina is in there
19 sleeping but you pushed open the door to check on her as
20 she was sleeping?

21 A Yes, ma'am.

22 Q And according to you I believe she popped her head
23 up?

24 A She did.

25 Q So, she was fine?

1 A She was fine.

2 Q Let's take a look at your statement which is the
3 written statement, State's exhibit 30. And you recognize
4 this as the statement that you gave to Officer Ben
5 Blackmon, correct?

6 A Yes, ma'am.

7 Q Now just to clarify where we are in the timeline of
8 events. Where we are in the timeline of events, you and
9 Ashley are together at the home. From the home EMS
10 arrives, y'all go to Self Hospital in Greenwood, correct?

11 A That is correct.

12 Q And once you arrive in Greenwood there are officers
13 who show up to speak with you, correct?

14 A Yes, ma'am.

15 Q Ben Blackmon who took this statement, he is one of
16 them?

17 A Yes, ma'am.

18 Q Deputy Garrison who was in here yesterday, he was
19 another one?

20 A Yes, ma'am.

21 Q And then at some point there was also a DSS worker,
22 Dee Deal, the gentleman who was here earlier today and
23 yesterday?

24 A Yes, ma'am.

25 Q All three of those, of those personnel spoke with you

1 at Self Hospital in Greenwood?

2 A I don't remember if the DSS case worker ever spoke
3 with me.

4 Q Do you remember him being present?

5 A Not exactly I don't.

6 Q Also while you were at Greenwood Dr. Curry who was
7 working with Audrina, she spoke with you, didn't she?

8 A If she did I don't remember.

9 Q You don't remember speaking with medical staff?

10 A Not a doctor, I remember briefly speaking with the
11 Chaplain. I don't remember speaking with a doctor, no.

12 Q So your testimony is that you don't recall speaking
13 to any medical personnel?

14 A No, ma'am.

15 Q You knew why Audrina was in the hospital?

16 A Not at that point and time, I just knew that
17 something was wrong with her.

18 Q Now, Mr. Lewis, after you spoke with law enforcement
19 here at the hospital they asked you to come to the Laurens
20 County Sheriffs Department, right?

21 A Yes, ma'am.

22 Q And this was in the early morning hours of October
23 the 13th?

24 A Yes, ma'am.

25 Q So, you left the hospital here in Greenwood and you

1 went directly to the sheriffs department, so you never
2 went to Greenville Hospital?

3 A No, ma'am.

4 Q So you arrive here at the sheriffs department and you
5 waived your Miranda rights, I believe we have talked about
6 previously, you were advised of your Miranda rights,
7 correct?

8 A Yes ma'am, I was.

9 Q You waived those Miranda rights, State's exhibit 31,
10 the time on this is 6:20 a.m., correct?

11 A Yes, ma'am.

12 Q So at 6:20 a.m. you waive your Miranda rights and
13 then ultimately you give this written statement that I am
14 holding in my hand to Officer Ben Blackmon, Investigator
15 Ben Blackmon?

16 A Yes, ma'am.

17 Q And you knew full well he was an investigator with
18 the sheriffs department?

19 A Yes ma'am, I did.

20 Q Now, there is no question in your mind that you knew
21 that Audrina had been injured as a result of child abuse?

22 A At that point and time, no.

23 Q No?

24 A I wasn't exactly sure what was wrong with her.

25 Q Did you not testify earlier on direct examination

1 that when you were at Greenwood Hospital you were
2 questioned about shaken baby?

3 A Yes, ma'am.

4 Q You heard that?

5 A Yes, ma'am.

6 Q Your testimony was is that you heard that from
7 medical personnel and from law enforcement?

8 A I remember hearing it from law enforcement, yes.

9 Q That was at the hospital in Greenwood, correct?

10 A Yes, ma'am.

11 Q So you are not trying to tell us that you heard at
12 the hospital in Greenwood that Audrina was severely
13 injured and that it was shaking baby, at a minimum and
14 that you didn't understand that when you met with this
15 officer at Laurens County hours later that he was asking
16 you about what had happened to Audrina?

17 A Yes ma'am, I did understand what he was asking.

18 Q Okay. Let's take a look at this particular
19 statement. It is your name at the top, Richard Brandon
20 Lewis. The time on this is 6:42 a.m., correct?

21 A That is correct.

22 Q So at this point Audrina had been transferred to
23 Greenville Hospital and they are working to save her live
24 and you are at the Laurens County Sheriffs Office?

25 A Yes, ma'am.

1 Q This statement written by B. Blackmon at my request.
2 Your statement was, I got to Ashley Nicole Hepburn's house
3 around 8:30 on October 12th of 2009. Your statement was,
4 we sat in the living room and watched TV. Ashley was
5 going to give the kids a bath. Let me stop you right
6 there and ask you, did you see the kids getting a bath?

7 A I believe I got there when they were getting out of
8 the bath.

9 Q I helped Owen get dressed in his pajamas while Ashley
10 dressed Audrina for bed. After that she put Audrina to
11 bed for a little bit. And when you say she put her to
12 bed, where are you referring to?

13 A She put her in her crib.

14 Q We went and watched TV a little bit and she got her
15 out of the crib. Then she put her back. What happened
16 after she got her out of the crib while you were watching
17 TV?

18 A She brought her into the living room for a little
19 bit.

20 Q So Audrina came from the crib back into the living
21 room with you and Owen and Ashley?

22 A Yes, ma'am.

23 Q And she was fine at that point?

24 A Yes ma'am, at that point she was fine.

25 Q Then she helped Owen brush his teeth. While they

1 were laying down I said I was going to watch football. I
2 watched the game until 11:00 or so and went to the
3 bathroom and stuck my head in the door and Audrina popped
4 her head up.

5 A Yes, ma'am.

6 Q So that is the time that you had just told us about a
7 few moments ago?

8 A Yes, ma'am.

9 Q When you testified that you had looked in on her as
10 she was in her room?

11 A Yes, ma'am.

12 Q So, she popped her up up and she certainly appeared
13 okay at that point, correct?

14 A Yes, ma'am.

15 Q Then I shut the door. I didn't hold her then but I
16 did earlier in the night. I didn't shake her or anything.
17 I tried to wake Ashley up and she was tired. When you say
18 you tried to wake Ashley up where was she?

19 A She was in the bed with Owen.

20 Q Then I tried to give her some hash but she didn't
21 want it. When you say you tried to give her some hash,
22 who are you referring to?

23 A Ashley.

24 Q And that was the hash that your grandmother made?

25 A Yes, ma'am.

1 Q So, I went back to the living room and I put in a
2 movie, the walls were thin so I could usually hear Audrina
3 crying.

4 A Yes, ma'am.

5 Q And here they let you look over the statement and add
6 anything that you needed to add, correct?

7 A Correct.

8 Q And at some point you looked over the statement and
9 decided to add in and then initial the words, wasn't
10 crying, right here in the upper text, wasn't crying, so
11 you could clarify that the walls were thin and usually you
12 could hear Audrina crying but you did not hear her crying.

13 A That is what I put in the statement, yes.

14 Q Okay. So, what you put in the statement was that
15 Audrina was fine and you had not heard her crying?

16 A Yes, ma'am.

17 Q I usually check on her during the night. I looked in
18 on her about 1:20 and she didn't stick her head up. So I
19 thought she was asleep. When I seen her she was laying on
20 her stomach with her head on the rails on the crib. So,
21 your last statement before you described finding Audrina
22 unresponsive in her crib, your last statement had been
23 that you had not heard her crying and you had last seen
24 her fine?

25 A Yes, ma'am.

1 Q I woke Ashley up and I told her I couldn't get
2 Audrina awake, we were panicking. We got her mother and
3 her boyfriend up, called 911. Then we all huddled around
4 her until the EMS came. I remember looking at her lips
5 and thought she had a seizure. EMS got there really
6 quick. Then we went to the hospital from there. End of
7 statement with your signature, correct.

8 A Yes, ma'am.

9 Q And this is 6:42 a.m. on October the 13th while
10 Audrina is still alive and still in the hospital?

11 A Yes, ma'am.

12 Q In fact she is in pediatric intensive care?

13 A I wasn't aware at that time but yes ma'am, I assume.

14 Q You knew that this child had not regained
15 consciousness, correct?

16 A From what I was told, yes.

17 Q And you signed this affirming that it is a true and
18 accurate statement?

19 A Yes, ma'am.

20 Q All right. Now, when you talk about seeing her lips
21 and you thought she had a seizure, what is it that made
22 you think she had a seizure?

23 A I remember seeing blood on her mouth and on, I know
24 that whenever I had seizures that I would usually bite my
25 tongue and I would have blood on my mouth as well.

1 Q And where did you see blood on her mouth?

2 A I saw on the outside of her lips.

3 Q Where was she when you saw blood on her mouth?

4 A She was in my arms.

5 Q That is the first time you saw blood was when she was
6 in your arms?

7 A When I picked her up out of the crib, yes.

8 Q So you saw her bleeding in the crib?

9 A Yes, ma'am.

10 Q And that is not in this statement, is it?

11 A No, ma'am.

12 Q Now, five hours go by, you are still at the law
13 enforcement center?

14 A Yes, ma'am.

15 Q They haven't let you leave, have they?

16 A No, ma'am.

17 Q Because they are still interviewing you?

18 A Yes, ma'am.

19 Q And you could leave if you wanted to but you knew
20 that they still wanted more information from you?

21 A Yes, ma'am.

22 Q They still thought that you had more to say, that you
23 knew more, correct?

24 A That is correct.

25 Q And I believe you previously testified in this case,

1 giving depositions, I believe there has been discussions
2 about you testified at a DSS hearing, correct?

3 A That is correct.

4 Q And do you recall making the statement before that
5 law enforcement didn't seem satisfied with your first
6 statement. In other words, they didn't seem to believe
7 it?

8 A Yes, ma'am.

9 Q The reason that they didn't seem to believe it is
10 because it wasn't true, correct?

11 A That is correct.

12 Q And after five hours go by, no longer 6:42 a.m., it
13 is now 11:56 a.m. you give this second statement, correct?

14 A Yes, ma'am.

15 Q And then this second statement which is timed 11:56
16 a.m. you also affirmed this is a true and accurate
17 statement, correct?

18 A Yes ma'am, I do.

19 Q - And in this statement you say on October 12th of 2009
20 I went to my girlfriend's house, Ashley Hepburn, around
21 8:30 or 9:00 p.m. We started watching TV and ended up
22 getting into an argument over her telling me how to be a
23 better parent. Ashley got mad because I told her not to
24 let her son to get away with everything that he does. I
25 then went to lay down on her bed and Ashley told Owen, her

1 son, to go brush his teeth in which Owen was apprehensive
2 about brushing his teeth at which time Ashley then gave
3 Owen what you call an intense spanking?

4 A Yes, ma'am.

5 Q And you had never mentioned that to law enforcement
6 before, had you?

7 A No, ma'am.

8 Q Ashley got Owen to brush his teeth and then put
9 Audrina in her crib. Ashley then went to bed with Owen
10 and I went into the living room to watch TV. I watched
11 the football game and then around 11:00 in the p.m. I went
12 to check on Audrina. When I went to check on her at that
13 point Audrina was fine laying in the crib. Is this the
14 time you mentioned earlier where she had popped her head
15 up?

16 A Yes, ma'am.

17 Q I started watching TV again. Then around 12:45 in
18 the morning I heard Audrina crying in her room. That is
19 different than your first statement, isn't it?

20 A Yes, ma'am.

21 Q In your first statement you had gone in, after the
22 statement was signed and asked the officer to add the
23 words, wasn't crying and then you initialed it, correct?

24 A That is correct.

25 Q This time you are saying that at 12:45 a.m. I heard

1 Audrina crying in her room?

2 A Yes, ma'am.

3 Q I then heard some loud footsteps coming from the back
4 of the house where Ashley and Owen were located at.
5 Audrina then started crying even louder as if she was
6 being shaken.

7 A Yes, ma'am.

8 Q You had never mentioned that before, had you?

9 A No, ma'am.

10 Q I then went to check on Ashley in Ashley's bedroom.
11 I asked Ashley if she wanted something to eat and Ashley
12 said no. But I just made something to eat for myself.
13 Let me understand correctly, you went to Ashley's room to
14 check on Ashley, you did not check on Audrina?

15 A That is correct.

16 Q After I ate I then went to check on Audrina in
17 Audrina's bedroom. Audrina was laying in her crib face
18 down and was hardly breathing. I also noticed that there
19 was blood on the outside of Audrina's mouth. I begin to
20 panic and then picked Audrina up out of the crib and then
21 went and woke Ashley up. Ashley then got up and went to
22 the bathroom to urinate while I was still holding Audrina.
23 Ashley saw then that Audrina couldn't hold her head up and
24 became very frantic. I then gave Ashley Audrina. And you
25 gave her Audrina to hold. We then and woke up Ashley's

1 mother, Doris Davis and her boyfriend, David in their
2 bedroom. We then laid Audrina on the floor on top of a
3 blanket and made sure that her head stayed still. David
4 then called EMS in which EMS arrived within ten minutes
5 and took Audrina to Self Regional Healthcare. EMS then
6 picked Audrina up at approximately 1:30 in the morning,
7 correct?

8 A Yes, ma'am.

9 Q End of statement.

10 A Yes, ma'am.

11 Q Then you also signed this one as true and correct,
12 correct?

13 A Yes ma'am, I did.

14 Q But both can't be correct, can they?

15 A No, ma'am.

16 Q So is it your testimony that you heard the footsteps
17 before you asked her to watch the movie or after you asked
18 her to watch the movie?

19 A After.

20 Q Is it your testimony that you heard the footsteps
21 before you asked her if she wanted something to eat or
22 after?

23 A I believe that was before.

24 Q So then there would be at least two times you went
25 into Ashley's room in addition to checking on Audrina

1 throughout the night, correct. You went in to ask her to
2 watch a movie and then according to your testimony you
3 went in at a different time to ask her for something to
4 eat?

5 A Yes, ma'am.

6 Q And then after the last time when you went in to ask
7 her for something to eat, your testimony was that you then
8 ate the hash, where did that happen at?

9 A In the living room.

10 Q Then you went back to the living room and all of that
11 happened before you ever went in to check on Audrina,
12 correct?

13 A Yes, ma'am.

14 Q Now, Mr. Lewis, you testified throughout this case
15 that you routinely go into Audrina's room and check on
16 her, even when she is quiet?

17 A Yes, ma'am.

18 Q Your testimony earlier that when you went to the
19 bathroom you opened the door and checked on her even
20 though she wasn't making a sound and she was just a
21 sleeping baby, correct?

22 A Correct.

23 Q And that is the time she popped her head up?

24 A Yes, ma'am.

25 Q But this time your testimony was that you heard the

1 loud footsteps go in there and you heard Audrina's voice
2 breaking and according to your testimony it sounded as if
3 she was being shaken and you didn't check on her, did you?

4 A No, ma'am. At the time it didn't occur to me that
5 she would have did something like that, in retrospect I
6 know that she did.

7 Q All right. So all the other times you check on her
8 when she is quiet and this time, according to your
9 testimony, she was crying, then you hear her voice
10 breaking. After you hear the stomping and all of a sudden
11 this time you don't check on her at all, you go and check
12 on Ashley to see if she wants something to eat and then
13 you go in the living room, correct.

14 A Correct.

15 Q And how much time passed between when you say you
16 heard the stomping and when you heard a sound that sounded
17 as if she was being shaken and then when you, according to
18 your testimony, went in the room and found her
19 unresponsive?

20 A Ten minutes at the most.

21 Q Ten minutes?

22 A Yes, ma'am.

23 Q Do you recall testifying previously that it was at
24 least fifteen minutes?

25 A It could have been ten or fifteen minutes.

1 Q All right. So that is something that you may have
2 testified to before?

3 A Yes, ma'am.

4 Q Now also between when you were at Self Hospital and
5 you first met with Officer Garrison and Officer Blackmon
6 and the Chaplain, Alex Brown and the DSS worker, Dee Deal,
7 after all of that and before you gave those statements to
8 law enforcement you placed a call to Ashley's cell phone,
9 didn't you?

10 A Could you repeat what time it was again?

11 Q Yes. Do you recall placing a telephone call to
12 Ashley's cell phone at approximately 5:38 a.m. in the
13 early morning hours of October 13th?

14 A Yes, ma'am.

15 Q All right. So you placed that call to her right
16 before you were being interviewed by law enforcement,
17 correct?

18 A Correct.

19 Q And you knew that you were at the law enforcement
20 center in order to be interviewed about these events,
21 correct?

22 A Correct.

23 Q At some point and time, Mr. Lewis, between when you
24 were first giving that statement at about 6:20 a.m. and
25 when you gave that second statement at 11:56 a.m. you knew

1 they didn't believe the first statement, you knew that
2 they knew that you weren't telling everything, correct?

3 A Correct.

4 Q And you knew that you could end up being arrested?

5 A I didn't assume that I would be arrested.

6 Q You didn't?

7 A No, ma'am.

8 Q Then how come after these events and after your
9 statements when Officer Plaxico showed up at your house to
10 make contact with you to see if you had anything more to
11 add you went running out of the house?

12 A Yes, ma'am.

13 Q You fled?

14 A Yes, ma'am.

15 Q Knowing he is a law enforcement officer?

16 A Yes, ma'am.

17 Q Because you thought he was there to arrest you?

18 A I thought that was possible.

19 Q All right. And your previous testimony, not just
20 today but on other occasions as well is that the reason
21 you did not tell the truth in this statement or what you
22 claimed to be the truth is because you didn't want to get
23 Ashley in trouble, correct?

24 A Correct.

25 Q You didn't want to get her in trouble?

1 A No, ma'am.

2 Q It might affect your relationship?

3 A I loved her.

4 Q Mr. Lewis, that child was in the hospital fighting
5 for her life and you were lying to the police about what
6 you knew in order to save your relationship with your
7 codefendant, that is correct, yes or no?

8 A I was just in love with her, I didn't want to believe
9 that she could hurt her.

10 Q She was more important to you at that moment than
11 Audrina was, wasn't she?

12 A No ma'am, I wouldn't say that.

13 Q Did you tell the truth in this statement?

14 A No, ma'am.

15 Q Now, this is the bathroom of the home, do you
16 recognize that?

17 A Yes ma'am, I do.

18 Q What happened to the towel that was in the towel
19 rack?

20 A I don't know, it is not there in the picture.

21 Q How did that towel get in Audrina's crib?

22 A I am not sure.

23 Q You don't know?

24 A No, ma'am.

25 Q How did you find Audrina?

- 1 A I just found her laying face down unresponsive.
- 2 Q According to you that was against the rails?
- 3 A Yes, ma'am.
- 4 Q Against the bumper?
- 5 A Yes, ma'am.
- 6 Q Who took this towel and wiped Audrina's mouth, wiped
- 7 her blood and saliva?
- 8 A I don't know.
- 9 Q After you fled from Investigator Plaxico Ashley was
- 10 arrested, wasn't she?
- 11 A Yes.
- 12 Q You became aware that she was arrested?
- 13 A Yes, ma'am.
- 14 Q And after she was arrested the next day Audrina died?
- 15 A Yes, ma'am.
- 16 Q And then the next day you took an overdose, correct?
- 17 A Yes, ma'am.
- 18 MR. WISE: Subject to my previous objection.
- 19 THE COURT: Overruled.
- 20 Q You took an overdose and you were treated at the
- 21 Laurens County Hospital for attempted suicide, correct?
- 22 A Yes ma'am, I was.
- 23 Q And then where you went from the Laurens County
- 24 Hospital is you went to the V.A. Hospital, correct?
- 25 A Yes, ma'am.

1 Q And at the V.A. Hospital you were treated by a number
2 of medical staff, do you remember being treated by Dr.
3 Vernetta Hill?

4 A Yes ma'am, I do.

5 Q Do you recall stating to Dr. Hill that you had argued
6 with your girlfriend earlier about spanking her son?

7 A I don't think I said we argued about her spanking her
8 son but something of that nature, yes.

9 Q Do you recall reporting to Dr. Hill that the baby was
10 fussy due to teething?

11 A Yes, ma'am.

12 Q Do you recall stating that you saw her, meaning the
13 girlfriend, stomp from her room into the room where the
14 baby was fussy?

15 A I remember telling her that I knew Ashley went into
16 the room. I have never said that I saw her go into the
17 room.

18 Q So, you deny that statement?

19 A Yes, ma'am.

20 Q That you saw her stomp into the room?

21 A Yes, ma'am.

22 Q Nothing further at this time.

23 THE COURT: Mr. Able.

24 CROSS-EXAMINATION

25 By Mr. Able:

1 Q Now, Mr. Lewis, you say that afternoon of October 12,
2 2009 you called Ashley a bitch?

3 A Yes, sir.

4 Q And that is a phrase that you commonly use was
5 bitches and whores on your Facebook page, wasn't it?

6 A No sir, I don't think so.

7 Q You didn't use those phrases on your Facebook?

8 A If it were, I may have.

9 Q You posted some things with those kinds of words on
10 your Facebook, didn't you?

11 A Yes sir, I may have.

12 Q And when you call a woman a bitch wouldn't you expect
13 to get slapped?

14 A Yes sir, I would.

15 Q And you stated earlier, you had testified at a DSS
16 hearing on behalf of the State. You testified for the
17 Department of Social Services, correct?

18 A Yes, sir. I assumed it was.

19 Q But it was the Department of Social Services that
20 subpoenaed you to be there?

21 A Yes, sir.

22 Q And at the time of that testimony you are not a
23 criminal defendant in this case, were you?

24 A No, sir.

25 Q You were charged, that was in May, I believe you were

- 1 charged in September?
- 2 A Yes, sir.
- 3 Q After giving that testimony?
- 4 A Yes, sir.
- 5 Q Now on the morning of October 13th you spoke to a lot
- 6 of people that day?
- 7 A A lot of law enforcement, yes sir.
- 8 Q Well, you spoke to Chaplain Brown?
- 9 A Yes, sir.
- 10 Q You spoke to Dr. Curry?
- 11 A I don't remember speaking to a doctor.
- 12 Q You heard her testimony, didn't you?
- 13 A Yes, sir.
- 14 Q You heard her say she spoke to you?
- 15 A Yes, sir.
- 16 Q And you heard her say last week that you had found
- 17 the baby unresponsive?
- 18 A Yes sir, I remember her saying that.
- 19 Q And you remember her testimony where she said you
- 20 confirmed Ashley had gone to bed earlier in the evening?
- 21 A Yes, sir.
- 22 Q And you heard Dr. Curry's testimony that you confirm
- 23 that when you found the baby Ashley was still in that bed?
- 24 A Yes, sir.
- 25 Q You told her all of that, didn't you?

- 1 A I assume I did if she testified to that, yes sir.
- 2 Q All right. So what you told Dr. Curry that morning
- 3 was that on the morning of October 13th was that Ashley
- 4 had gone to bed, you found the baby and Ashley was still
- 5 in that same bed with Owen, correct?
- 6 A Correct.
- 7 Q You confirmed that, you never said anything about
- 8 Ashley getting out of bed that morning, did you?
- 9 A No, sir.
- 10 Q And you talked to Dr. Brown, I mean, I am sorry,
- 11 Chaplain Brown?
- 12 A Yes, sir.
- 13 Q That is the gentleman that came in and he is the
- 14 first one that said that you said that morning, that baby
- 15 doesn't like me but I love her, correct?
- 16 A Yes sir, he stated that.
- 17 Q I am sorry?
- 18 A Yes sir, he stated that.
- 19 Q And that is what you told him, isn't it?
- 20 A I don't remember telling him that, no.
- 21 Q You don't remember telling that, but do you remember
- 22 telling Dee Deal the same thing?
- 23 A No sir, I don't remember a conversation with Mr.
- 24 Deal.
- 25 Q Okay. Do you remember Dee Deal being in the room

1 when you said the same thing to law enforcement that
2 morning?

3 A To be honest I don't remember him being in the room.

4 Q Okay. So you got two people, a Chaplain and a DSS
5 worker who were not together, you were with one and then
6 you were with the other and they both said that you said
7 the same exact thing. Doesn't that strike you odd?

8 A Yes, sir.

9 Q But you don't remember that?

10 A I don't remember making that remark, no sir.

11 Q You don't remember making it in the presence of
12 either Chaplain Brown or Dee Deal?

13 A No, sir.

14 Q And when you spoke to Chaplain Brown that morning, he
15 is the first one y'all saw when y'all got to Self
16 Regional, correct?

17 A Yes, sir.

18 Q And you heard his testimony last week?

19 A Yes, sir.

20 Q And his testimony, of course, was that you said that
21 Ashley had gone to bed with Owen, correct?

22 A That is correct.

23 Q And that you were the only one up?

24 A Yes, sir.

25 Q And that is what Dr. Curry testified too, that you

- 1 confirmed, you were the only one out of bed, correct?
- 2 A Yes, sir.
- 3 Q And that you being the only one up, you found the
- 4 baby and took the baby to Ashley?
- 5 A Yes, sir.
- 6 Q Wasn't that Chaplain Brown's testimony?
- 7 A Yes, sir.
- 8 Q That is what you told him?
- 9 A Yes, sir.
- 10 Q You didn't say a thing about hearing any footsteps or
- 11 Ashley getting out of bed that night?
- 12 A No sir, I didn't, I don't remember talking with them,
- 13 I am sorry, can you repeat the question.
- 14 Q You want me to repeat the question?
- 15 A Yes, sir.
- 16 Q What I said is, what you told Dr. Brown that morning,
- 17 I mean, I am sorry, Chaplain Brown that morning was the
- 18 same thing you had told Dr. Curry that morning. You heard
- 19 their testimony, correct?
- 20 A Yes sir, I heard their testimony.
- 21 Q And their testimony was that Chaplain Brown and Dr.
- 22 Curry, they had met with you and you confirmed for them
- 23 that Ashley had gone to bed with Owen, correct?
- 24 A Correct.
- 25 Q And that you were the only one up, correct?

1 A Yes, sir.

2 Q That you went in there at some point and you found
3 Audrina, correct?

4 A Correct.

5 Q And you took the child to her mother, Ashley, who was
6 still in bed with Owen, correct?

7 A Correct.

8 Q And that was their testimony?

9 A Yes, sir.

10 Q And that is what you told them that morning?

11 A Again, I don't personally remember speaking with
12 either of them to that extent but I assume that they are
13 telling the truth, yes.

14 Q All right. And you spoke, that morning you spoke to
15 Officer Garrison at the Self Regional Hospital?

16 A Yes, sir.

17 Q And you told him the same thing, didn't you?

18 A Yes, sir.

19 Q You were the only one up, Ashley had gone to bed and
20 you found the child and you took the child to its mother?

21 A Yes, sir.

22 Q You didn't tell him anything about hearing these
23 footsteps or the sounds of a baby being shaken or anything
24 like that, did you?

25 A No sir, I didn't.

- 1 Q You don't remember Dee Deal being there?
- 2 A No sir, I do not.
- 3 Q But you heard his testimony?
- 4 A Yes, sir.
- 5 Q And it is the same as everybody else's that morning,
- 6 when the other people that you talked to, correct?
- 7 A Yes, sir.
- 8 Q Nothing about any footsteps or babies being shaken or
- 9 anything like that?
- 10 A That is correct.
- 11 Q And you also spoke to law enforcement at Self
- 12 Regional?
- 13 A Yes, sir.
- 14 Q And you told them the same thing?
- 15 A Yes, sir.
- 16 Q Now, you want to keep adding to your story. In the
- 17 times that I have talked to you previously and your
- 18 statements that you have given, you never said anything
- 19 about busting up in the bathroom when you allege that
- 20 Ashley was urinating, did you, or going to the bathroom.
- 21 You never said anything about that before, have you?
- 22 A Yes sir, I have said that.
- 23 Q You have said that before?
- 24 A I made that apparently clear to law enforcement.
- 25 Q In your statement you did?

1 A It may not say it exactly like that on my statement
2 but I do remember telling them that she went to the
3 bathroom before she took Audrina from me.

4 Q On the second statement, Ashley then got up and went
5 to the bathroom to urinate while I was still holding
6 Audrina. You never said anything about you busted into
7 the bathroom to alert her to this situation, did you, you
8 never said that before, had you?

9 A I have told that to law enforcement, yes I have said
10 that.

11 Q Is it in one of these statements?

12 A No sir, it is not in the statement.

13 Q You had never said anything ever before, about Ashley
14 being stressed that day, have you?

15 A Yes sir, I told law enforcement that she was stressed
16 for not getting the job.

17 Q Is that in one of the statements?

18 A No, sir.

19 Q And at 5:38, the telephone call that you placed to
20 Ashley, you didn't talk to her at that time, did you?

21 A No, sir.

22 Q All right. Now, this happened on October 13th of
23 2009 and on October 18th of 2009 you tried to kill
24 yourself?

25 A Yes, sir.

1 Q It was the day after Audrina died?

2 A Yes sir, it was.

3 Q Now, what day was it, was it before that that you
4 tried to run from Officer Plaxico?

5 A Yes, sir.

6 Q So, he came to see you and you ran thinking you were
7 going to be arrested and then the day after this child
8 dies you try to kill yourself?

9 A Yes, sir.

10 Q And you were admitted out her to the Laurens
11 Hospital?

12 A Yes, sir.

13 Q And then you were transferred to the V.A. Hospital?

14 A That's correct.

15 Q And they kept you under the care of a psychiatrist
16 for a while?

17 A For about four days, I think.

18 Q Okay. And after you got out you were in the care of
19 a psychiatrist?

20 A Yes, sir.

21 Q As a matter of fact, before this event you were under
22 the care of a psychiatrist, weren't you?

23 A Yes, sir.

24 Q Through the Veteran's Administration?

25 A Yes, sir.

1 Q You have been under the care of a psychiatrist, I
2 believe, since March of '09?

3 A Approximately, yes.

4 Q Now, you were first under the care of a psychiatrist
5 when you were about twelve years old, weren't you?

6 A Yes, sir.

7 Q Why was that?

8 A My parents were going through a divorce and my father
9 shot my grandfather and my mother took the gun from him
10 and shot him.

11 Q Your mother took the gun from who and shot who?

12 A My mother took the gun from my father and shot him.

13 Q And you were under the care of a psychiatrist then as
14 well, correct?

15 A Yes, sir.

16 Q Now, so then from your cross-examination with Ms.
17 Mayes, you go down to the V.A. and you try to change your
18 story again, correct. You say about the footprints or the
19 loud sounds of the feet going across the home and then you
20 go down there and then you build on it again and you say,
21 I saw her going in there?

22 A No, sir.

23 Q You didn't say that?

24 A No sir, I didn't say that I saw her go in the room.

25 Q Now, I want you to look at your first statement with

1 me, it has been marked State's exhibit number 30 for
2 evidence. You recognize that, right?

3 A Yes sir, I do.

4 Q And that is the first statement you gave to law
5 enforcement that day, October the 13th?

6 A That is correct.

7 Q And that is a two-page statement and bears your
8 signature at the bottom?

9 A Yes, sir.

10 Q Now, Ms. Mayes eluded to it, but I want to read it
11 for you. It says down at the bottom, I have read each
12 page of this statement consisting of two pages, each page
13 which bears my signature and corrections, if any, bears my
14 initials and I certify the facts contained herein are true
15 and correct. Isn't that what it says?

16 A Yes, sir.

17 Q And it says that on both pages, correct?

18 A Yes, sir.

19 Q So when you signed this statement at 6:42 a.m. on
20 October 13th of 2009 you were certifying that everything
21 in here was correct?

22 A Yes, sir.

23 Q Officer Ben Blackmon wrote this statement at your
24 request?

25 A Yes sir, he wrote the statement.

1 Q And he wrote it for you as you dictated it to him?

2 A He would ask questions and assert things in which I
3 would answer and he would write down.

4 Q He wrote it down as you dictated to him, correct?

5 A Correct.

6 Q And now, let's look at this for a moment. It says
7 that, follow along with me, I got to Ashley Tolley
8 Hepburn's house around 8:30 on October 12th of 2009.

9 Correct?

10 A Correct.

11 Q And it says that you, we sat in the living room and
12 watched TV. Ashley was going to give the kids a bath.

13 Correct?

14 A Correct.

15 Q At that point Ms. Davis and Mr. Crumley had gone to
16 bed, correct?

17 A That is correct.

18 Q I helped Owen get dressed in his pajamas while Ashley
19 dressed Audrina for bed. Correct?

20 A Yes, sir.

21 Q After that she put Audrina to bed for a little bit,
22 who is she?

23 A That would be Ashley.

24 Q Then we went and watched TV a little bit and she
25 gave, watched TV a little bit and she got her out of the

- 1 crib. Correct?
- 2 A Correct.
- 3 Q Then she put her, then she put her back. Who put who
- 4 back?
- 5 A Ashley put Audrina back in her crib.
- 6 Q Okay. So, she put the child down, she put Audrina in
- 7 the crib, Audrina was in the crib for a while. Was that
- 8 when y'all went outside to smoke a cigarette?
- 9 A It may have been.
- 10 Q Do you remember that?
- 11 A Yes sir, I remember going out and smoking a
- 12 cigarette.
- 13 Q That is not in your statement, is it?
- 14 A No, sir.
- 15 Q It is not in either statement, is it?
- 16 A No, sir.
- 17 Q So, y'all go outside, come back in and Ashley goes
- 18 and gets Audrina and brings her into the living area where
- 19 y'all were?
- 20 A Yes, sir.
- 21 Q And you didn't see any injuries or problems with
- 22 Audrina at that time?
- 23 A Not at that time.
- 24 Q Didn't see any marks on her or bruises or anything
- 25 like that?

- 1 A No sir, none other than the bruise she had on her
2 forehead.
- 3 Q Okay. She was acting fine?
- 4 A Yes, sir.
- 5 Q Sitting in her mother's lap?
- 6 A She could have been, yes.
- 7 Q Playing with her brother?
- 8 A Yes, sir.
- 9 Q Okay. And that was around 9:30 or 10:00 o'clock, I
10 think you testified to?
- 11 A Yes, sir.
- 12 Q So at that point in the evening, no problems with
13 Audrina?
- 14 A At that point no problems at all with her.
- 15 Q Now, I think it has been well established that these
16 children have their own bedroom, correct?
- 17 A Yes, sir.
- 18 Q They share a bedroom?
- 19 A Yes, sir.
- 20 Q And the children's bedroom is divided by this little
21 foyer here from their mother's bedroom, correct?
- 22 A That's correct.
- 23 Q With the bathroom there in the middle?
- 24 A Yes, sir.
- 25 Q When Ashley put the child, put Audrina back in the

1 bed that second time you walked back there with her,
2 didn't you?

3 A Yes sir, I may have.

4 Q Didn't you?

5 A I think I did.

6 Q And again at that point her putting her down
7 everything was fine?

8 A Yes, sir.

9 Q You didn't see, other than the bruise you described
10 earlier did you see any kind of other marks or injuries to
11 the child?

12 A No, sir.

13 Q Then you say in your statement that she then helped
14 Owen brush his teeth while there were laying down. I said
15 I was going to watch football, correct?

16 A Correct.

17 Q Okay. And that would have been when Ashley and Owen
18 went back into the bedroom and went to sleep, correct?

19 A Yes, sir.

20 Q And that is what you reported to everybody that
21 morning, Chaplain Brown, Dr. Curry, Ben Blackmon, Dee
22 Deal, that was what you told everybody that morning,
23 correct?

24 A Yes sir, that she went to bed.

25 Q That she went to bed, her and Owen went back in her

1 bedroom and went to bed?

2 A Yes, sir.

3 Q You watched the football game and then at some point,
4 you say I watched the game until 11:00 or so and went to
5 the bathroom and stuck my head in the door and Audrina
6 popped her head up?

7 A Yes, sir.

8 Q All right. Then you go on to say, I shut the door, I
9 didn't hold her then but I did earlier in the evening. I
10 didn't shake her or anything?

11 A Yes sir, that is the way the statement reads. I was
12 actually asked that question.

13 Q You were asked that question, which question?

14 A If I held her or if I had shaken her.

15 Q So you were asked the question if you had shaken her.
16 I mean you were asked the question if you had shook her?

17 A Yes, sir.

18 Q So you were watching the game and you had to go to
19 the bathroom, correct?

20 A Yes, sir.

21 Q So you left the living area and went around into the
22 kitchen, or the dining area and you went into the foyer
23 and that is when you decided you were going to check on
24 Audrina?

25 A Yes, sir.

- 1 Q You opened the door to Audrina's room?
- 2 A Yes, sir.
- 3 Q So the door was shut?
- 4 A Yes sir, it was, she would always leave it cracked
- 5 open, Ashley would.
- 6 Q And so you pushed it open?
- 7 A Yes, sir.
- 8 Q You stuck your head in?
- 9 A Yes, sir.
- 10 Q And she woke up?
- 11 A Yes, sir. She popped her head up.
- 12 Q And looked at you?
- 13 A Yes, sir.
- 14 Q And you shut the door?
- 15 A Yes, sir.
- 16 Q When you checked on her at that time Ashley was in
- 17 the bed with Owen?
- 18 A Yes, sir.
- 19 Q She was not in the bedroom with Audrina?
- 20 A No sir, she was in her bedroom.
- 21 Q Audrina wasn't crying at that time, was she?
- 22 A No, sir.
- 23 Q She wasn't being fussy?
- 24 A No, sir.
- 25 Q She wasn't doing anything to cause you to check on

1 her and to open the door?

2 A No, sir.

3 Q It is just your testimony that you just checked on
4 her?

5 A Yes, sir. I was right by her room so I stuck my head
6 in and checked on her.

7 Q Then you put in your statement, I didn't shake her or
8 anything?

9 A In reference to one of the officer's questions, yes.

10 Q You were anticipating my question, weren't you?

11 A I am sorry?

12 Q You were anticipating what I was going to ask you,
13 weren't you, when you said that. You said the officer
14 asked you that question?

15 A I was just answering the question.

16 Q You thought it important enough at that point that
17 you put that in your statement, didn't you?

18 A When they asked me, yes sir, they wrote the statement
19 for me, I didn't write it.

20 Q You thought that was important to say that I didn't
21 shake her?

22 A At the time, yes, I guess I did.

23 Q Then you go on in your statement and you say, I tried
24 to wake Ashley up and she was tired. Then I tried to give
25 her some food. Now, that was the, that was one time you

1 went in there with her, wasn't it, you asked her if she
2 wanted to come eat with you, I mean, if she wanted to come
3 and watch the movie and eat something with you?

4 A I think it was two separate times. I asked her
5 before I started the movie. And then whenever I was about
6 done watching the movie I asked her if she wanted
7 something to eat.

8 Q So, where does it say that in your statements, that
9 you went in there two separate times. Does it say that?

10 A I am not sure if it does.

11 Q Well, in this statement it says, I tried to wake
12 Ashley up and she was tired. And then I tried to give her
13 some hash but she didn't want it. So, I went back to the
14 living room and put in a movie. Does it say anything in
15 this first statement about you going back in there to
16 check on Ashley at that time or a second time?

17 A I don't think it does, no.

18 Q Okay. So, it says Ashley didn't want anything to eat
19 so you got yourself something to eat and went back to
20 watch the movie, correct?

21 A Correct.

22 Q And what was the movie you were watching?

23 A It was a movie called Congo.

24 Q Okay. And you went back into the living area,
25 correct?

- 1 A Correct.
- 2 Q This is State's exhibit number 32. That is the room
- 3 you went back in to?
- 4 A Yes, sir.
- 5 Q That is a speaker right here, isn't it?
- 6 A Yes sir, it is.
- 7 Q And that is hooked up to the television?
- 8 A It is like a surround sound type thing.
- 9 Q It is a surround sound speaker, isn't it?
- 10 A Yes, sir.
- 11 Q And you were watching that television, that night?
- 12 A Yes, sir.
- 13 Q With the surround sound on it?
- 14 A Yes, sir.
- 15 Q And isn't it true that when EMS came in there that
- 16 morning to get that baby that was on so loud they had to
- 17 turn it down so they could talk?
- 18 A I am not sure if they had to do that or not. It may
- 19 have been.
- 20 Q It was on pretty loud, wasn't it?
- 21 A It is a Congo movie.
- 22 Q It is an action thriller, isn't it?
- 23 A Yes sir, it is kind of an action movie, almost horror
- 24 movie, I guess.
- 25 Q Now, when you first went into Audrina's room there

- 1 was a small night light on in that room, correct?
- 2 A Yes sir, there was always a night light on in the
- 3 room.
- 4 Q No overhead light on?
- 5 A No, sir.
- 6 Q No lamp on?
- 7 A No, sir.
- 8 Q She wasn't crying?
- 9 A No, sir.
- 10 Q I am still referring to your first statement, your
- 11 first voluntary statement. She wasn't crying?
- 12 A No, sir.
- 13 Q She wasn't fussy?
- 14 A No, sir.
- 15 Q She wasn't calling for her mama?
- 16 A No, sir.
- 17 Q You just thought you would go in there and check on
- 18 her?
- 19 A Yes, sir. I was right there by her so I stuck my
- 20 head in.
- 21 Q You then go on to say in this first statement, I
- 22 looked in on her about 1:20 and she didn't stick her head
- 23 up, correct?
- 24 A Correct.
- 25 Q So I thought she was asleep, you thought she was

1 asleep?

2 A Usually even if she were asleep she would pop her
3 head up, she was a very light sleeper.

4 Q I am not asking you that, Mr. Lewis, I am saying you
5 said you thought she was asleep?

6 A In this statement, yes.

7 Q And that was 1:20 in the morning?

8 A Correct.

9 Q And you go on to state, when I see her she was laying
10 on her stomach with her head on the rails on the crib?

11 A That is correct.

12 Q And at that point you thought she was asleep?

13 A At that point I thought something was wrong with her.

14 Q When you looked in on her the second time and saw her
15 you thought she was asleep, isn't that what you said?

16 A That is what it says in the statement, yes.

17 Q So you went in the room and tried to wake her up?

18 A Yes, sir.

19 Q All right. And there was a little night light on,
20 correct?

21 A Correct.

22 Q Ashley was in her room with Owen?

23 A Yes, sir.

24 Q You never made any statement in your first statement
25 about seeing or hearing Ashley come out of that room, did

1 you?

2 A No, sir.

3 Q So, you went into that room to a child you thought
4 was sleeping and you tried to wake her up?

5 A I saw a child that I thought was hurt, I tried to
6 help her.

7 Q You just stuck your head in the door, correct?

8 A At 11:00, yes.

9 Q She didn't, no, I am talking about at 1:20, you stuck
10 your head in the door?

11 A Yes, sir.

12 Q Or did you go in the room?

13 A After I saw the way she was laying in the crib I went
14 in the room.

15 Q And you still thought she was asleep but you said you
16 saw her laying horizontally?

17 A Yes sir, she was laying horizontally in the crib.

18 Q That is not in your statement either, is it?

19 A No sir, it is not in this statement.

20 Q It is not in your other statement either, is it?

21 A That she was laying horizontally, I don't think it
22 is.

23 Q So you go in there and you try to wake what you think
24 is a sleeping baby, you nudge her and you call her name,
25 didn't you?

1 A I called her name and when I saw how she was laying I
2 got her out of the crib.

3 Q You thought she had had a seizure?

4 A I thought it was possible that she had a seizure.

5 Q Okay. And you didn't say anything in here about
6 hearing any footsteps or let me, excuse me, you didn't say
7 anything in your first voluntary statement about hearing
8 any footsteps or anything like that?

9 A No, sir.

10 Q You didn't say anything about hearing a baby being
11 shaken?

12 A No, sir.

13 Q You go on to say in your statement, though, I thought
14 that she had a seizure?

15 A Yes, sir.

16 Q Trying to explain what you thought you saw?

17 A Yes, sir.

18 Q So you thought at that time that you would go into
19 the room of a sleeping baby who wasn't fussy, who wasn't
20 crying and you wake her up. You thought that was
21 important to do?

22 A From the way that she was laying in the crib, yes, I
23 thought it was important to check on her.

24 Q Now, what you put in this statement is basically the
25 same thing you told everybody else that morning, isn't it?

1 A Who do you mean.

2 Q I mean everybody that you talked to that morning
3 before that statement, it is basically the same thing you
4 told those other people?

5 A Yes, sir.

6 Q Chaplain Brown, Dr. Curry, law enforcement, Officer
7 Garrison, Dee Deal and law enforcement. That is what you
8 told all of those people, correct?

9 A Yes, sir.

10 Q You never mentioned anything to any of those people
11 about hearing any of these footsteps or these noises that
12 you describe five hours after that statement, did you?

13 A No, sir.

14 Q Then you came back and gave your second statement.
15 Let me show that to you, it is marked defendant's exhibit
16 for evidence number 2. Is that your statement?

17 A Yes sir, it is.

18 Q I am going to read the bottom of it for you. It says
19 I have read each page of this statement consisting of one
20 page, each page of which bears my signature and
21 corrections, if any, bear my initials and I certify that
22 the facts contained herein are true and correct. Is that
23 right?

24 A Yes sir, that is right.

25 Q So this second statement is a lot different than the

1 first statement, isn't it?

2 A Yes, sir.

3 Q So you were saying, based upon what I have read off
4 both of these statements you were saying both of these
5 statements are true and correct. Is that right?

6 A Yes, sir. I am not saying that the first one is
7 correct now.

8 Q No, you are not saying the first one is correct now,
9 are you. Because you had time to think about that that
10 morning, didn't you?

11 A The first one wasn't correct.

12 Q Between the first statement at 6:42 and this
13 statement here you had time to think about what you had
14 said all morning, didn't you?

15 A I had time to think but I also had time to use better
16 judgment.

17 Q And your better judgment was to protect yourself,
18 wasn't it?

19 A My better judgment was to tell the truth.

20 Q Your better judgment told you, I have told everybody
21 that associated with this case that I was the last person
22 in that baby's room. Isn't that what you told them?

23 A That is what I told everybody until I made this
24 statement, yes.

25 Q Right. Before that statement you told everybody that

1 my client, Ashley Hepburn, had gone to bed and she was in
2 the bed when you found that child and you didn't say
3 anything to anybody about hearing footsteps or the sounds
4 of a baby being shaken, did you?

5 A No, sir.

6 Q So you had time to think about it sitting there in
7 Laurens County Sheriffs Office. And you decided I better
8 protect myself in this case, didn't you?

9 A No, sir.

10 Q I better come up with a story to try to change what I
11 have told all of these other people, correct?

12 A No, sir.

13 Q But you certified both of them to be true?

14 A I did.

15 Q So you lied?

16 A Yes sir, I did.

17 Q So you are a liar?

18 A No sir, I am not.

19 Q All right. You certified both of these statements to
20 be true, correct?

21 A Correct.

22 Q So you are saying you lied?

23 A Yes, sir.

24 Q Mr. Lewis, you want us to believe that you lied when,
25 are you lying now?

1 A No, sir.

2 Q Or did you lie the morning of October 13th of 2009,
3 which one is it?

4 A I tried to protect her, I wasn't lying.

5 Q Okay. So you were trying to protect her, you weren't
6 lying. So you are saying that you lied to Chaplain Brown,
7 is that a lie?

8 A No sir, I don't recall everything that was said with
9 Chaplain Brown.

10 Q I am just trying to figure out how many times you
11 have lied, young man, that is what I am trying to figure
12 out here. You testified earlier when I was talking to you
13 that the sequence of events that Chaplain Brown testified
14 to, you told him that Ashley and Owen went to bed, that
15 you went in the room with the baby and found her, you took
16 the child to Ashley and you never said anything about
17 getting up. Was that a lie?

18 A No sir, it wasn't a lie. I just didn't tell them
19 everything.

20 Q You didn't tell the truth, is that what you are
21 wanting to say?

22 A Yes, sir.

23 Q So not only are you a liar, you don't tell the truth
24 either, is that what you are telling me?

25 A No, sir.

1 Q I asked you a while ago, you didn't tell the truth,
2 correct?

3 A The first statement was not true.

4 Q The first statement was not true. I am talking about
5 what you told these other folks because it sure sounded a
6 lot like what you put in this voluntary statement, what
7 you told everybody else before you did this first
8 statement at 6:42 a.m., it sure sounded a lot like that.
9 I am trying to figure out, you are saying this one is a
10 lie, correct?

11 A Correct.

12 Q This statement that you gave at 6:42 a.m., you are
13 saying that was a lie?

14 A Yes, sir.

15 Q So you have admitted that you are a liar. So is
16 everything you told Chaplain Brown, Dr. Curry, Dee Deal,
17 Officer Garrison and law enforcement over at the hospital,
18 did you lie to all of them too?

19 A Yes, sir.

20 Q Okay. So that is six lies all together you are
21 saying you told that morning. So you want us to believe
22 you now though, you are telling the truth now, is that it?

23 A Yes, sir.

24 Q Okay. It didn't have anything to do with the fact
25 that you realized between 6:42 a.m. and that second

1 statement that you could go to jail for the rest of your
2 life, you realized that, didn't you?

3 A No, sir.

4 Q You realized that you had told everybody that morning
5 you were the last person in that room with that child and
6 you found her in that condition and took her to her mother
7 across the hall, that is what you realized, isn't it?

8 A No, sir.

9 Q You didn't realize that, you didn't think about that?

10 A I didn't do anything wrong, why would that occur to
11 me.

12 Q So you want us to believe you lied and then you
13 decided to do the honorable thing?

14 A Yes, sir.

15 Q You decided to do the honorable thing after you
16 realized what you had said?

17 A Yes, sir.

18 Q And what you had said was that you were the only one
19 up, Ashley was in the bed with Owen, when you found the
20 child you took her to Ashley who was still in the bed with
21 Owen, that is what you had said?

22 A Yes, sir.

23 Q And you say that you and Ashley got into an argument
24 that evening?

25 A Yes, sir.

- 1 Q And you got upset, right?
- 2 A Yes, sir.
- 3 Q You got upset?
- 4 A Yes sir, we were both upset.
- 5 Q This thing about we started watching TV, I am
- 6 referring to your second statement, we started watching TV
- 7 and ended up getting into an argument over me telling her
- 8 how to be a better parent. You told her she needed to be
- 9 a better parent?
- 10 A Something to that nature, yes.
- 11 Q It is your statement, Mr. Lewis, I am reading out,
- 12 this is what you signed, correct?
- 13 A Yes, sir.
- 14 Q So you told her she needed to be a better parent?
- 15 A Yes, sir.
- 16 Q Okay. Do you know how to be a better parent than
- 17 her?
- 18 A Yes sir, I do.
- 19 Q Okay. And do you have children?
- 20 A No sir, I don't.
- 21 Q And you say Ashley got mad because I told her her son
- 22 got away with everything that he does and then you went to
- 23 lay down on her bed. So y'all got into an argument about
- 24 parenting, correct?
- 25 A Correct.

- 1 Q And none of that is in your first statement, is it?
- 2 A No, sir.
- 3 Q And this second statement that you gave is about five
- 4 and a half hours after your first statement?
- 5 A Yes, sir.
- 6 Q And you had been at the annex building for that
- 7 entire time?
- 8 A Yes, sir.
- 9 Q Never left?
- 10 A Never left.
- 11 Q And about, for ninety percent of that time you were
- 12 being interrogated?
- 13 A Yes, sir.
- 14 Q You had a little bit of time, I think you said, to
- 15 talk to your grandmother?
- 16 A Very briefly amount of time, yes sir.
- 17 Q And you say in this second statement that Owen got an
- 18 intense spanking?
- 19 A Yes, sir.
- 20 Q Not in your first statement?
- 21 A No, sir.
- 22 Q Nothing like that is in your first statement?
- 23 A No sir, it is not.
- 24 Q You didn't see a spanking that night, did you?
- 25 A Yes, I didn't see a spanking, no I didn't.

1 Q You didn't witness it, you weren't in there with
2 them?

3 A No, sir.

4 Q You were in the bedroom?

5 A Yes, sir.

6 Q They were in the bathroom?

7 A Yes, sir.

8 Q And this thing about jerking, you said something
9 about Ashley jerking Owen up by the arm, that is not in
10 either statement, is it. Take your time and read over it,
11 you won't find it.

12 A No sir, it isn't.

13 Q It is not in either one of those statements, is it,
14 about her jerking her child up by the arm?

15 A No, sir.

16 Q Is that something new you want to tell us about or is
17 that a lie too?

18 A That is not a lie.

19 Q Okay. All right. Are you sure?

20 A I am absolutely sure.

21 Q So you are building on the story as we go along, is
22 that what you are telling me?

23 A No, sir.

24 Q You now come back sixteen months later and, sixteen
25 months after these statements and you are wanting to give

- 1 us some new information, aren't you?
- 2 A No, sir.
- 3 Q So, when they were in the bathroom you were in
- 4 Ashley's bedroom, correct?
- 5 A That is correct.
- 6 Q And after Owen brushed his teeth that night he and
- 7 Ashley went to bed?
- 8 A Yes, sir.
- 9 Q Audrina was already in her crib?
- 10 A Yes, sir.
- 11 Q Did you ever go back in there and see Ashley reading
- 12 these books to Owen?
- 13 A No, sir.
- 14 Q You were in their watching football?
- 15 A Yes, sir.
- 16 Q And according to your second statement you went to
- 17 check on Audrina around 11:00 o'clock a.m.
- 18 A That is correct.
- 19 Q And you checked on her then, you were going to the
- 20 bathroom?
- 21 A Yes, sir.
- 22 Q And she was fine?
- 23 A She was fine.
- 24 Q Then around 12:00, it says, I started watching TV
- 25 again and then around 12:45 in the a.m. I heard Audrina

1 crying in her room. So you heard her crying?

2 A Yes, sir.

3 Q Okay, you heard her crying but you had, was the
4 football on or was that movie in at that time?

5 A The movie was in.

6 Q So you got this action, thriller, horror movie on the
7 surround sound and you hear Audrina crying?

8 A I could faintly hear her crying, yes.

9 Q You were in the den?

10 A Yes, sir.

11 Q You were laying on the couch?

12 A Yes, sir.

13 Q I think you have already told us where you were but
14 in State's exhibit number 32 you were somewhere on here on
15 the couch?

16 A Yes, sir.

17 Q Were you awake or were you asleep?

18 A I was awake.

19 Q Now, when I spoke to you last about this didn't you
20 say you had dozed off?

21 A I had almost drifted off to sleep, yes.

22 Q Didn't you say you had dozed off?

23 A Yes, sir.

24 Q So you didn't say that now, right?

25 A I wasn't asleep, whenever I heard the footsteps I was

1 alarmed, I could feel the vibrations and I never quite
2 dozed off to sleep.

3 Q Now, you went to check on Audrina the first time at
4 11:00 and you were going to the bathroom, she wasn't
5 crying, she wasn't fussy?

6 A No, sir.

7 Q But you checked on her?

8 A Yes, sir.

9 Q When did you check on her when you heard her crying
10 on this second statement?

11 A It was around 1:20 a.m.

12 Q Now, you say I started watching TV then around 12:45
13 in the a.m., I heard Audrina crying in her room. You
14 didn't go check on her, did you?

15 A No, sir.

16 Q So, you check on a baby that is not crying but a baby
17 that is crying you don't go check on her?

18 A I heard her mother go into the room, there was no
19 need for me to check on her.

20 Q Okay. Now, that is when you say I then heard some
21 loud footsteps coming from the back of the house where
22 Ashley and Owen were located at. Audrina then started
23 crying even louder as if being shaken, correct?

24 A Correct.

25 Q So, you heard what you thought was a baby being

1 shaken?

2 A Yes, sir.

3 Q At 12:45, correct?

4 A Yes, sir.

5 Q And you heard her crying louder like she was being
6 shaken?

7 A Yes, sir.

8 Q And you didn't go check on her then either, did you?

9 A Not at that point and time, it only occurred to me
10 that she had actually been shaken when law enforcement
11 told me it was shaken baby syndrome.

12 Q All right. So, that was a sound that you had heard
13 before?

14 A No, sir.

15 Q You didn't hear any kind of bang or any kind of thud
16 or anything like that, did you?

17 A No, sir.

18 Q But you get up and you take the time to go check on a
19 baby that is not crying or fussy. But when you hear what
20 you say you describe as a baby being shaken you didn't
21 bother to get up and go around there and check on her, did
22 you?

23 A No sir, I didn't check on her at that instance, no I
24 didn't.

25 Q You are saying that you waited ten or fifteen minutes

1 before you did anything?

2 A Yes, sir.

3 Q What is the sound of a baby being shaken sound like?

4 A It would be hard for me to do it myself, I just
5 remember hearing breaks in her voice and pauses and it
6 just sounds different than the way she would normally cry.

7 Q So your testimony is that you heard what you
8 described as a baby being shaken but you can't tell us
9 what it sounds like?

10 A I can't personally tell you what it sounded like, I
11 can describe to you what it sounds like, I can't make the
12 noise myself.

13 Q When you heard this you didn't bother to go in there
14 and say, what is going on here, why is this baby making
15 this sound I never heard before, did you?

16 A No, sir.

17 Q That is because it didn't happen that way, did it?

18 A It happened.

19 Q You waited fifteen minutes to get up from where you,
20 you are wanting us to believe you waited fifteen minutes
21 after you say you heard what you heard to even get up off
22 that couch?

23 A No sir, I went and checked on Ashley first and then I
24 asked her if she wanted anything to eat. I ate and then I
25 found Audrina the way she was.

1 Q I am saying, what I am saying though, listen to me,
2 Mr. Lewis, is after you say you heard what you say you
3 heard but you can't describe for us you waited fifteen
4 minutes to get up from the couch, didn't you?

5 A Yes, sir.

6 Q And when you waited those fifteen minutes, you saying
7 you heard what you heard and you say you heard it in that
8 baby's room right there, correct?

9 A Her crib is actually on the other side.

10 Q Okay. I am saying this room?

11 A Yes sir, that room.

12 Q Okay. And when you got up off the couch after you
13 said you heard what you heard, allegedly, you got up off
14 the couch in this room, you walked around to this foyer?

15 A Yes, sir.

16 Q You could probably hold your arms out like that and
17 touch both of those doors, couldn't you?

18 A Yes, sir.

19 Q And instead of turning left to go check on a baby
20 that you described allegedly hearing the sounds of the
21 mother go in there, stomp in there, shake her daughter and
22 them stomp out, that is what you say happened, right?

23 A Yes, sir.

24 Q And instead of turning left to go in that room to
25 check on that sixteen month old baby you say you turned

- 1 right to check on your girlfriend?
- 2 A Yes, sir.
- 3 Q The door to Ashley's room was closed?
- 4 A No, sir.
- 5 Q The door to Audrina's room was closed?
- 6 A Yes, sir.
- 7 Q Your statements don't say anything about hearing the
- 8 baby's door open or anything like that, do they?
- 9 A No, sir.
- 10 Q When you made that turn to the right, not going left
- 11 to check on a sixteen month old that you say allegedly you
- 12 heard what you heard and you made that turn to the right
- 13 at that time you went in there and asked her if she wanted
- 14 to come watch a movie and eat some hash that our
- 15 grandmother made?
- 16 A Yes, sir.
- 17 Q Owen is still in the bed with her?
- 18 A Yes, sir.
- 19 Q She is laying in her bed, Ashley is laying in the
- 20 bed?
- 21 A Correct.
- 22 Q She is asleep?
- 23 A Yes sir, to my knowledge she was asleep.
- 24 Q She was in there with the door, I mean with the
- 25 lights out?

- 1 A Correct.
- 2 Q You say you woke her up, correct?
- 3 A Yes sir, I woke her up.
- 4 Q So she was asleep?
- 5 A Yes, sir.
- 6 Q And she said, no, I don't want anything to eat, I
- 7 don't want to come watch the movie with you. So you leave
- 8 this bedroom, you leave this bedroom and you walk back
- 9 into this foyer, correct?
- 10 A Correct.
- 11 Q And instead of going straight across to investigate
- 12 what you say you allegedly heard over the surround sound
- 13 in that den, in that living area, over the Congo movie,
- 14 the thriller action movie, what you say you heard, instead
- 15 of going straight across to investigate to check on this
- 16 baby you turn left and go in the kitchen and get yourself
- 17 a plate of hash, didn't you?
- 18 A Yes, sir.
- 19 Q Then you leave that kitchen, you go again back into
- 20 the den and sit down and eat your food and watch a movie?
- 21 A Yes, sir.
- 22 Q And you are saying you did all this after what you
- 23 described for us as the sound of a baby being shaken?
- 24 A Yes, sir.
- 25 Q Mr. Lewis, that is pretty unbelievable, isn't it?

1 A At the time I didn't fully understand the severity of
2 the situation and was later explained that it was possible
3 shaken baby syndrome.

4 Q You never went in there to investigate, you never
5 thought of the urgency to go in there with what you are
6 telling us was true, you never went in there to check on
7 that baby?

8 A No, sir. I never thought that her mother would do
9 that to her.

10 Q And you never thought that her mother would do that
11 to her because her mother didn't do it, you did it, didn't
12 you?

13 A No, sir.

14 Q You went in that night while Ashley was in the bed
15 asleep with Owen and you caused these injuries to Audrina,
16 didn't you?

17 A No, sir.

18 Q That is why you have that second statement, you
19 decided you had to cover yourself, didn't you?

20 A No, sir.

21 Q Ashley was in there sleeping with Owen and you went
22 in there because you were upset, you were still upset and
23 you hurt that baby, didn't you?

24 A I could never get that upset, no sir.

25 Q And that doesn't match up with anything that you told

1 all of these people all morning long about what happened,
2 does it?

3 A No sir, it doesn't.

4 Q You admitted being a liar and now you are telling us
5 you couldn't get that upset to hurt that baby?

6 A No sir, I could not.

7 Q So should we believe you now?

8 A Yes, sir.

9 Q We should believe what you say now is true?

10 A Yes, sir.

11 Q Because you are afraid of going to jail, aren't you?

12 A I don't want to go to jail more than anyone would but
13 I want you to believe me because it is the truth.

14 Q But you didn't bother to tell anybody that until
15 about 12:00 o'clock that afternoon, did you?

16 A No, sir.

17 Q You told them something completely different?

18 A Yes, sir.

19 Q You signed the paper saying that what you told all of
20 those people at the hospital and signed a paper saying
21 that is true, that is, I certify that to be true and
22 correct?

23 A Yes, sir.

24 Q You never saw Owen out of bed that night?

25 A No, sir.

1 Q Have you ever used cocaine?
2 MR. WISE: Objection.
3 THE COURT: Mr. Able, relevance?
4 MR. ABLE: Sorry, Your Honor.
5 THE COURT: Ladies and gentlemen of the jury, that
6 last question was improper. You are instructed to
7 disregard that, there will be no inference drawn on that
8 whatsoever from that question in any way shape or form.
9 It was an improper question and should not have been
10 asked. Continue, Mr. Able.
11 MR. ABLE: Sorry, Your Honor.
12 Q When you finished eating you threw your plate in the
13 trash and that is when you decided you would go check on
14 Audrina?
15 A Yes, sir.
16 Q You say in the second statement you saw her laying
17 face down and she was hardly breathing?
18 A Yes, sir.
19 Q And you just popped your head in like before?
20 A Yes sir, pretty much, the way that I did before.
21 Q And you just pushed the door open and stuck your head
22 in?
23 A Yes, sir.
24 Q There is no light night?
25 A There is a night light.

1 Q I am sorry, there was a night light, there wasn't any
2 bedside lamp or over light on or anything like that?

3 A No, sir.

4 Q So you popped your head in and let me show you what
5 has been marked as State's exhibit number 62. That is
6 Audrina's crib looking from the door, correct?

7 A Correct.

8 Q And you popped your head in like you did the first
9 time, just pushed the door open?

10 A Yes, sir.

11 Q And with that low night light you looked in to check
12 on the child?

13 A Yes, sir.

14 Q And you say you saw her laying horizontal in that
15 crib from that point?

16 A Yes, sir.

17 Q And the low light?

18 A Yes, sir.

19 Q And again, the part about saying she was laying
20 horizontal in her crib, you didn't put that in either one
21 of your statements, did you?

22 A No, sir.

23 Q She wasn't being fussy then?

24 A No, sir.

25 Q She wasn't crying?

1 A No, sir.

2 Q So then again you go in and check on a baby who isn't
3 being fussy and isn't crying, you check on her then but
4 you wouldn't check on her when she was crying?

5 A No sir, because her mother was in the room with her.

6 Q And you didn't go check on her when you say you heard
7 what you heard?

8 A No sir, not until about ten minutes later.

9 Q So you go in that room to a baby you thought was
10 asleep, not crying, not being fussy and you try to wake
11 her up?

12 A I got her out of the crib, I didn't try to wake her
13 up.

14 Q She wasn't making any noise like she wanted to be
15 taken out of the crib or anything, was she?

16 A No sir, she wasn't making any noises at all.

17 Q So, after you say you saw her laying horizontally
18 which you didn't put in your statement that you say caused
19 you to go in there to check on her, that is when you say
20 you saw her and you picked her up?

21 A Yes, sir.

22 Q Mr. Lewis, you knew something was wrong with that
23 baby because you went in there that night, didn't you?

24 A No, sir.

25 Q You were the only one up at that time, weren't you?

1 A No sir, I know that she went into the room so I
2 wasn't the only one awake.

3 Q You were the only one, you told everyone previously,
4 prior to this last statement that you gave that you were
5 the only one out of bed that night, correct?

6 A Correct.

7 Q And you told everyone Ashley was still in the bed
8 across the hall?

9 A Correct.

10 Q Now, in your second statement you make a statement
11 about the baby was, Audrina was laying in her crib face
12 down and was hardly breathing. So, you determined she was
13 hardly breathing while she was laying in her crib face
14 down?

15 A No sir, I determined she was hardly breathing when I
16 got her out of the crib.

17 Q I am sorry?

18 A When I got her out of the crib I noticed that she was
19 barely breathing.

20 Q Now, you don't say anything in here about picking her
21 up before noticing that, did you?

22 A No, sir.

23 Q But you said she, Audrina was laying in her crib face
24 down and was hardly breathing. So, you say now that you
25 went in there and picked her up and noticed that she was

1 hardly breathing?

2 A Correct.

3 Q So before you picked her up you didn't know she was
4 hardly breathing?

5 A That's correct.

6 Q And when you went in to wake up Ashley after this
7 discovery you say she became frantic, didn't she?

8 A Not at first she didn't.

9 Q Is that the part you are saying about she went to use
10 the bathroom?

11 A That's correct.

12 Q And that is the part where you are adding today about
13 she went to the bathroom and you say, look, something is
14 wrong with the child?

15 A Yes sir, that is what I did.

16 Q And that is a new part to the story too, correct. Is
17 that in either one of these statements?

18 A No, sir.

19 Q That is a new part you are telling us about, correct?

20 A Yes, sir.

21 Q Ashley took that baby from you and held her and she
22 started screaming her name, didn't she?

23 A Yes, sir.

24 Q She was frantic?

25 A Yes, sir.

- 1 Q Panicking?
- 2 A Yes, sir.
- 3 Q She wanted to know what was wrong with her child?
- 4 A I assume she did but I think she should have known.
- 5 Q I am sorry?
- 6 A I think she was aware of what happened to her.
- 7 Q You think she was aware that you went in there and
- 8 beat that child to death?
- 9 A No sir, not at all.
- 10 Q Ashley was crying?
- 11 A Yes, sir.
- 12 Q And you went into her room holding her lifeless baby
- 13 and she was asleep in that room, correct?
- 14 A Correct.
- 15 Q After you had gone in there to check on her earlier
- 16 to ask her if she wanted some food and to watch a movie
- 17 after you had allegedly saying she went in there and hurt
- 18 her daughter, correct?
- 19 A Correct.
- 20 Q So, you appear in the doorway of her bedroom holding
- 21 her lifeless baby and she becomes frantic and upset just
- 22 like you would expect a mother to, don't you?
- 23 A After she went to the bathroom she became frantic
- 24 like I would have expected her to.
- 25 Q Where is the part about going to the bathroom in the

1 first statement?

2 A It is not in there.

3 Q You were the last one to be in that room with Audrina
4 that night, weren't you?

5 A Yes, sir.

6 Q You were the last one to hold Audrina in that room
7 that night, weren't you?

8 A Yes, sir.

9 Q You never saw Ashley hurt Audrina in any way that
10 night, did you?

11 A No, sir.

12 Q You never saw Ashley shake that baby that night, did
13 you?

14 A No, sir.

15 Q You never saw Ashley get out of bed that night, did
16 you?

17 A No, sir.

18 Q And after you say you heard what you heard allegedly
19 you never went to check on that baby until you decided you
20 were going to bed, correct?

21 A Correct.

22 Q So you have given a lot of different stories in this
23 case, haven't you?

24 A No sir, I don't think that I have.

25 Q You have talked to a lot of different people about

1 it, I am talking about the morning of October 13th of
2 2009, you talked to a lot of different people, didn't you?

3 A Yes, sir.

4 Q And you gave one concise specific story up until that
5 last sworn statement, didn't you?

6 A Yes, sir.

7 Q For everybody else that morning you reported the same
8 thing, correct?

9 A Correct.

10 Q You heard Ashley's testimony, correct?

11 A Correct.

12 Q And you heard Captain Brown's testimony, correct?

13 A Correct.

14 Q And you heard Dr. Curry's testimony, correct?

15 A Yes, sir.

16 Q And you heard Officer Garrison's testimony, correct?

17 A Yes, sir.

18 Q You heard Dee Deal's testimony, correct?

19 A Yes, sir.

20 Q And you heard the testimony of Dr. Crosswell in
21 Greenville, correct?

22 A Yes, sir.

23 Q And Ashley gave the same story each time to everybody
24 that she was asleep in the bed from the time she and Owen
25 laid down until you came in there with Audrina, correct?

- 1 A Yes, sir.
- 2 Q So the only one who has changed their story is you?
- 3 A Yes, sir.
- 4 Q And when Ashley, you never went to Greenville
5 Hospital, did you?
- 6 A No, sir.
- 7 Q You were down here giving this first statement?
- 8 A Yes, sir.
- 9 Q The one at 6:42 a.m.
- 10 A Yes, sir.
- 11 Q And you heard Dr. Crosswell last week testify that
12 she had obtained a history from Ashley that morning up in
13 Greenville, correct?
- 14 A Correct.
- 15 Q And Ashley was telling Dr. Crosswell, from her
16 testimony last week that she had gone to bed with Owen and
17 that you come in there to ask her if she wanted something
18 to eat, that you were the only one up and the next thing
19 she knew you were standing over her with the body of her
20 lifeless baby, correct?
- 21 A Correct.
- 22 Q That was Dr. Crosswell's testimony?
- 23 A Correct.
- 24 Q That is what Dr. Crosswell testified that Ashley told
25 her the morning of October 13th while you were down here

1 giving your sworn statement?

2 A Yes, sir.

3 Q And isn't it funny that when Ashley was telling Dr.
4 Crosswell was the same exact thing you were telling
5 Officer Ben Blackmon, it was the same story, wasn't it?

6 A Yes, sir.

7 Q I am sorry?

8 A Yes sir, that was the first statement, yes sir.

9 Q So what she is up there telling Dr. Fran Crosswell
10 you are down here at the same time telling Officer Ben
11 Blackmon at the sheriffs office, correct?

12 A To the best of my knowledge, yes.

13 Q It was the same thing, it was the same history of
14 events that she was relating to a doctor thirty miles away
15 while you were relating that same information to Ben
16 Blackmon here at the sheriffs office?

17 A Yes, sir.

18 Q And then five and a half hours later, after you had
19 realized you had put yourself in that baby's room by
20 yourself, the last one in there, what you had told
21 everybody else that morning that Ashley was asleep,
22 nothing about any of these footsteps, nothing about
23 hearing the sounds of a baby. That is when you came back
24 and made up this story, isn't it?

25 A No sir, I didn't make that story up.

1 Q Well, you say you made this one up?

2 A I didn't give the complete truth, no.

3 Q Okay. So, this complete truth and what she was
4 telling Dr. Crosswell, that is not the truth. How was she
5 up there telling the same thing, when you are down here
6 telling it to Ben Blackmon?

7 A I am not sure.

8 Q That is all I have of this witness.

9 THE COURT: Mr. Wise, redirect?

10 MR. WISE: Yes, sir.

11 REDIRECT EXAMINATION

12 By Mr. Wise:

13 Q Did Ashley Hepburn ever give a written statement to
14 the police officers that you know of?

15 A Not that I know of.

16 Q Did she ever sit in a three hour deposition?

17 A No, sir.

18 Q Did she ever testify in the DSS hearing?

19 A No, sir.

20 Q What was Ashley's normal habit to do with the bottle
21 that she gave Audrina at night?

22 A I am not exactly sure.

23 Q Let me ask you this question. When Audrina went to
24 bed what did Ashley do with the bottle?

25 A She would put it in her crib.

1 Q Put it in her crib. Did you ever see her put Audrina
2 to bed without putting the bottle in the crib?

3 A No, sir.

4 Q Now, after this happened they mentioned attempted
5 suicide?

6 A Yes, sir.

7 Q Were you upset over, what were you upset about?

8 A I loved Ashley and I didn't want to have to testify
9 against her, I didn't want to have to do any of this.

10 Q Did that bother you?

11 A Yes, sir.

12 Q After you went to a psychiatrist did it help you?

13 A Yes, sir.

14 Q Did it help you deal with the issues?

15 A Yes, sir.

16 Q In fact after you went to a psychiatrist did you go
17 to school?

18 A Yes, sir.

19 Q And after you went to the psychiatrist and had the
20 psychotherapy how did your grades do?

21 A They were fine.

22 Q In fact after you went to the psychiatrist did you
23 receive any awards?

24 A For my ACT I received an award for meeting, above
25 credible thinking on the ACT.

1 Q Did you get an award for that?

2 A I got a certificate and a gift certificate.

3 Q So the psychologist and psychiatrist you saw helped
4 you?

5 A Yes, sir.

6 Q You then put in your second statement about Ashley
7 jerking Audrina, didn't you?

8 A Do you mean Owen.

9 Q I mean, excuse me, Owen?

10 A No, sir.

11 Q You gave a deposition on March 4th of 2010?

12 A Yes, sir.

13 Q I ask you to look at page 63, line 18 and read what
14 you said in March of 2010?

15 A No sir, I know she spanked, I mean she jerked him up
16 by the arm, took him in the bathroom and you know what a
17 spanking sounds like and he was crying.

18 Q So you told Mr. Able in March of 2010 she jerked him
19 up by the arm, didn't she?

20 A Yes, sir.

21 Q How long did you talk with the police officers the
22 night of the 13th of October?

23 A Probably about six hours.

24 Q Did they ask you as many questions as you have been
25 asked by Mr. Able?

1 A No, sir.

2 Q Did they ask you as detailed questions as asked by
3 Mr. Able?

4 A No, sir.

5 Q Did they ask you as detailed of questions as I have
6 asked you?

7 A No, sir.

8 Q Thank you.

9 THE COURT: Ms. Mayes.

10 MS. MAYES: Yes sir, Your Honor.

11 RECROSS-EXAMINATION

12 By Ms. Mayes:

13 Q Mr. Lewis, can we agree now that you did in fact
14 speak with Dr. Curry, that would be Dr. Michelle Curry,
15 the emergency room physician who was treating Audrina?

16 A Yes, ma'am.

17 Q So you do recall Dr. Curry coming into the family
18 room where both you and Ashley were together, correct?

19 A I don't recall that but I heard testimony dictates
20 and I have no reason to question whether she is telling
21 the truth or not.

22 Q All right. And if her report indicates that she
23 entered the family room and spoke with all family members
24 present including the child's mother and her boyfriend you
25 don't dispute that, correct?

1 A Correct.

2 Q And at that point both of you indicated to Dr. Curry
3 that she had been healthy, correct?

4 A Correct.

5 Q And Mr. Wise, I believe or Mr. Able was asking you
6 about Ashley's statement at Greenville Hospital. You
7 weren't present at Greenville Hospital, correct?

8 A Correct.

9 Q So you don't know what Ashley was saying to any of
10 the medical personnel, correct?

11 A No, ma'am.

12 Q Like Dr. Crosswell?

13 A No, ma'am.

14 Q But what you do know is that when the two of you met
15 with the Chaplain in Greenwood at Self Hospital one of the
16 first things that happened that night the two of you were
17 together, correct?

18 A Correct.

19 Q And at that point and time when the Chaplain came
20 into the family room and spoke with both you and Ashley
21 and her parents or her mom and Mr. Crumley were there you
22 were providing the information that is in the first
23 statement, the written statement that I believe we have
24 all acknowledged now is not the whole truth, correct?

25 A Correct.

1 Q And so right there in front of Ashley you were giving
2 the history that she was asleep and you were watching TV
3 and then at some point later you went in and checked on
4 the baby and she was unresponsive, correct?

5 A Correct.

6 Q And as you were giving that history Ms. Hepburn was
7 nodding along and in agreement with that story, correct?

8 A Correct.

9 Q So, it is fair to say at that point and time neither
10 one of you had any more information that you were willing
11 to provide to medical personnel, correct?

12 A Correct.

13 Q And in the second statement where you talk about the
14 fact that it sounded like she was being shaken, I believe
15 your testimony on cross-examination by Mr. Able was you
16 didn't tell them what you were hearing, it sounded as if
17 she was being shaken, correct?

18 A Correct.

19 Q And after you heard that sound you never heard
20 Audrina again, did you?

21 A No, ma'am.

22 Q And I think we can all agree that that would have
23 been important information for the medical personnel to
24 know, correct?

25 A Correct.

1 Q Now, Mr. Able was asking you about the sound of the
2 movie, Congo, was that movie so loud that it was keeping
3 up all the other members of the home?

4 A No, ma'am.

5 Q Was it loud enough to wake Mr. Crumley and Ms. Davis?

6 A No, ma'am.

7 Q Who are right here in this bedroom over here?

8 A No, ma'am.

9 Q And was it loud enough to wake up Owen?

10 A No, ma'am.

11 Q And would it have been loud enough to keep Audrina
12 from sleeping?

13 A No, ma'am.

14 Q And in fact when y'all called 911 you called from
15 that living room area, correct?

16 A Correct.

17 Q Now, when, you testified previously about it being
18 approximately ten to fifteen minutes between when you hear
19 the sound of the stomping and Audrina's voice breaking and
20 then it sounded as if she was being shaken and you never
21 heard from her again. I believe your testimony a few
22 moments ago or earlier was that that was approximately ten
23 to fifteen minutes before you checked on her, correct?

24 A Correct.

25 Q But in this written statement you indicated that it

1 was around 12:45 in the morning I heard Audrina crying in
2 her room. I then heard some loud footsteps coming from
3 the back of the house where Ashley and Owen were located
4 at. Audrina then started crying even louder as if she was
5 being shaken. Then you later go into Ashley's room and
6 then there has been testimony that you went back to the
7 living room but ultimately I think we can agree that
8 according to when EMS arrived at the home, EMS arrived at
9 the home sometime after 1:20 a.m., correct?

10 A Correct.

11 Q So if your estimation of 12:45 in the morning is
12 accurate that would be in excess of thirty minutes, that
13 would be about thirty-five minutes.

14 MR. WISE: Your Honor, I am going to object to that,
15 that is a misleading question because if that is when EMS
16 arrived.

17 THE COURT: I will sustain, he can get what you are
18 getting at by rephrasing it.

19 MS. MAYES: Yes sir, Your Honor.

20 Q EMS, I believe, after everyone's estimate took around
21 ten minutes?

22 A Yes, ma'am.

23 Q Okay. Nothing further.

24 MR. WISE: Nothing further.

25 THE COURT: Mr. Lewis, thank you, you can step down.

1 I want to meet with counsel over here.

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

5 THE COURT: Ladies and gentlemen of the jury, it has
6 been a long day, we are going to break for the evening.
7 Please be back in the jury room tomorrow morning at 9:00
8 o'clock. Again, don't discuss the case with anyone
9 tonight. You will have this case to deliberate on
10 tomorrow at some point, hopefully in the late morning,
11 early afternoon. Don't discuss the case tonight with
12 anyone. You are excused.

13 (Whereupon, the jury excused from open court for the
14 day.)

15 THE COURT: The jury is out. We will be at ease in
16 this case until tomorrow at 9:00 o'clock.

17 (Whereupon, the trial will resume the next morning at
18 9:00 o'clock.)

19 THE COURT: The record should reflect that I
20 received, last evening, proposed charges and I previously
21 emailed and I meant to mention this to y'all yesterday.
22 But I emailed to you my proposed charges in hopes that you
23 would have an opportunity to look at them last night. I
24 don't know that you necessarily did. Apparently Mr. Wise
25 was able to take a look at them. He has submitted by

1 email two requests to charge on behalf of Mr. Lewis which
2 I will review here shortly because I couldn't open the
3 attachments.

4 MR. WISE: The oldest attorney in this trial can open
5 all of that.

6 THE COURT: I congratulate you, sir. So, I will
7 review those requests to charge, we won't discuss them at
8 this point and time but apparently Mr. Wise has submitted
9 three requests to charge. Y'all have copies for anything
10 that you would like for me to be looking at I will be more
11 than happy to take a look at that at this time. Ms.
12 Mayes, do you have anything specific?

13 MS. MAYES: No further request for charge, Your
14 Honor. I do have an objection to two of Mr. Wise's
15 charges.

16 THE COURT: We will take those up at a later point
17 and time when we give the jury a break.

18 MR. WISE: Your Honor, you have a curative
19 instruction yesterday when Mr. Able asked about the
20 cocaine.

21 THE COURT: Your first witness will also, yes, the
22 cocaine.

23 MR. WISE: On the basis of that question I also move
24 for a mistrial, for a curative instruction to erase that
25 from the jury's mind.

1 THE COURT: I am not entirely sure that the motion is
2 timely but I will take that under advisement. My usual
3 reaction is is that the curative instruction was
4 sufficient to hear the resulting prejudice. I think that
5 the speed in which I also gave the curative instruction
6 clearly conveyed to the jury that I had ruled that the
7 question was improper so I believe that the prejudice
8 which may have resulted in any prejudice, which may have
9 resulted to Mr. Lewis was cured by that curative
10 instruction. That is my initial reaction, do you want to
11 argue that again at a later point and time you will be at
12 liberty to do so. Let's have the jury.

13 (Whereupon, the jury came into open court at
14 approximately 9:15 a.m.)

15 THE COURT: Let the record reflect that the jury is
16 present. Ladies and gentlemen, I hope you had a restful
17 pleasant evening last night. We are still in Mr. Lewis'
18 case-in-chief. Mr. Wise, you may call your next witness,
19 sir.

20 MR. WISE: Call Ms. Starnes.

21 Carol Starnes, being first duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24 By Mr. Wise:

25 Q Please give us your full name.

- 1 A Carol Starnes.
- 2 Q And, Ms. Starnes, where do you live?
- 3 A Cedar Street, Clinton.
- 4 Q And how long have you been living there?
- 5 A 42 years.
- 6 Q You are kin to Brandon Lewis?
- 7 A I do.
- 8 Q And what relation are you to him?
- 9 A I am his grandmother.
- 10 Q Did you receive a phone call from him in the early
- 11 morning hours of October 13th of 2009?
- 12 A I did, at 5:15 from Self Memorial Hospital.
- 13 Q All right. Basically without going into great detail
- 14 what did you learn from that conversation?
- 15 A He told me that he was at Self Memorial Hospital,
- 16 that Ashley's baby had gotten something wrong with it,
- 17 they didn't know what was wrong with it and I said I will
- 18 be there in a few minutes.
- 19 Q Did you go to Self Hospital?
- 20 A I did.
- 21 Q Did you see him there?
- 22 A No, they told me at the emergency room that he was
- 23 transported back to Laurens with some officers.
- 24 Q Okay. Did you subsequently get a phone call from a
- 25 Laurens Deputy?

- 1 A I did.
- 2 Q And who was that?
- 3 A Stephon Williams.
- 4 Q As a result of that phone call what did you do?
- 5 A I came to the sheriffs department, I think that is
- 6 the annex building and over there they was interrogating
- 7 Brandon.
- 8 Q Did you see Brandon?
- 9 A I did.
- 10 Q And who was in the room with you, if you remember?
- 11 A Nobody, they let me go in and see him but there was
- 12 four or five officers in there that talked to me before I
- 13 went in.
- 14 Q Did you speak to Brandon?
- 15 A I did.
- 16 Q What was his demeanor?
- 17 A Brandon, he was crying so and so sweaty I was afraid
- 18 he was going into a seizure.
- 19 Q Did you give him any advice as to what to do?
- 20 A I did. I just said, calm down, you know, just talk
- 21 to me a little bit. And then I said, Brandon, if there is
- 22 anything that you haven't told these officers you have got
- 23 to tell it now. No matter what happens, you have got to
- 24 tell it now.
- 25 Q And how long had Brandon been living with you?

1 A Most of his life. My husband worked on an offshore
2 oil rig and was gone a month and at home a month. And his
3 daddy was gone and Erica would stay with her mama and
4 Brandon with me because we was both by ourselves.

5 Q So, he had been staying with you a good many years?

6 A Yes.

7 Q Thank you. Answer any questions they may have.

8 CROSS-EXAMINATION

9 By Ms. Mayes:

10 Q So, Ms. Starnes, if I understand correctly when you
11 first got the call from your grandson he was at Self
12 Hospital, correct?

13 A Yes.

14 Q And that was about 5:15 in the morning, correct?

15 A Yes.

16 Q So, are you aware now that he had been at the
17 hospital since about 1:30 that night?

18 A Yes.

19 Q So, he had been at the hospital about three or four
20 hours. Did he tell you what the doctors had talked with
21 him about?

22 A He said that he, the baby was real sick, he didn't
23 say what the doctor, I didn't know the doctors were there
24 at the time. He just briefly told me that and I said I
25 will be there.

1 Q Okay. So at that point he was telling you that the
2 baby was sick and that they didn't know what was wrong
3 with it, correct?

4 A I don't know if he said they didn't know what was
5 wrong. He said the baby was, he found the baby real sick,
6 unresponsive I think is what he said.

7 Q So, he didn't let you know at that time that the baby
8 had been abused?

9 A No.

10 Q All right. And then when you went down to the
11 sheriffs department that would have been about what time?

12 A Well, Stephon Williams called me at five minutes
13 after nine because I couldn't find Brandon and I went home
14 to wait on a call.

15 Q Five minutes after nine in the morning?

16 A Yes, ma'am.

17 Q And did you know that Brandon had already given one
18 sworn statement to law enforcement?

19 A I don't, I didn't.

20 Q So, he didn't talk with you about that?

21 A Mr. Williams, I didn't talk with Brandon at that
22 time. Mr. Williams just called me and ask if I could
23 come.

24 Q So at that point and time you weren't aware of what
25 stories he had told and who he had told them to?

1 A No, ma'am.

2 Q Nothing further.

3 THE COURT: Mr. Able.

4 CROSS-EXAMINATION

5 By Mr. Able:

6 Q Did Brandon tell you that he had talked to a lot of
7 people that morning?

8 A Yes, he did.

9 Q And did he tell you what the substance of those
10 conversations were?

11 A Yes, he did.

12 Q And he told you that he spoke to Officer Garrison?

13 A Repeat the last name.

14 Q Officer Garrison, the officer that testified he was
15 the first one to speak to him at Self?

16 A I don't remember that name.

17 Q Did he tell you he had talked to Dr. Curry, the ER
18 doctor?

19 A I can't remember that name.

20 Q Okay. Did he tell you he had talked to Dee Deal, the
21 DSS worker?

22 A Yes.

23 Q Did he tell you he had talked to Chaplain Alexander
24 Brown?

25 A No.

1 Q Did he tell you he had given the first statement to
2 Mr. Ben Blackmon?

3 A I think he had just given that statement when I got
4 there from what they told me.

5 Q Did he tell you at all what the substance of what his
6 conversation with all of these people earlier that
7 morning?

8 A They was asking him what had happened to the baby.

9 Q And he said he told them?

10 A He said he told them he didn't know.

11 Q So he didn't tell you that he had told all of these
12 people that he was the only one awake that morning?

13 A Yes, he did.

14 Q Oh, he did?

15 A Yes, sir.

16 Q And did he tell you that he told all of these people
17 that morning that Ashley was in the bed asleep?

18 A Yes.

19 Q And did he tell you that he was the last one in
20 there, that he had told all of these people he was the
21 last one in there with Audrina that morning?

22 A He told me that he went in there to check on her
23 before going to bed and that he found her unresponsive, I
24 don't know the word he used but it wasn't unresponsive.

25 Q So, it was only after he talked to you that he gave

1 this statement?

2 A Yes, sir.

3 Q And that was a lot different than the first
4 statement, are you aware of that now?

5 A No sir, he just added more to it.

6 Q Now, your grandson has been living with you a long
7 time?

8 A Has he been living with me?

9 Q He has been living with you a long time?

10 A Yes, sir.

11 Q You know him pretty well?

12 A Yes, sir.

13 Q You know that on September the 20th of 2009 on his
14 Myspace page he had posted he didn't want children?

15 A He didn't want what?

16 Q He didn't want children, he didn't want children?

17 A No sir, I am not into the computers.

18 Q You don't know that he had put on his--

19 MR. WISE: Your Honor, unless he asked her if she has
20 seen the Myspace page or Facebook page, she has no basis,
21 he needs to establish if she has seen that page first.

22 THE COURT: Sustained.

23 Q You have never seen his Myspace page?

24 A No, sir.

25 Q So you don't know what he has on it?

1 A No, sir.

2 Q Thank you.

3 THE COURT: Thank you, you can step down.

4 MR. WISE: Officer Moody.

5 THE COURT: You are still under oath from last week,
6 okay, sir.

7 MR. MOODY: Yes, sir.

8 THE COURT: Now, ladies and gentlemen, you have
9 previously heard evidence of a statement given to this
10 officer by one of the individuals involved in this
11 particular case. Again, at the time the testimony was
12 given about these statements, at the time these statements
13 were first elicited and you first heard them the rules of
14 evidence prohibited introduction of the entire statement
15 until later in the trial. We have now reached that
16 portion of the trial where it is proper to introduce the
17 full statement and allow you to hear the full statement.
18 Again, I am telling you this because I don't want you to
19 have the impression that anyone was attempting to keep the
20 full statement out, it was simply that the rules of
21 evidence prohibited the introduction of the full statement
22 earlier in the trial. Mr. Wise you may continue.

23 DIRECT EXAMINATION

24 By Mr. Wise:

25 Q I am going to hand you defendant's exhibit 2 which is

1 a statement by Richard Brandon Lewis and ask you if you
2 recognize that?

3 A I do.

4 Q Did you obtain that statement?

5 A I did.

6 Q Did you type that statement up?

7 A I did.

8 Q Did you type that statement up based upon your
9 conversation with Mr. Lewis?

10 A That is correct.

11 Q And in that statement did Mr. Lewis make any comments
12 about Ashley Hepburn?

13 A Yes, he did.

14 Q And what did he say in that statement?

15 A He stated that, Ashley got Owen to brush his teeth
16 and then put Audrina in her crib. Ashley then went to bed
17 with Owen and I went to the living room to watch TV. I
18 watched the football game and then around 11:00 in the
19 p.m. I went to check on Audrina. When I went to check on
20 her at that point Audrina was fine laying in the crib. I
21 started watching TV again and then around 12:45 in the
22 a.m. I heard Audrina crying in her room. I then heard
23 some loud footsteps coming from the back of the house
24 where Ashley and Owen were located at. Audrina then
25 started crying even louder as if she was being shaken.

1 Q And that was the statement that he gave at 11:56 that
2 morning?

3 A That's correct.

4 Q Who was present when that statement was given?

5 A Deputy Judy Stiles.

6 Q And I believe he had been previously, are you aware
7 of whether or not he had been talking to his grandmother
8 previously?

9 A I am not aware of that.

10 Q Who did you give that statement to after you got it?

11 A I don't recall who exactly at that time.

12 Q Do you know if you gave it to Officer Plaxico?

13 A I don't recall that.

14 Q Thank you.

15 THE COURT: Ms. Mayes.

16 MS. MAYES: This statement is in evidence, Your
17 Honor?

18 THE COURT: It is.

19 MR. WISE: It is.

20 CROSS-EXAMINATION

21 By Ms. Mayes:

22 Q Good morning. The second statement that was given by
23 Brandon Lewis, that was at 11:56 a.m, correct?

24 A That is correct.

25 Q And at one point do you recall if you came in to

1 start interviewing Brandon Lewis, maybe about an hour
2 before that?

3 A I say approximately about an hour before that, that
4 is correct.

5 Q So, you wouldn't have been present for the earlier
6 interviews with Investigator Blackmon?

7 A No, ma'am.

8 Q Or any of the other officers like Garrison?

9 A No, ma'am.

10 Q All right. So, at this point you weren't aware of
11 all of the different stories or the changing stories that
12 had been told by Brandon Lewis?

13 A I was not.

14 Q And you pretty much typed up what he was telling you
15 as it went?

16 A Verbatim and then let him read it afterwards.

17 Q And he didn't never mention to you anything about the
18 white towel in the crib or how the white towel got there?

19 A Not to my knowledge.

20 Q Nothing further.

21 THE COURT: Mr. Able.

22 MR. ABLE: No questions, Your Honor.

23 THE COURT: You can step down.

24 MS. MAYES: Your Honor, can we approach?

25 THE COURT: Please.

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

4 MR. WISE: Call Robert Plaxico.

5 THE COURT: You have testified previously, correct?

6 MR. PLAXICO: Yes, sir.

7 THE COURT: Have a seat. Again, ladies and
8 gentlemen, as I have instructed you of the last witness
9 who previously you heard testimony about a statement, this
10 witness collected from another individual involved in this
11 case. At the time that the statement was first heard the
12 rules prohibited introduction of the full statement until
13 later in the trial. Now, it is the proper time for you to
14 hear the full statement. And, again, I don't want you to
15 get the impression that anyone was keeping this statement
16 from you. You may proceed.

17 DIRECT EXAMINATION

18 By Mr. Wise:

19 Q Please give us your full name.

20 A Robert Plaxico.

21 Q And how long have you been with the Laurens Sheriffs
22 Department?

23 A 18 years.

24 Q You were the lead investigator in this case?

25 A Yes, sir.

1 Q Let me ask you, I am going to show you defendant's
2 exhibit 2 and ask you if you recognize that?

3 A Yes sir, it was a statement taken from Brandon Lewis.

4 Q And that was taken about, shortly before noon?

5 A Yes, sir.

6 Q Did you subsequently have an occasion to show that
7 statement to Ashley Hepburn?

8 A I did.

9 Q And about what time was that?

10 A It was late in the afternoon.

11 Q And did you let her read it?

12 A I did.

13 Q And did she make any comments after you read it?

14 A She did.

15 Q After she read it?

16 A She did.

17 Q And what was that comment?

18 A She said, oh my god all of this is true but I don't
19 remember hurting my baby.

20 Q Oh my god all of this is true but I don't remember
21 hurting my baby?

22 A Yes, sir.

23 Q Did you ask any other questions about that?

24 A I have talked to her about sometimes when you have a
25 real traumatic experience your mind will forget things and

1 block things out. And Ms. Hepburn then asked me if I
2 thought she had hurt her baby and just didn't remember it.
3 And I told her I thought she would have remembered it and
4 needed to tell me. And she raised her voice at me and
5 stated that she didn't hurt her baby. Said that twice and
6 then I terminated the interview.

7 Q You terminated the interview at that point?

8 A Yes, sir.

9 Q Thank you.

10 CROSS-EXAMINATION

11 By Ms. Mayes:

12 Q Good morning, Investigator Plaxico. Just to kind of
13 go back over your involvement in the case and you
14 testified previously and now we are talking about the full
15 content of some statements that were made to you. Your
16 first contact with Mr. Lewis was at Self Hospital, right?

17 A Correct.

18 Q So, at Self Hospital I think that is when you and
19 Investigator Blackmon went down there to try to get
20 information from both Ashley Hepburn and Brandon Lewis?

21 A That is correct.

22 Q And y'all show up at Self and at some point Ashley is
23 brought out to the parking lot?

24 A Yes, ma'am.

25 Q To speak with yourself and Investigator Blackmon, is

1 that correct?

2 A That is correct.

3 Q And in the parking lot she indicates that she doesn't
4 know, she didn't have any information to add about what
5 could have happened to the baby?

6 A Correct.

7 Q And then at some point y'all have contact with Mr.
8 Lewis as did Deputy Garrison?

9 A Yes, ma'am.

10 Q And the only thing he had to inform law enforcement
11 of at that point is that everybody else had been asleep in
12 the house and he was up watching a movie and at some point
13 he had gone to check on the child and found her
14 unresponsive?

15 A Yes, ma'am.

16 Q And he did also indicate that the child had been
17 healthy earlier in the evening while he was there?

18 A That is correct.

19 Q And so time goes by, Dr. Curry is involved, Chaplain
20 Alex Brown is involved in speaking with all of these
21 people and then Ashley goes on to Greenville Memorial and
22 the officers ask, you guys ask her to come on back to, ask
23 him to come on back to Laurens County Sheriffs Office to
24 add more information?

25 A Correct.

1 Q All right. So, let me ask you this, at this point
2 was it clear that between Ashley Hepburn and Brandon Lewis
3 law enforcement was not getting an accurate story?

4 A Yes, ma'am.

5 Q And at this point it was clear that this was a case
6 of child abuse based on the information you would receive
7 from Dr. Curry and other medical personnel?

8 A Yes, ma'am.

9 Q So he comes back, well he comes on down to the
10 sheriffs department and he waives his Miranda rights about
11 a little after 6:00 a.m., he waives his Miranda rights and
12 he gives the first written statement to Investigator
13 Blackmon?

14 A That is correct.

15 Q Let me give you a chance to look at this. He waives
16 his Miranda rights here at 6:24, correct?

17 A Yes, ma'am.

18 MR. WISE: Your Honor, that officer was not present
19 when that statement was given. I don't know how he can
20 make any opinion on the statement, about any statement.

21 MS. MAYES: I can clarify, Your Honor.

22 THE COURT: All right.

23 Q Investigator Plaxico, at what point, of course you
24 were at Self Hospital and had contact with Mr. Lewis and
25 then you were also at the sheriffs department because you

1 were the investigator on call that night, right?

2 A Yes, ma'am.

3 Q So you were also at the sheriffs department when he
4 came down there?

5 A Yes, ma'am.

6 Q Roughly sometime between 5:00 and 6:00 a.m.,
7 somewhere around there?

8 A Yes, ma'am.

9 Q And you are still present at the law enforcement
10 office?

11 A Yes, ma'am.

12 Q Throughout that morning on into the early morning
13 hours what degree of contact were you having with Mr.
14 Lewis as well as with other investigators in the case and
15 trying to get to more information about what had happened
16 to Audrina?

17 A I was in and out during his questioning and
18 statement. I don't really know what he was saying at the
19 time, you know, when the investigators finished his first
20 statement we did talk some.

21 Q And I believe after he waived Miranda rights and he
22 gave this first written statement, this is State's exhibit
23 30, this written statement where again he was reiterating
24 that he was watching a movie and everybody was asleep and
25 the child had been healthy and then a little while later

1 he mysteriously finds the child unconscious. You had an
2 opportunity to review this statement, correct?

3 A I did.

4 Q And upon reviewing this statement did you make it
5 clear to Mr. Lewis or did you make it clear to the other
6 investigators that that statement did not coincide with
7 what medical personnel had indicated?

8 A Yes ma'am, we felt like there was more there to be
9 told.

10 Q And so that statement is 6:42 a.m., correct?

11 A Yes, ma'am.

12 Q And ultimately the typed statement where he
13 implicates Ms. Hepburn was at 11:56 a.m., correct?

14 A Yes, ma'am.

15 Q So, a little over five hours?

16 A Yes, ma'am.

17 Q So for about five hours he was still down at the
18 sheriffs department trying to tell y'all that story about
19 how nobody knew anything, the child had just been found
20 that way?

21 A Yes, ma'am.

22 Q Now, after that statement that implicated Ms. Hepburn
23 ultimately she was arrested, correct?

24 A Correct.

25 Q And somewhere around the timeframe of him giving that

1 final statement to law enforcement and the ongoing
2 investigation you went to his home to try and see if there
3 was still even more information in addition to the typed
4 written statement that he can add, correct?

5 A Yes, ma'am.

6 Q Even considering the typed written statement which is
7 his final statement, is it the position of law enforcement
8 that he still was withholding information?

9 MR. WISE: Your Honor, I would object to that
10 question.

11 THE COURT: Sustained.

12 MS. MAYES: Yes sir, Your Honor.

13 Q Pursuant to the investigation did you find it
14 necessary to still attempt to followup with more
15 information with Mr. Lewis?

16 A That is correct.

17 Q All right. And so you show up at his house and as
18 soon as you enter the house he flees out the back door or
19 the side door, correct?

20 A The front door.

21 Q Okay. And it takes a while to find him, the family
22 rounds him up, brings him in and at that point he tells
23 you he has nothing further to add, correct?

24 A Correct.

25 Q And then some point the next day or a few days later

1 you get information that he is at the Laurens County
2 Hospital, correct?

3 A Correct.

4 Q And he was at the Laurens County Hospital because of
5 a suicide attempt?

6 A Yes, ma'am.

7 Q And you went to that location to have contact with
8 him as well?

9 A I did.

10 Q And throughout this investigation, Lieutenant
11 Plaxico, have you stayed in contact with the State Law
12 Enforcement Division?

13 A I have.

14 Q So y'all had worked together as law enforcement
15 agencies in this case?

16 A Yes, ma'am.

17 Q Now, I know you mentioned the contact you had with
18 Mr. Lewis beginning at Self Hospital and then continuing
19 throughout the five hours he was at the sheriffs
20 department. Can you kind of go back and reiterate also
21 the contact that you had with Ms. Hepburn along the way?

22 A Yes, ma'am. During the day we went to Greenville
23 Hospital and I talked to Ms. Hepburn there and, you know,
24 asked her to come down to the sheriffs department for an
25 interview and she did.

1 Q So, your first contact with Ms. Hepburn had been at
2 Self?

3 A It was.

4 Q And then at some point you were able to make it up to
5 Greenville Memorial to have further contact with her as
6 well?

7 A Yes, ma'am.

8 Q And when you were at Greenville Hospital was she
9 willing to come back to Laurens County and speak with
10 y'all?

11 A Yes ma'am, she came on her own.

12 Q Okay. And the interviews that were done at the
13 Laurens County Sheriffs Department, in your opinion were
14 they freely and voluntarily given?

15 A Yes, ma'am.

16 Q Based on your contact with Ms. Hepburn?

17 A Yes, ma'am.

18 Q And also just prior to your interview with Ms.
19 Hepburn do you know what other officers or agencies were
20 involved in interviewing Ms. Hepburn?

21 A There were two investigators from the Laurens County
22 Sheriffs Department, Mr. Franklin and Mr. Burns and then
23 there were two SLED agents interviewed her.

24 Q And the two SLED agents include Agent Casey Kirkland?

25 A Yes, ma'am.

1 Q And Agent Sara Hurt and that was in relation to a
2 child fatality?

3 A Correct.

4 Q Task Force?

5 A Yes, ma'am.

6 Q And they had come in at your request?

7 A They did.

8 Q So, the SLED agents had interviewed Ms. Hepburn just
9 prior or sometime before your interview with Ms. Hepburn,
10 is that correct?

11 A Correct.

12 Q And that is the interview you told us about just a
13 moment ago where she made the verbal statement?

14 A It is.

15 Q After reviewing the statement of Mr. Lewis?

16 A Correct.

17 Q At any point in the interview with Ms. Hepburn do you
18 recall if she implicated Mr. Lewis?

19 A She did not.

20 Q Nothing further.

21 THE COURT: Mr. Able.

22 CROSS-EXAMINATION

23 By Mr. Able:

24 Q Lieutenant Plaxico, you initially spoke to Ashley
25 Hepburn at Self Regional Hospital in Greenwood, correct?

1 A That is correct.

2 Q And that took place on the early morning hours of
3 October 13th of 2009?

4 A Correct.

5 Q You spoke to Mr. Lewis at the hospital as well?

6 A Correct.

7 Q And it was Mr. Lewis who told he had found Audrina
8 unconscious?

9 A It is.

10 Q Mr. Lewis at that time gave no indication that
11 Audrina had been injured at any time earlier in the night,
12 did he?

13 A No, sir.

14 Q Now, when you spoke to Mr. Lewis at the hospital,
15 that was when Mr. Dee Deal was present, you, Ben Blackmon
16 and Dee Deal?

17 A I don't remember Dee Deal being there.

18 Q But during that interview with Mr. Lewis at the
19 hospital he told you that Ashley had put the baby in the
20 bed around 10:30?

21 A Yes, sir.

22 Q And then he related that Ashley had gone to bed with
23 Owen, after putting Audrina down to bed?

24 A That is correct.

25 Q She and Owen then went and got in the bed together?

1 A That is correct.

2 Q And Owen was in the bed across the hall from Audrina
3 with his mother?

4 A Correct.

5 Q And Mr. Lewis told you he was watching TV and that
6 everyone else in the house was asleep, didn't he?

7 A Correct.

8 Q He told you everybody else, Mr. Crumley, Ms. Doris
9 Davis, Ashley and Owen were all in the bed asleep?

10 A Correct.

11 Q He was the only one awake?

12 A Correct.

13 Q He told you that later in the evening he had checked
14 on Audrina and she was fine, that was around 11:00
15 o'clock?

16 A That is correct.

17 Q Then he told you he went back to watching television?

18 A Correct.

19 Q He told you he later had gone to try and wake Ashley
20 up to see if she wanted something to eat and to watch
21 television?

22 A Correct.

23 Q He told you that morning that he said that Ashley
24 told him no, she didn't want anything and she went back to
25 sleep?

1 A Correct.

2 Q Then he said he went and got himself something to eat
3 and went back to watching TV?

4 A Correct.

5 Q Then later around 1:30 he found Audrina unconscious?

6 A That is correct.

7 Q At that time he didn't say anything at all to you or
8 Mr. Blackmon about hearing any footsteps or hearing any
9 noises about a baby being shaken or anything like that,
10 did he?

11 A That's correct.

12 Q Now, after talking to Mr. Lewis at the hospital that
13 was when he was taken to the Laurens County Sheriffs
14 Office to be interviewed?

15 A That is correct.

16 Q That was the first interview by Mr. Ben Blackmon?

17 A Correct.

18 Q And that was at 6:42 a.m. on October 13th of 2009?

19 A That's correct.

20 Q You reviewed that statement?

21 A I have.

22 Q You know what the content of it is?

23 A Yes, sir.

24 Q And the content of it is what he had told you earlier
25 that morning at Self Memorial Hospital?

- 1 A That's correct.
- 2 Q At that point there was no change in his story?
- 3 A No, sir.
- 4 Q Were you present when he spoke to Officer Garrison?
- 5 A No, sir.
- 6 Q Were you present when he spoke to Chaplain Brown?
- 7 A No, sir.
- 8 Q Were you present when he, when I say I mean Mr.
- 9 Lewis, were you present when Mr. Lewis spoke to Dr. Curry?
- 10 A No, sir.
- 11 Q So you weren't present when he related that same
- 12 story to any of those persons?
- 13 A No, sir.
- 14 Q Now, Officer, do you know Ms. Carol Starnes?
- 15 A I do.
- 16 Q Brandon's grandmother?
- 17 A I do.
- 18 Q How do you know her?
- 19 A I have been knowing her since I was a little boy,
- 20 they used to live down the street from a place my daddy
- 21 owned.
- 22 Q And from your investigation, Officer, in this case
- 23 there is no physical evidence of any nature that would
- 24 indicate Ashley Hepburn harmed that child, is it?
- 25 A Correct.

1 Q There is no physical evidence that would indicate
2 that Ashley Hepburn caused the death of that child?

3 A Correct.

4 Q And that is what you determine as a lead investigator
5 on this case?

6 A Yes, sir.

7 Q Now, you never obtained a written statement from
8 Ashley Hepburn, did you?

9 A Did not.

10 Q There were never any tape recordings or video
11 recordings made of any interview with Ashley Hepburn?

12 A That's correct.

13 Q Now, as to the, you have got the statements. As to
14 the second statement which has been marked as defendant's
15 exhibit number 2. It says in there that Mr. Lewis relates
16 the sounds of hearing the footsteps across the floor and
17 then what he describes as the sounds of a baby being
18 shaken and some more footsteps, correct?

19 A Correct.

20 Q And it is your contention that when you showed that
21 to Ashley the evening of October 13th of 2009 that she
22 said, oh my god all that is true but I don't remember
23 hurting my baby?

24 A That is correct.

25 Q And when she made that statement nobody else was

1 present during the interview with Ashley?

2 A No, sir.

3 Q And the previous interview she said, with Officer
4 Franklin and, Officer Franklin and Mr. Jim Burns were
5 together when they interviewed her?

6 A Correct.

7 Q And then they had the two SLED agents, Ms. Kirkland
8 and, Agent Kirkland and Agent Hurt together when they
9 interviewed her?

10 A Correct.

11 Q But you didn't have anybody there with you when you
12 spoke to Ashley?

13 A I did not.

14 Q Nobody else heard her make those statements?

15 A No, sir.

16 Q Nobody can testify that they heard those statements?

17 A No, sir.

18 Q There, you didn't take any notes?

19 A No, sir.

20 Q You didn't put anything in writing?

21 A No, sir.

22 Q You made no notes about any of the conversation?

23 A That is correct.

24 Q Now, Officer, you had prepared a supplemental report
25 concerning your interview of Ashley Hepburn, didn't you?

1 A Correct.

2 Q And the first supplemental report you prepared was
3 done on October, it was dated October 19th of 2009?

4 A That is correct.

5 Q Now, the first incident or incident report in this
6 case, that was prepared on October 13th of 2009?

7 A That is correct.

8 Q And that was done by Officer Garrison?

9 A Yes, sir.

10 Q And you weren't present for that conversation?

11 A No, sir.

12 Q Now, as to the first supplemental report on October
13 19th of 2009, about half way down you had indicated that
14 Brandon had come back and given his second statement?

15 A Correct.

16 Q And it was after that second statement you said that
17 you interviewed Ashley and she stated that she had done
18 nothing to the child, that she had just woke up to her
19 boyfriend yelling for help?

20 A That is correct.

21 Q So that was after Mr. Lewis had given not just the
22 first statement but the second statement that has been
23 marked as defendant's exhibit number 2?

24 A Correct.

25 Q You went and spoke to her at that time and you

1 prepared in your supplemental report dated October 19th of
2 2009 then an investigating officer interviewed Ashley and
3 she stated that she had done nothing to the child, that
4 she had just woke up to her boyfriend yelling for help?

5 A That is correct.

6 Q There is nothing else in any of that statement about
7 Ashley saying anything else?

8 A That is correct.

9 Q And then you prepared a second supplemental report?

10 A Correct.

11 Q Now, before you prepared that second report October
12 of 2010 you had testified at a DSS hearing?

13 A I had.

14 Q And that was the first time you indicated anything
15 about Ashley saying this about, oh my god all of this is
16 true?

17 A That is correct.

18 Q Again, you didn't make any writings or
19 contemporaneous notes at the time?

20 A No, sir.

21 Q It wasn't recorded?

22 A No, sir.

23 Q It wasn't videotaped?

24 A No, sir.

25 Q You just said in May of 2010 at that hearing this is

1 what she said?

2 A Correct.

3 Q And you didn't say that in the case-in-chief by DSS,
4 you didn't say on cross-examination by me, you said it at
5 the very end when you were being cross-examined by Mr.
6 Wise?

7 A That is correct.

8 Q Now, on the second report you prepared that was dated
9 October 11th of 2010?

10 A Correct.

11 Q And that report was prepared 363 days after your
12 report, the initial report of October the 13th of 2009?

13 A Correct.

14 Q And you interviewed Ashley you are saying on October
15 13th of 2010?

16 A That is correct.

17 Q And so this second report of October 11th of 2010 was
18 prepared 357 days after the first supplemental report
19 where you said she didn't say anything?

20 A That's correct.

21 Q So the second supplemental report, you come back
22 almost a year later and include in that report these
23 statements that you attribute to Ms. Ashley Hepburn as she
24 said, oh my god all of this is true but I don't remember
25 hurting my baby?

1 A That is correct.

2 Q Now, when Mr. Burns and Mr. Franklin interviewed
3 Ashley on October 13th of 2009, they didn't obtain a
4 written statement?

5 A They did not.

6 Q And then she was subsequently interviewed that same
7 afternoon by Agent Kirkland and Agent Hurt?

8 A That is correct.

9 Q And they didn't obtain a written statement?

10 A No, sir.

11 Q She had told them pretty much the same series of
12 events, the same history that she related to everybody
13 else that day, correct?

14 A Correct.

15 Q They didn't obtain a written statement, they made
16 notes?

17 A That is correct.

18 Q You were aware that they had prepared a memorandum of
19 those notes?

20 A I am not, I was not.

21 Q Now, in your report of October 11th of 2010 you say
22 Ashley Hepburn was interviewed by Franklin and Burns on
23 which no statement was given but she did sign her waiver
24 of rights. Ashley Hepburn was interviewed by SLED agents
25 Casey Kirkland and Sara Hurt. Now, Casey Kirkland's name

1 changed between the time of, the beginning of this
2 investigation to her current name as Kirkland, correct?

3 A Yes.

4 Q So, in your report that you made a year later you
5 included the name, the name changed to Casey Kirkland?

6 A I did.

7 Q I believe she got divorced and her name changed?

8 A I did.

9 Q Now, in that report, your testimony just now was that
10 you allowed Ashley to read Brandon's second statement?

11 A That is correct.

12 Q Which has been marked as defendant's exhibit number 2
13 and that is when she made this statement?

14 A That is correct.

15 Q There is nothing in your, that report that you
16 prepared a year later saying that you allowed Ashley to
17 read Brandon's statement, is it?

18 A That is correct.

19 Q You didn't obtain any written statement?

20 A No, sir.

21 Q No one ever obtained a statement from her?

22 A No, sir.

23 Q It goes on to say that Ashley Hepburn was then
24 interviewed by Plaxico at which time she started crying
25 and said, oh my god all of this is true but I don't

1 remember hurting my baby. Ashley asked Plaxico, do you
2 think I did this to my baby, I don't remember it. Plaxico
3 then replied, I think you remember and need just to tell
4 me what happened. And Ashley raised her voice saying I
5 wouldn't hurt my baby, I wouldn't hurt my baby?

6 A Correct.

7 Q And you terminated the interview?

8 A I did.

9 Q You released her to go home?

10 A Yes sir, she left the building.

11 Q She left the building?

12 A She did.

13 Q And she had just told you all of that was true?

14 A Correct.

15 Q And you didn't arrest her?

16 A I did not.

17 Q Now, Officer, on January the 13th of 2010 there was a
18 preliminary hearing held in this case, correct?

19 A Correct.

20 Q And I asked you at that preliminary hearing on
21 October the 13th of 2010, what evidence do you have that
22 says my client was involved with the shaking of this baby
23 other than anything, anything other than the statement of
24 Richard Brandon Lewis. Do you remember that?

25 A I do.

1 Q And what was your answer?

2 A I didn't have anything else.

3 Q You told me, at this time nothing, correct?

4 A Correct.

5 Q You didn't say anything about a statement being made
6 by Ashley Hepburn?

7 A I did not.

8 Q You didn't say anything her supposedly saying, oh my
9 god all of this is true?

10 A Correct.

11 Q You didn't tell me anything about her saying, I don't
12 remember hurting my baby?

13 A Correct.

14 Q And the time of that preliminary hearing, January
15 13th of 2010, that was only three months after this
16 incident, correct?

17 A Correct.

18 Q And it wasn't until May of 2010 that you ever made
19 mention of those statements?

20 A Correct.

21 Q You told me there was no evidence that Ms. Hepburn
22 was involved with these injuries to Audrina except the
23 second statement of Richard Brandon Lewis?

24 A Correct.

25 Q And that statement was given some five hours after he

1 had given his first statement?

2 A Correct.

3 Q And that was the reason that you arrested my client
4 was based solely upon this statement of Richard Brandon
5 Lewis?

6 A It was.

7 Q And there were only two people to blame that night,
8 weren't there?

9 A Correct.

10 Q Him or her?

11 A Correct.

12 Q And you would expect him to blame her, wouldn't you?

13 A Correct.

14 Q Thank you.

15 THE COURT: Mr. Wise?

16 REDIRECT EXAMINATION

17 By Mr. Wise:

18 Q Officer Plaxico, how common is it to show another
19 person's statement to see their reaction to it?

20 A We do it quite often.

21 Q Is that a good investigative technique?

22 A It is.

23 Q And you got to talk to Brandon several days after he
24 gave that statement, didn't you?

25 A I did.

1 Q At his grandmother's house?

2 A Yes, sir.

3 Q And he answered all of your questions?

4 A He did.

5 Q And I think we also discussed earlier, did you ever
6 ask to see him again after that, did you ever ask to talk
7 to him again after you talked to him at his grandmother's
8 house?

9 A Yes, I went to see him one time after that.

10 Q One time after that?

11 A Yes, sir.

12 Q So two times?

13 A Yes, sir.

14 Q Did he tell you anything that would justify getting a
15 warrant on him?

16 A No, sir.

17 Q And are you also aware that he testified at a DSS
18 hearing?

19 A I am.

20 Q Did you learn that he said anything in May of 2010
21 that would justify getting a warrant on him?

22 A No, sir.

23 Q And the statement that Ashley was giving was, was it
24 the same statement that Brandon said originally at the
25 hospital or the same facts?

1 A Pretty much.

2 Q When you were talking to Ms. Hepburn she was pretty
3 much saying what Brandon had said at the hospital?

4 A Yes, sir.

5 Q And he was the first one to say something at the
6 hospital?

7 A Yes sir, I think we talked to him first.

8 Q All right. Thank you.

9 RE CROSS-EXAMINATION

10 By Ms. Mayes:

11 Q Mr. Able was asking you about physical evidence that
12 conclusively ties Ms. Hepburn to the crime. Is there any
13 physical evidence which conclusively ties either Mr. Lewis
14 or Ms. Hepburn to the crime?

15 A No, ma'am.

16 Q All right. And does the fact that there isn't
17 conclusive physical evidence such as fingerprints mean
18 that nobody can ever be arrested?

19 A That's correct.

20 Q In other words, does that mean you can't prosecute a
21 case just because you don't have fingerprints?

22 A You have to go with what you have got at the time.

23 Q Thank you, nothing further.

24 RE CROSS-EXAMINATION

25 By Mr. Able:

1 Q And what you had at the time was this statement?

2 A That is correct.

3 Q Of Richard Brandon Lewis?

4 A Yes, sir.

5 Q And subsequently he was arrested?

6 A He was.

7 Q Mr. Lewis?

8 A He was.

9 Q By SLED?

10 A Correct.

11 Q And the second time you had gone to visit him, well
12 the first time was when he ran out the door at his
13 grandmother's house?

14 A Correct.

15 Q And the second time was when you went to see him at
16 the hospital when he tried to kill himself the day after
17 Audrina died?

18 A Correct.

19 Q Thank you.

20 REDIRECT EXAMINATION

21 By Mr. Wise:

22 Q And you also, did you also have an admission from Ms.
23 Hepburn?

24 A Sir?

25 Q When you made the decision to arrest somebody did you

1 also have an admission from Ms. Hepburn?

2 A The only thing I had was Mr. Lewis' statement and
3 what she said to me.

4 Q What she said to you, is that an admission from her?

5 A It was.

6 Q Thank you.

7 THE COURT: Thank you, sir, you can step down. Mr.
8 Wise, call your next witness.

9 MR. WISE: We call Agent Kirkland.

10 THE COURT: Agent, I will remind you that you are
11 still under oath from your previous testimony. Again,
12 ladies and gentlemen of the jury, I anticipate that Mr.
13 Wise will elicit testimony about previous statements you
14 heard earlier in this trial. Again, at the time that
15 statement was heard by you you had not heard the full
16 statement due to the rules of evidence. At this point in
17 the trial it is proper for you to receive or to hear the
18 full statement based upon the rules of evidence. No one
19 is trying to prevent you from hearing the full statement
20 earlier in the trial, it is simply a matter of law that
21 those statements could not come in at that point and time
22 based on the rules of evidence. You may proceed, Mr.
23 Wise.

24 DIRECT EXAMINATION

25 By Mr. Wise:

1 Q Agent Kirkland, you interviewed Ms. Hepburn, did you
2 not?

3 A Yes, sir.

4 Q Did you obtain a written statement from her?

5 A No, sir.

6 Q Did you try to obtain a written statement from her?

7 A Yes, sir.

8 Q Did you ask her for one?

9 A Yes, sir.

10 Q Did she give you one?

11 A No, sir.

12 Q Did she give a reason for refusing?

13 A She was very defensive.

14 Q Excuse me?

15 A She was defensive during the interview.

16 Q Turn your notes, if you would please, and look at the
17 bottom of the second page of your notes, the very last
18 line that begins with Brandon. Do you see that?

19 A Yes, sir.

20 Q What was the question that preceded that?

21 A At that time I was asking who was in the house and
22 went through each person in the house, what they were
23 doing. And I asked about Brandon, about what was Brandon
24 doing.

25 Q So you asked her what was Brandon doing?

- 1 A Yes, sir.
- 2 Q What was her response to that?
- 3 A Brandon was watching TV during it all.
- 4 Q During it all?
- 5 A Yes, sir.
- 6 Q Was that words that she put in?
- 7 A That is what I wrote down.
- 8 Q That wasn't your interpretation of anything she said?
- 9 A No, sir.
- 10 Q All right. Did she also tell you, what did she tell
- 11 you about Daniel Hepburn?
- 12 A That she doesn't put it past their father to do this
- 13 and that the dad, Daniel, resented her for the divorce and
- 14 he has aggressive behavior.
- 15 Q And did you accuse Mr. Hepburn of being involved in
- 16 this?
- 17 A No, sir. I had spoke with him previously at the
- 18 hospital and knew that he had not seen or had not been
- 19 around the children in four to five days.
- 20 Q Thank you.

21 CROSS-EXAMINATION

22 By Ms. Mayes:

- 23 Q Agent Kirkland, just to go back to where you fit in
- 24 the timeline of your contact with Ms. Hepburn, sometime
- 25 after she left Self Hospital she went to Greenville

1 Memorial, correct?

2 A Yes.

3 Q And you also had the opportunity to be at Greenville
4 Memorial on the early morning hours or into the noon hours
5 of October 13th of 2009, correct?

6 A Correct.

7 Q And for what purpose were you at Greenville Memorial?

8 A I was contacted by Lieutenant Plaxico to assist and
9 I, myself and Agent Hurt went to Greenville Memorial
10 Hospital, photographed the victim, Audrina Hepburn, while
11 she was in the hospital room in ICU and spoke with
12 physicians.

13 Q So are you talking about these photographs of Audrina
14 that we have seen before, this being State's exhibit
15 number 7?

16 A Correct.

17 Q And in these photographs that depict the stomach
18 bruises as well as other bruises, they were taken by you
19 and Agent Hurt?

20 A Correct.

21 Q Do your notes or does your information reflect what
22 time those photographs were taken?

23 A On my goldenrod I document what time, it was around
24 1:00.

25 Q So it was around 1:00 p.m., correct?

1 A Correct.

2 Q So if EMS was called at 1:20 a.m. in the early
3 morning hours, we are talking about little less than
4 twelve hours later, correct?

5 A Correct.

6 Q So you photographed Audrina and was Plaxico,
7 Lieutenant Plaxico also at Greenville Memorial?

8 A Yes.

9 Q And at some point the decision was made to ask Ms.
10 Hepburn to come back to the, or come down to the sheriffs
11 department in order for additional interviews to take
12 place, correct?

13 A Correct.

14 Q So, she leaves Greenville Memorial and voluntarily
15 comes to the sheriffs department?

16 A Yes.

17 Q And you and Agent Hurt also arrive at the sheriffs
18 department?

19 A Yes, we came in after she did.

20 Q And at some point Lieutenant Plaxico is also back at
21 the sheriffs department after leaving Greenville Memorial,
22 correct?

23 A Correct.

24 Q So, she gets down there to the sheriffs department
25 and at what is called, what is noted as 15:55 she has been

1 read her Miranda warnings or Miranda rights, what time
2 would that be in civilian time?

3 A 3:55 p.m.

4 Q So by 3:55 she is back here at the, well she is at
5 the sheriffs department, she waives her Miranda rights and
6 then she has contact with you and Agent Hurt, correct?

7 A Correct.

8 Q Now, when you go about the interview, how do you
9 approach it in terms of needing certain information,
10 everything that may have occurred that night of the
11 incident?

12 A When we do interviews involving child abuse or if the
13 child is already deceased by that time, we normally go
14 back twenty-four hours from when the child was presented
15 to the ER or if we found the deceased at the home. At
16 that time we want every detail, the mother or whoever we
17 are interviewing can give us, what the child ate, what the
18 child plays with, who was around the child, when the child
19 went to the bathroom and then we try to find holes in the
20 story to go back and we will do follow-up questions. And
21 then at that time we need to know who was in the house and
22 what were they doing.

23 Q And just to clarify, you were with the special
24 victim's unit at the State Law Enforcement Division?

25 A Yes.

1 Q Is this the first child homicide case you had
2 investigated?

3 A No, ma'am.

4 Q So, you had experience investigating a homicide of
5 children, correct?

6 A Correct.

7 Q And that also includes cases of abuse of head injury
8 such as Audrina's?

9 A Yes.

10 Q So, you are trying to find out who is in the home in
11 the last twenty-four hours, and what did Ms. Hepburn tell
12 you in that regard?

13 A That it was her, Ashley Hepburn, Brandon Lewis, her
14 mom, Doris and her mom's boyfriend, David Crumley.

15 Q And did you also ask questions concerning Audrina's
16 health and whether she had been in a normal state of
17 health up to the point that she was found by Mr. Lewis?

18 A Yes, she was fine, she ate earlier that day, she was
19 playing with her brother, Owen.

20 Q And then Ms. Hepburn reported to you that her mom and
21 Mr. Crumley had gone to bed even before Ms. Hepburn
22 arrived, correct?

23 A Correct.

24 Q So, then it is her and Mr. Lewis and the two-year-old
25 in the home with Audrina, correct?

1 A Correct.

2 Q Now, at any point during this interview did she
3 implicate the codefendant, Brandon Lewis?

4 A No, ma'am.

5 Q Would she have had the opportunity to do so?

6 A Yes. I asked, you know, who was in the home and at
7 that time trying to figure out what everybody was doing,
8 Doris and David were asleep. She didn't know who could
9 have done it. She never said Brandon, she said she didn't
10 put it past Daniel, doesn't put it past their father to do
11 this.

12 Q So, when you are asking her who could have done it,
13 she did not implicate Mr. Lewis and instead implicates the
14 biological father who had not had contact with the child
15 in over four days, correct?

16 A Correct.

17 Q And did you make it clear to Ms. Hepburn that you
18 were investigating not only her injuries that night but
19 any previous injuries?

20 A Yes.

21 Q How did you make that clear?

22 A We wanted to know if the child had had any previous
23 injuries prior to this event, had she been to the doctor
24 and I believe, that is when she said that, had the slight
25 bruise on the chin and a bruise on the stomach.

1 Q All right. And at any point did she implicate Mr.
2 Lewis on the bruise on the chin or the bruise on the
3 stomach?

4 A No.

5 Q And did she report anything to you about Audrina
6 being afraid to be around Mr. Lewis?

7 A No.

8 Q Did she ask you to talk to her family members who
9 could corroborate that Audrina was afraid to be around Mr.
10 Lewis?

11 A No.

12 Q So at this point and time she had not implicated him
13 in any way, is that correct?

14 A Correct.

15 Q Now, can you force someone to give you a written
16 statement during the course of a law enforcement
17 interview?

18 A No, ma'am.

19 Q Why or why not?

20 A It is their legal right, they don't have to write a
21 statement.

22 Q All right. Was she aware she had the opportunity to
23 provide a written statement?

24 A Yes.

25 Q But instead she participated in a verbal interview,

1 correct?

2 A Correct and I took notes and then at that time we had
3 the opportunity to write a memorandum of the interview
4 based off of our written notes.

5 Q And how would you describe her demeanor during the
6 course of the interview?

7 A She was calm and then she would yell out at, towards
8 us and then we would calm her back down and then she would
9 yell out, she was very defensive.

10 Q And after your interview with Ms. Hepburn did you see
11 anyone else having contact with her?

12 A Lieutenant Plaxico went in right after we did.

13 Q And he had contact with her one on one?

14 A Yes, with the door cracked.

15 Q Nothing further.

16 CROSS-EXAMINATION

17 By Mr. Able:

18 Q Now, Agent, you said my client was defensive. During
19 the interview you were accusing her of hurting her baby,
20 weren't you?

21 A No, sir. I was asking questions to get information
22 regarding her child's injuries that she was in the
23 hospital for.

24 Q You didn't say to her that she was the one who did
25 it, that she needed to confess to it?

1 A No.

2 Q Now, you said about, she had the opportunity to
3 provide a written statement, that is not in your
4 memorandum, is it?

5 A No, sir.

6 Q You didn't put anything in there about y'all had
7 provided her a memorandum, offered to have her write a
8 statement that she refused?

9 A No sir, when we write a memorandum interview, there
10 is not a statement that is written to go along with it.

11 Q Okay. But I am saying, you didn't put that in your
12 memorandum from your notes. Your notes don't reflect that
13 you offered to have her write a written statement and that
14 she refused to do that?

15 A No, sir.

16 Q Now, as it concerns the statement, you are saying,
17 Ashley stated that Brandon was watching TV during all of
18 this. She had told you also, Ashley stated that when she
19 went to her room to read two books to Owen and she fell,
20 and they both fell asleep in the bed, correct?

21 A Are you on the memorandum?

22 Q I am sorry?

23 A Where on the memorandum?

24 Q Oh, I am sorry. Second page, fifth line down about
25 half way through. It says Ashley stated that she then

1 went to her room to read two books to Owen and they both
2 fell asleep in the bed?

3 A Yes, sir.

4 Q Ashley stated that Brandon asked her if she wanted to
5 watch Congo and if she wanted any food that his
6 grandmother made and she fell asleep again?

7 A Yes, sir.

8 Q So, she was telling you she was asleep?

9 A Yes, sir.

10 Q Throughout this whole thing, correct, that is the
11 only statement she ever made, she was asleep?

12 A Correct.

13 Q Except Brandon had woke her up, like a lot of the
14 testimony has been revealed, Brandon woke her up to see if
15 she wanted to come watch a movie and eat some food?

16 A Correct.

17 Q So, she said she was asleep and she was saying, Mr.
18 Wise asked you a moment ago about the statement, Ashley
19 stated that Brandon was watching TV during all of this.
20 She was saying that he was the only one up, correct?

21 A She said he was watching TV.

22 Q But your statement says Ashley stated that Brandon
23 was watching TV during all of this?

24 A Yes.

25 Q And that he was the only one up. Is there anything

- 1 in there to indicate anybody else was up?
- 2 A No, sir.
- 3 Q Now, we are talking about the father. You had asked
- 4 Ashley about if her mother could have done this, didn't
- 5 you?
- 6 A I asked about anybody in the house.
- 7 Q You asked about Mr. Crumley, if he could have done
- 8 it?
- 9 A Correct.
- 10 Q You asked if the father was capable of doing it?
- 11 A I asked if Brandon, Doris, David and herself and then
- 12 I said if they did not do it who else could have done it.
- 13 Q And that is when she said something about the father?
- 14 A Correct.
- 15 Q Now, your notes don't reveal any of the questions you
- 16 asked, do they?
- 17 A No sir, I write my answers or her answers.
- 18 Q You just write down answers?
- 19 A Correct.
- 20 Q You don't have a list of questions to match up those
- 21 answers to?
- 22 A We have normal questions that we ask for any child
- 23 that passes away or is abused and from there, depending on
- 24 the answers we are giving we follow-up with other
- 25 questions.

1 Q I am saying, from the notes that I have been
2 provided, you don't have questions to those answers?

3 A No, sir.

4 Q And this interview took place on October 13th of
5 2009, 6:00 o'clock a.m.

6 A 6:00 p.m.

7 Q I am sorry, 6:00 p.m.

8 A Yes, sir.

9 Q Your memorandum of the interview was not prepared
10 from your notes until April 7th of 2010?

11 A Correct, I had my notes at that time.

12 Q You had your notes but not the questions?

13 A Correct, I didn't write the questions. I don't ever
14 put the questions in a memorandum of an interview.

15 Q Now, your interview as not taped?

16 A No, sir.

17 Q Your interview was not videoed?

18 A No, sir.

19 Q You are going off your notes from October 13th of
20 2009 and prepared your memo some five, six months after
21 that?

22 A Yes, sir.

23 Q Now, didn't she tell you that Brandon was the only
24 one up?

25 A She said that he was watching TV.

1 Q Okay. And that, that would have meant that he was
2 the only one who could have done this, correct?

3 A She never came out and said that he was the only one
4 that could have done this.

5 Q Well, what I am saying is is that she was in the bed
6 asleep and Brandon was watching TV?

7 A Correct.

8 Q And you don't interpret that to mean that he was the
9 only one who could have done it?

10 A No sir, I don't interpret their words.

11 Q She told you that though, didn't she?

12 A She told me that Brandon was watching TV and that she
13 was in the bed asleep as well as her mother and her
14 mother's boyfriend were asleep.

15 Q And you are going off those notes you made?

16 A Yes, sir.

17 Q My point is, there was nothing in your notes or in
18 your memorandum where Ashley said Doris Davis couldn't
19 have done this, David Crumley couldn't have done this,
20 Brandon Lewis couldn't have done this?

21 A No sir, when I followed up with the questions, I said
22 if Doris couldn't have done it, David couldn't have done
23 it and Brandon or yourself who could have because she at
24 that time, she had said that Brandon, I mean her mother,
25 she never saw her mother or her mother's boyfriend come

1 out of their bedroom.

2 Q And she did say that Brandon Lewis was watching
3 television?

4 A She said he was watching TV during all of this.

5 Q And she was in the bed asleep?

6 A Yes, sir.

7 Q Thank you, that is all I have.

8 REDIRECT EXAMINATION

9 By Mr. Wise:

10 Q When you talk about the types of questions that are
11 asked when you are conducting an interview like this.

12 A Sir, repeat that, I am sorry.

13 Q What are you talking about the type of questions you
14 ask people when you are being interviewed?

15 A We ask open questions. Can you start at the
16 beginning of, at this time I told her to start at 8:00
17 a.m. on October the 12th which was the day before the
18 child was found.

19 Q And what are open questions, how would you describe
20 those generally?

21 A They are not leading, it is not an answer that I
22 expect. I don't ask the question with the answer in there
23 that I expect.

24 Q You don't ask questions in which you expect the
25 person just to agree with your statement?

1 A Correct.

2 Q You let them speak?

3 A Yes.

4 Q Did she ever tell you that she thought Brandon was
5 watching TV during it all?

6 A She stated that Brandon was watching TV during it
7 all.

8 Q Did she say that, did she say how she knew that?

9 A No, sir.

10 Q You say she was, at the time, yelling at you?

11 A Yes, sir.

12 Q Raising her voice?

13 A Yes, sir.

14 Q Is that what you mean by defensive or was defensive,
15 something else?

16 A That way.

17 Q Did you ever look at her and accuse her of injuring
18 her child?

19 A No, sir.

20 Q Thank you.

21 RECROSS-EXAMINATION

22 By Ms. Mayes:

23 Q Agent Kirkland, the memorandum that has been
24 discussed by Mr. Able, what is that based on?

25 A My written notes.

1 Q And are your written notes taken contemporaneously
2 with the interview with Ms. Hepburn?

3 A Yes, ma'am.

4 Q In other words, as you ask a question and she
5 provides an answer you write it down, correct?

6 A Correct.

7 Q And that includes everything from what happened that
8 morning when y'all got up to what did you eat?

9 A Correct.

10 Q All the way to whether Audrina had preexisting
11 bruises and who could have done this?

12 A Correct.

13 Q All right. And the memorandum that has been
14 mentioned, is that fair and accurate or fair and correct
15 representation of your notes?

16 A Yes, ma'am.

17 MR. ABLE: Objection, Your Honor.

18 THE COURT: What was the question?

19 MS. MAYES: Yes sir, Your Honor, at this time the
20 State is offering the memorandum pursuant to rule 106,
21 under the rule of completeness. I think there have been
22 portions offered from both defense counsel and at this
23 time I believe that full context of the memorandum of the
24 interview should be considered.

25 THE COURT: Let me see that, if I may.

1 MR. WISE: Under Rule 106, I think we should actually
2 enter a copy of the handwritten notes and the memorandum.

3 MS. MAYES: I have no objection to that.

4 THE COURT: Do you have any objection to the notes.

5 MR. ABLE: I mean she has testified from them, there
6 is no need to have the memorandum and the notes.

7 THE COURT: Let me look at it, if I may. Y'all come
8 up here.

9 (Whereupon, a bench conference was held in the
10 presence of the jury but out of the hearing of the
11 jury.)

12 THE COURT: Ms. Mayes, you can continue. You can go
13 ahead and mark that if you want, we will need a clean copy
14 of the actual typed statement.

15 MR. ABLE: Judge, that is over my objection.

16 THE COURT: Subject to your objection. State's 66
17 and 67 is admitted into evidence.

18 (Whereupon, State's Exhibit 66 and 67 was admitted
19 into evidence.)

20 Q Agent Kirkland, identify State's exhibit number 67?

21 A Yes. It is the memorandum of the interview that I
22 took or that I typed from the interview of Ashley Hepburn
23 on October 13th of 2009.

24 Q And State's exhibit 66?

25 A They are my handwritten notes from the interview of

1 Daniel Hepburn on October 13th at 1:30 as well as my
2 handwritten notes from the interview of Ashley Hepburn on
3 October 13th at 6:00 p.m.

4 Q State's exhibit 66, if you could identify that?

5 A My handwritten notes from the interview of Ashley
6 Hepburn on October the 13th starting at 6:00 p.m.

7 Q And are those the same notes that you ultimately used
8 to prepare the written memorandum?

9 A Yes.

10 Q And I believe that is the written memorandum that is
11 now in evidence?

12 A Correct.

13 Q State's exhibit 67?

14 A Yes.

15 Q If you could, refer to the last page of your
16 handwritten notes and there is some text written upside
17 down, what is that text?

18 A Here?

19 Q Right.

20 A That was notes that I was taking, that was at the end
21 of the interview.

22 Q In reference to what?

23 A Questions that were being asked to Ashley.

24 Q Okay. About what specific topic?

25 A Previous injuries and how Audrina was that day.

1 Q Now, what other information is written upside down?

2 A That Ashley's mother is on antidepressant every day.

3 Q All right. So, just to clarify, that is a reference
4 to Ashley's mother, Doris Davis and not to Ashley herself,
5 correct?

6 A Correct.

7 Q Nothing further.

8 MR. ABLE: Nothing further.

9 MR. WISE: Nothing further.

10 THE COURT: Ladies and gentlemen, we will take a ten
11 minute break. Don't discuss the case and will have you
12 back in about ten minutes.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: We will take a short break.

16 (Whereupon, a short break was taken.)

17 THE COURT: Before we bring the jury back in let's go
18 ahead and address the objection, Mr. Able needs to have an
19 opportunity to address the objection that he had to the
20 introduction of the last two exhibits, the typed statement
21 as well as the Agent's notes. Anything else you need to
22 put on the record about that, Mr. Able?

23 MR. ABLE: No sir, just my position that she had
24 testified before from those, not the notes but the
25 memorandum. On earlier testimony I think it was all in

1 her testimony. I didn't see a necessity of putting it in.

2 THE COURT: I understand. At the very least I
3 believe that is probably cumulative evidence but your
4 objection is noted. I also had mentioned to you at
5 sidebar that we had, about thirty minutes ago, that there
6 was and you had informed me that it would not be your
7 intention to seek a jury charge concerning the
8 voluntariness of your client's statements to law
9 enforcement at this particular point and time. The charge
10 being along the lines that the jury would have to find
11 that beyond a reasonable doubt that your client's will is
12 not overborn, et cetera, et cetera, is that correct?

13 MR. ABLE: That is correct, Your Honor.

14 THE COURT: Very good. Let's have the jury, please.

15 (Whereupon, the jury came into open court at
16 approximately 10:52 a.m.)

17 MR. ABLE: Judge, can we approach?

18 THE COURT: Yes.

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

22 THE COURT: Ladies and gentlemen, I am going to have
23 to ask you to step back out again, I apologize. There has
24 been a matter between the time I called for you and you
25 came out here, a matter arose that I have to discuss. If

1 you will, adjourn and don't discuss the case.

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

3 THE COURT: The jury is out. At sidebar Mr. Able
4 informed me and I have a copy of the physician's records
5 here with me. One of the diagnosis, having a discharged
6 diagnosis, or Axis I, diagnosis is adjustment disorder
7 with depressed mood as well as cannabis abuse. Mr. Wise
8 has an issue with the cannabis abuse being referred to.

9 MR. WISE: I do, Your Honor, and the reason is this.
10 You know, I objected to the comment about his being,
11 attempted to take his life in the first place. Everybody
12 had the discovery, these medical records. There wasn't a
13 scintilla of evidence, scintilla of evidence in those
14 medical records that says that he did anything to harm
15 this child. What they are going to argue is that he
16 attempted to kill himself because he killed the child.
17 That is not in keeping with the testimony of Dr. Hill who
18 was given reason and explanations for his depression,
19 based upon her interview and analysis of the situation.
20 And the idea of cannabis abuse which has nothing to do
21 with this trial, no one has even said they were smoking
22 marijuana on the night in question, no one has said that
23 cannabis abuse would cause someone to batter a child. It
24 is so over prejudicial that it is simply not probative of
25 anything and certainly more prejudicial than probative.

1 Dr. Hill talked about his depression and what she learned
2 from the history of it, I think is inappropriate to refute
3 the inference that they are going to make that he killed
4 himself because he harmed the child.

5 THE COURT: Page two of the report also indicates,
6 "reports occasional marijuana use, is unwilling to
7 quantitate frequency of use." The second page also
8 references a, "past arrest for possession of marijuana".

9 MR. WISE: I think several years ago he ended up in
10 the PTI program.

11 THE COURT: Mr. Able, for what purpose do you want to
12 go down this road.

13 MR. ABLE: Judge, I think as you have already noted,
14 it is part of a diagnosis. I think if Mr. Wise is going
15 to put this doctor up and say, this was his diagnosis I
16 don't think we can just say this was part of it, if they
17 want part of it to come in I think all of it has to come
18 in. That is part of why he was there, that is part of the
19 Doctor's diagnosis.

20 MR. WISE: That may be part of what was diagnosed,
21 but it wasn't the part of why he was there. He was there
22 for the depression arousing our of this incident which
23 they are going to infer because he harmed the child when
24 everybody knows there is nothing in the record at the
25 hospital that says that. So, I have got to refute that

1 impression.

2 THE COURT: It is my understanding that, would I be
3 correct in saying that there was no indication of
4 marijuana use on this particular evening, on the evening
5 or at any time preceding the evening which would have
6 affected his mental state at the time the incident took
7 place.

8 MR. WISE: That is correct. The statement from the
9 officers, they were asked that and both of them denied
10 marijuana use, I know Mr. Lewis did.

11 THE COURT: Now, the obvious question is to what
12 extent the prior marijuana use could have affected him and
13 rendered him more or less susceptible to depression or may
14 have affected his mental state in such a way as to, to
15 cause him to theoretically shake the child.

16 MR. WISE: And if someone has an expert that can say
17 that it does that then I would guess it would be
18 admissible if they have got an expert to say that.
19 Without an expert to say that certainly it is prejudicial
20 and probative. I don't think you will find an expert that
21 says that.

22 THE COURT: Are you representing to the Court, Mr.
23 Wise, that you have spoken to the doctor and the doctor
24 has told you that cannabis abuse did not factor into the
25 incidences or his mental state?

1 MR. WISE: I don't think she has an opinion one way
2 or the other. I have talked to her but I didn't ask her
3 that specific question. I will be happy to call her up
4 here and ask her.

5 THE COURT: She is probably the only person in the
6 court house right now who would be qualified to answer
7 that question and that is key to me ruling upon Mr.
8 Wise's, I am sorry, Mr. Able's, at least proffer that
9 testimony and see what she has to say. If we could have
10 the doctor to come on up.

11 MR. WISE: Your Honor, I assume with this little
12 hearing we can dispense with the qualifications?

13 THE COURT: Right, we can.

14 Vernetta Hill Jacobs, being
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Wise:

18 Q Dr. Jacobs, you were the psychiatrist that saw
19 Brandon Lewis at the V.A. hospital?

20 A Yes, I was.

21 Q And I believe you were sitting in the courtroom
22 during our little discussion we had?

23 A Yes.

24 Q To what affect did marijuana use, prior use or
25 whatever have, do you have an opinion as to what affect it

1 may have had on causing anything that would result in
2 abusive behavior of a child?

3 A I won't be able to clearly state that and the reason
4 is is that he was unwillingly to tell me how frequently he
5 used marijuana. And so because of that I can't really
6 make a determination as to how marijuana may have
7 contributed to his depression, he did not want to discuss
8 it.

9 Q Okay. Let's back up a minute. So you are unable to
10 determine whether or not it affects his depression,
11 correct?

12 A Right.

13 Q What about the possibility, are you qualified or is
14 anybody qualified to talk about whether or not marijuana
15 would cause aggressive reaction?

16 A I can talk about the affects of marijuana.

17 Q Okay.

18 A Yes, I can. Marijuana is a psychoactive substance
19 that can affect the brain. It can lead to episodes of
20 agitation, it can lead to a motivation, it can lead to
21 symptoms that can mimic depression. And it could possibly
22 have had an affect but I can't say specifically to this
23 person.

24 Q Can you make a determination, the last time marijuana
25 was used by Mr. Lewis?

1 A No, he was unwilling to discuss marijuana and I
2 documented that in my notes.

3 Q All right.

4 THE COURT: Ms. Mayes?

5 MS. MAYES: No questions, Your Honor.

6 THE COURT: Mr. Able?

7 MR. ABLE: No questions, Your Honor.

8 THE COURT: Thank you, doctor, you can step down.
9 Mr. Able?

10 MR. ABLE: Judge, I think it is clear based upon the
11 doctor's testimony that it could have played a role, his
12 cannabis abuse could have played a role in his actions
13 that night. And based upon that we think we would be
14 allowed to get into it.

15 THE COURT: Mr. Wise?

16 MR. WISE: I don't think the testimony shows it is
17 going to be a player role in the activities that night.
18 Obviously, it could play a role in the cause of his
19 depression which that creates another issue.

20 THE COURT: Mr. Wise, the discussions with the
21 doctor, maybe I should have asked her while she was up
22 here but what is the significance of an Axis I diagnosis.

23 MR. WISE: Judge, you have a bigger background on
24 that than I do. We can ask her again.

25 THE COURT: Ma'am, come on back up. Just so the

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 VI

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 record is clear for purposes of appeal, explain to the
2 Court, if you will, the significance of an Axis I
3 diagnosis as well as the other axis that psychiatrists
4 will describe in a psychotic occasion, please, Doctor.

5 A In my evaluation of this, of any patient I review
6 mood, psychotic, substance and anxiety disorders. And I
7 make a determination as to what diagnosis may be present
8 from the interview and I document all of that information
9 on an Axis I. The purpose of this is it helps a provider
10 to know how to accurately provide treatment for patients
11 and what to look for in the future in terms of the
12 condition itself and improvement.

13 THE COURT: And, Doctor, is it possible for any given
14 patient who presents psychotic symptoms and psychiatric
15 problems to have multiple Axis I diagnosis?

16 A Yes, it is.

17 THE COURT: So, in your experience, especially with
18 these occurring disorders or patients who are suffering
19 from substance abuse as well as mental illness, how common
20 is it to see a patient suffering from both mental
21 illnesses as well as substance disorder?

22 A Very common.

23 THE COURT: And what percentage of patients would you
24 estimate who suffer from disorders of that nature?

25 A Probably around the nature of fifty to sixty percent

1 of patients.

2 THE COURT: So between half or over half of the
3 patients that you see would have a substance abuse
4 component that would be mentioned in an Axis I diagnosis
5 as well as a psychiatric diagnosis?

6 A That is correct.

7 THE COURT: And here is the chicken or the egg
8 question, to what extent do substance abuse diagnosis play
9 into or would have an affect on psychiatric diagnosis
10 which is made?

11 A That is a chicken or egg question. For this
12 particular individual, because of the background that he
13 had, the childhood that he had that was very traumatic, he
14 would be predisposed to having episodes of depression. A
15 lot of times in order to deal with depression or even
16 because of environmental exposures a person may use
17 substances as well. It is known that substances can
18 worsen psychiatric disorders. But for this particular
19 individual what came first, I can't really say.

20 THE COURT: But based upon his background and his
21 childhood it would be to a reasonable degree of medical
22 certainty you could state it would be expected for at
23 least, for some more common that perhaps Mr. Lewis would
24 in fact suffer from psychiatric illness such as
25 depression?

1 A Yes.

2 THE COURT: And is it also common to find that people
3 self-medicate from time to time with substances in an
4 effort to address the side affects of their psychiatric
5 problem?

6 A Yes.

7 THE COURT: Do you believe that that is a reasonable
8 possibility in this case with respect to Mr. Lewis'
9 marijuana use?

10 A It is a reasonable possibility.

11 THE COURT: Ms. Mayes, questions?

12 MS. MAYES: No sir, Your Honor.

13 THE COURT: Mr. Able?

14 MR. ABLE: No, sir.

15 THE COURT: Mr. Wise?

16 MR. WISE: None, Your Honor.

17 THE COURT: You may step down. Here is what is
18 concerning me, in all honesty under 403 analysis I do find
19 that it would be, under 401 analysis certainly this is
20 evidence which is relevant to a degree, has some degree of
21 relevance. The Court is conscious of the fact that there
22 has already been questions asked of Mr. Lewis when he was
23 on the stand concerning his cocaine use. Had that
24 question not been asked I would be more inclined to
25 perhaps permit some level of discussion of this but even

1 though I have instructed the jury to disregard and even
2 though I have taken Mr. Wise's motion for a mistrial under
3 advisement, due to that question I believe if we ventured
4 down this road the prejudicial effect of any reference to
5 marijuana use especially there is absolutely no evidence
6 whatsoever that marijuana played any role in this
7 particular crime. I believe any reference to its use or
8 the Axis I diagnosis of cannabis abuse, I believe that the
9 prejudicial effect of that testimony would outweigh any
10 probative value. I am also swayed, of course, by the
11 testimony of the Doctor in her statement that obviously
12 substance abuse is fairly common in folks who are
13 suffering from mental illness, and necessarily in my
14 experience would have to elicit substances and it could
15 also be alcohol, it could be prescription medication, it
16 can be over the counter medication. In rare occasions I
17 have heard have attempted to be used to medicate or self
18 medicate for psychiatric symptoms. For those reasons
19 because there seems to be a falsity of evidence linking up
20 any Axis I cannabis abuse diagnosis with the depression
21 diagnosis under 403 I find that that evidence will be
22 excluded. Your objection is noted for the record, Mr.
23 Able.

24 MR. ABLE: Yes, sir.

25 THE COURT: Let's bring the jury in. The record

1 should also reflect that it would be speculative based
2 upon the Doctor's testimony as to whether or not one
3 caused the other.

4 (Whereupon, the jury came into open court at
5 approximately 11:11.)

6 THE COURT: Let the record reflect the jury is
7 present. Mr. Wise, you may continue.

8 MR. WISE: Call Dr. Vernetta Hill Jacobs.

9 Vernetta Hill Jacobs, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Wise:

13 Q State your name, please.

14 A Dr. Vernetta Hill Jacobs.

15 Q Dr. Jacobs, where are you employed?

16 A Dorn V.A. Medical Center.

17 Q And how long have you been employed there?

18 A Just over three years.

19 Q Can you give us your educational background?

20 A I completed high school, Rock Hill High School in
21 South Carolina. I completed graduate school at Spelman
22 College in Atlanta, Georgia. And then I completed medical
23 school at Medical University of South Carolina in
24 Charleston, South Carolina. I completed residency at
25 Medical University of South Carolina in Charleston, South

1 Carolina.

2 Q Did you have a specialty field?

3 A General psychiatry.

4 Q And are you a member of any national boards or
5 organizations?

6 A The American Board of Psychiatry and Neurology, I am
7 a Diplomat of that organization.

8 Q And is that a recognized group?

9 A Right. It certifies me in psychiatry.

10 MR. WISE: I would like to qualify this witness as an
11 expert in the field of psychiatry.

12 THE COURT: Any objections?

13 MR. ABLE: No objection.

14 MS. MAYES: No objection, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury, again,
16 normally a person can't testify or give opinion testimony.
17 Usually when a person testifies they have to relate to you
18 something that they observed personally through one of
19 their five senses. An exception exist for a person who is
20 qualified in a particular area of expertise due to
21 training or experience and in this case this witness, the
22 Doctor has been qualified as an expert in the field of
23 general psychiatry therefore she will be permitted to give
24 you her opinion testimony in that field. It does not mean
25 that you must accept it but it is evidence for you to

1 consider and give it whatever weight you deem is
2 appropriate. You may continue, Mr. Wise.

3 Q Dr. Jacobs, did you have an occasion, well November
4 20th of 2009 to have a patient, Richard Brandon Lewis?

5 A I believe it was October of 2009, if I am not
6 mistaken, but yes.

7 Q How long was he there at the Dorn facility?

8 A Just under a week.

9 Q What was he there for?

10 A He had attempted suicide by taking an overdose of
11 medications. He was taken to an ER and that ER called
12 Dorn V.A. and requested admission for him.

13 Q And what were you treating him for?

14 A Adjustment disorder.

15 Q And is that commonly called depression?

16 A Adjustment disorders can have a different diagnosis
17 such as depression or anxiety or conduct. But
18 specifically for him his diagnosis was adjustment disorder
19 with depressed mood.

20 Q And did you have, during the course of your seeing
21 him as a patient did you learn the source of the
22 depression?

23 A Could you repeat the question.

24 Q During the time you saw him as a patient did you
25 learn from him the source of his depression?

1 A We talked about it.

2 Q And what was that?

3 A He talked about the events that took place prior to
4 taking the overdose. He described being in a relationship
5 and the death of a child recently occurring and he felt
6 overwhelmed by the situation and attempted suicide.

7 Q And what was he feeling overwhelmed about?

8 A He talked about having to testify against his
9 girlfriend regarding the death of the child.

10 Q How did he view his girlfriend at that time and her
11 child who died and her other sibling?

12 A He descried them as his family. He indicated that he
13 was in love with his girlfriend and that he felt very
14 close to the family.

15 Q Did you learn anything about his personal family
16 background?

17 A In discussion we talked briefly about his background,
18 his childhood.

19 Q And did he come from a stable family or unstable
20 family?

21 A It appeared that his background was very chaotic,
22 very traumatic.

23 Q And did you learn how long he had been seeing Ms.
24 Hepburn?

25 A He indicated five months.

1 Q Was that, what was your opinion about his attachment
2 to her and her children after just five months?

3 A My initial observation is that, that was a very short
4 period of time in which to become so attached to this
5 relationship and to this family.

6 Q With his family background would that have, how would
7 that factor in to his becoming attached to that family?

8 A That is not uncommon in situations of trauma in
9 childhood.

10 Q And why is that?

11 A A lot of times because of the instability of the
12 childhood a person may want to strive to have stability in
13 later life. And so he appeared to be trying to create a
14 happy family scenario.

15 Q Based upon what you observed and talked to him how
16 would he react to having to testify against the woman he
17 said he was in love with?

18 A Very overwhelmed, overwhelmed to the point that he
19 attempted suicide.

20 Q All right. Is that common or uncommon for people in
21 that situation to react very emotionally to that type?

22 A It is common to react in such a way that, the loss of
23 the relationship would have been very overwhelming to him
24 and he could react in a very emotional way as a result of
25 that.

1 Q Thank you. Answer any questions they may have.

2 THE COURT: Ms. Mayes.

3 CROSS-EXAMINATION

4 By Ms. Mayes:

5 Q Good morning, Dr. Hill.

6 A Good morning.

7 Q Just to clarify, you do have the records with you
8 today that reflect some of the sessions you had with Mr.
9 Lewis?

10 A Yes.

11 Q I want to refer you to the session that you had with
12 him on October 21st. So October 21st, were you ever given
13 any information about the date in which the child was
14 killed?

15 A No.

16 Q Audrina Hepburn?

17 A No.

18 Q Audrina Hepburn's death occurred or injuries occurred
19 on October 13th of 2009. And ultimately her death
20 occurred on October 17th of 2009 at Greenville Memorial
21 Hospital. So, if you saw Mr. Lewis on the 21st that would
22 be approximately four days after Audrina's death, correct?

23 A Yes.

24 Q And what had happened is he took an overdose, I
25 believe on the 18th and then after the overdose was being

1 treated at the Laurens County Hospital, they referred him
2 on to the V.A. Hospital for inpatient care, correct?

3 A That is correct.

4 Q And you were one of the staff physicians at the V.A.
5 Hospital in Columbia, correct?

6 A Yes.

7 Q And it is pretty routine after a suicide attempt that
8 somebody would be referred for inpatient treatment?

9 A That is routine, yes.

10 Q And that is to watch them and monitor them concerning
11 any future behavior, correct?

12 A That is correct.

13 Q So, he comes in and y'all are basically trying to
14 find out what is wrong with him and what might have led to
15 him taking an overdose, correct?

16 A Yes.

17 Q And all of the information that you would get would
18 come directly from him, correct?

19 A That is correct.

20 Q So, whatever he tells you is what you document?

21 A Right.

22 Q And in this particular case, according to your notes,
23 on October, it looks like the note is dated October 21st
24 of 2009 but during the course of, according to what was
25 upsetting, he reported that his girlfriend had recently

1 been arrested for allegedly causing the death of her
2 sixteen month old daughter, correct?

3 A That is what he told me.

4 Q And he stated on the night of the event he was at the
5 home of his girlfriend?

6 A Yes.

7 Q And he also stated that they had argued earlier about
8 his girlfriend spanking her son?

9 A Yes.

10 Q And he reported that the baby was fussy due to
11 teething. He states that he saw her stomp from her room
12 into the room where the baby was fussy, correct?

13 A Yes.

14 Q And the fact that this is in your dictation would
15 indicate that that information came directly from Mr.
16 Lewis, correct?

17 A Yes.

18 Q Okay. Then he went on to report that he had found
19 the child lifeless and that his girlfriend had gone to the
20 bathroom after he told her the baby was lifeless. And he
21 reported that the baby was taken to the hospital?

22 A Yes.

23 Q And then he reported that the baby died. And he went
24 on to tell you about being questioned by the police
25 regarding the events of that evening, correct?

1 A Yes.

2 Q And when he was telling you about that he never, he
3 never mentioned at any point any of the history about him
4 providing false information to police, did he?

5 A No, he didn't tell me that.

6 Q And he didn't go into any details with you about the
7 fact that he had withheld information or given false
8 information to the medical providers when they were trying
9 to treat the baby, correct?

10 A Correct.

11 Q So, he went on to describe that he loves his
12 girlfriend and he was overwhelmed because of these
13 relationship problems they were having, correct?

14 A Yes.

15 Q And I think ultimately when you reach a diagnosis
16 about the condition that they are in, one of the diagnosis
17 that you mentioned concerning Mr. Lewis was his legal
18 issues, relationship issues?

19 A Yes.

20 Q So, no doubt it was his relationship with Ms. Hepburn
21 and the legal issues surrounding that that was causing him
22 depression?

23 A Yes.

24 Q And this information that he gives you, it is not a
25 situation where you are not an investigator, you are there

1 to treat him, correct?

2 A That is correct.

3 Q So, it is not a situation where you have the police
4 find or really investigate the information that he gives
5 you?

6 A Right.

7 Q It is pretty much whether it is true or false,
8 whatever spin a patient might put on is how it is
9 documented, correct?

10 A Right, I did not ask any specific questions about the
11 incident.

12 Q And in this particular case he stated that he loved
13 his girlfriend and was stressed about her being arrested
14 and that is even after he has reported to you that
15 according to him she killed her daughter, correct?

16 A Yes.

17 Q Nothing further.

18 CROSS-EXAMINATION

19 By Mr. Able:

20 Q Now, Doctor, what did you report as his chaotic, he
21 had a chaotic childhood?

22 A Yes, he talked to me about his father killing his
23 grandfather, his mother shooting his father. He talked
24 about his father being in prison and ultimately being
25 released from prison and how that was difficult for him to

1 deal with.

2 Q And it was your understanding that he was trying to
3 create a family with his girlfriend and her children?

4 A Yes.

5 Q Now, as far as about the part, well, you are there to
6 listen, correct?

7 A I am there to provide treatment for the episode of
8 the suicide attempt that led him to be hospitalized.

9 Q And you listen to what he has to say?

10 A That is correct.

11 Q And it is all his story?

12 A Right.

13 Q You don't interject anything, you let him tell what
14 happened?

15 A Right and I don't ask specific details.

16 Q And he stated to you that he saw his girlfriend stomp
17 into the room where the baby was, correct?

18 A That is what he told me.

19 Q And he didn't say anything about hearing, he said he
20 saw?

21 A Yes.

22 Q Now, he told you, let me ask you this way. He could
23 be overwhelmed, just as overwhelmed about the fact that he
24 caused the injury to this child that he is telling you his
25 girlfriend caused the injuries to the child, couldn't he?

1 A Yes, that is possible.

2 Q He could have been overwhelmed by the fact that he
3 was a suspect in that case, couldn't he?

4 A Yes.

5 Q All of those, those things could have led to his
6 possible suicide, his attempt to suicide that he had
7 caused these injuries to this child and he was a suspect?

8 A Yes.

9 Q So all you hear is what he has to say?

10 A That is correct.

11 Q Did he tell you he had given any conflicting
12 statements on the morning of October 13th of 2009 to law
13 enforcement?

14 A He didn't volunteer that.

15 Q And he didn't volunteer that he had given statements
16 where he didn't implicate his girlfriend?

17 A No, he didn't tell me any of that.

18 Q That is all.

19 REDIRECT EXAMINATION

20 By Mr. Wise:

21 Q Dr. Jacobs, was what he told you consistent with that
22 you saw in him when he was before you as far as his
23 depression and so forth?

24 A It is possible.

25 Q Now, you are not gathering investigative information,

1 you said?

2 A That is correct.

3 Q And whether he saw her enter the room or heard her
4 enter the room would not really change your analysis in
5 any way?

6 A Not at all.

7 Q Based upon your observation of him, was he close to
8 or was he emotionally attached to Ashley Hepburn?

9 A Yes, he was.

10 Q Very much emotionally attached to her?

11 A Yes.

12 Q Would it surprise you then that when initially
13 interviewed by the police he would say nothing negative
14 about Ashley Hepburn?

15 MR. ABLE: Judge, I don't think this is redirect.

16 MR. WISE: They went to the conflicting statements on
17 all of the cross-examination, both of them did.

18 THE COURT: Overruled.

19 Q Would it surprise you that he would give a statement
20 to the police that did not say anything negative about
21 her?

22 A It would probably surprise me some.

23 Q Would he, with his relationship toward her would he
24 want to protect her?

25 A He would probably want to protect her.

1 Q Initially anyway?

2 A Yes.

3 Q Thank you.

4 RECROSS-EXAMINATION

5 By Ms. Mayes:

6 Q And, Dr. Hill Jacobs, when he is talking about the
7 fact that his feelings for his girlfriend were so strong,
8 like in a situation like this where he has indicated that
9 his relationship with his girlfriend and the fact that she
10 has been arrested and all of the legal fallout from that
11 led to his suicide attempt, in a situation like this he
12 would go as far as to lie to protect her, correct?

13 A It is possible, yes.

14 Q Nothing further.

15 RECROSS-EXAMINATION

16 By Mr. Able:

17 Q The same respect, Doctor, he would lie to protect
18 himself too, wouldn't he?

19 A That is a natural instinct.

20 Q Thank you.

21 THE COURT: Doctor, you can step down. No objection
22 that this witness can be excused?

23 MR. ABLE: No objection.

24 MS. MAYES: No objection.

25 THE COURT: Thank you so much for coming, have a good

1 day. Mr. Wise.

2 MR. WISE: That is defendant's, Richard Brandon Lewis
3 rests.

4 THE COURT: Any motions to address before anything in
5 reply?

6 MS. MAYES: No, sir.

7 THE COURT: Anything in reply?

8 MS. MAYES: No reply from the State, Your Honor.

9 THE COURT: Mr. Able.

10 MR. ABLE: Yes, sir.

11 THE COURT: Call your first witness, Mr. Able.

12 MR. ABLE: Ashley Hepburn.

13 THE COURT: You are still under oath from your
14 testimony earlier. So do consider yourself under oath.

15 DIRECT EXAMINATION

16 By Mr. Able:

17 Q Now, Ashley, when you had an opportunity to be with
18 Lieutenant Plaxico on October 13th that was down at the
19 sheriffs office, correct?

20 A Correct.

21 Q And did he show you what has been marked as
22 defendant's exhibit number 2, the second voluntary
23 statement of Richard Brandon Lewis?

24 A Yes, he did.

25 Q Did you have an opportunity to read it?

1 A I had an opportunity to skim over it.

2 Q What did you tell Officer Plaxico about that
3 statement?

4 A I went through and pointed out certain things that I
5 found to be true such as, I took my son to brush his teeth
6 and we watched football for a little while, certain things
7 like that.

8 Q What did you say to him about giving Owen an intense
9 spanking?

10 A I said that I did not give him an intense spanking.

11 Q What did you say about, what did you tell him about
12 your having told him that day?

13 A I told him that I went to bed with my son that night
14 and I didn't get up after that.

15 Q What did you tell him about the statement that you
16 had gotten up, that Mr. Lewis had heard footsteps coming
17 from where you were, you went into the room, he heard the
18 sounds of the baby and heard footsteps stomping out. What
19 did you tell Lieutenant Plaxico concerning that portion of
20 the statement.

21 A I told him that that was not true.

22 Q At any point in that conversation did you tell him,
23 oh my god all of this is true?

24 A No, I did not.

25 Q Did you at any point tell Lieutenant Plaxico, I don't

1 remember hurting my baby?

2 A No, I did not.

3 Q What did you tell Lieutenant Plaxico when he had
4 asked you if you had hurt Audrina that night?

5 A I told him very clearly that I did not hurt my baby
6 and would not hurt my baby.

7 Q Were you upset?

8 A Very upset.

9 Q Would you say that in a loud tone?

10 A I was being accused of hurting my baby so yes.

11 Q So, parts of that statement are true?

12 A Parts of it.

13 Q Parts of it are not true?

14 A Parts of it are not true.

15 Q And you made that clear to Lieutenant Plaxico that
16 night?

17 A I did.

18 Q Now, where did you go that night. After you left the
19 sheriffs office where did you go?

20 A Initially I tried to go by the hospital.

21 Q Back up to Greenville?

22 A Correct.

23 Q And after that where did you go?

24 A To my dad's house.

25 Q And when were you arrested?

1 A Friday the 17th, I believe.

2 Q Now, in talking to Agent Kirkland, you were
3 interviewed that same day by her and Agent Hurt, I
4 believe?

5 A Correct.

6 Q Did you offer to write a statement?

7 A I did.

8 Q And why did you not write a statement?

9 A I was informed--

10 Q -- by who?

11 A Lieutenant Plaxico that if I were not to say in the
12 statement that I hurt my baby that they were not going to
13 accept my statement.

14 Q Did you offer to write that statement?

15 A I did.

16 Q And what would you have said in that statement?

17 A I would have told them that I knew that that night I
18 went to sleep with my son and put my daughter down to
19 sleep and Brandon was the only one up that night.

20 Q Since October 13th of 2009 have you said anything
21 different other than you didn't hurt your baby?

22 A No, I have not.

23 Q That is all I have.

24 CROSS-EXAMINATION

25 By Ms. Mayes:

1 Q Ms. Hepburn, you said that that statement was made to
2 you by Lieutenant Plaxico, correct?

3 A Correct.

4 Q Lieutenant Plaxico was not even in the room when you
5 were interviewed by Agents Kirkland and Hurt, correct?

6 A It was after they interviewed me that he interviewed
7 me, correct.

8 Q When you say that you didn't have the opportunity to
9 provide a written statement you are referring to the final
10 interview that you had with Lieutenant Plaxico, correct?

11 A Correct.

12 Q Nothing further.

13 CROSS-EXAMINATION

14 By Mr. Wise:

15 Q You were interviewed by Agent Kirkland earlier?

16 A Correct.

17 Q And then did you give a written statement to Agent
18 Kirkland?

19 A No, I did not.

20 Q Did she ask you to give her a written statement?

21 A No, she did not.

22 Q So, she just took an interview from you, signed the
23 Miranda warnings and never asked you to write down a
24 written statement?

25 A Correct.

1 Q Is that right?

2 A Correct.

3 Q And you say since October 13th you have never said
4 anything different, right?

5 A Correct.

6 Q Well, since about October the 14th you have never
7 said anything about this case, have you?

8 A Correct.

9 Q Thank you.

10 MR. ABLE: Nothing further.

11 THE COURT: Ma'am, you can step down, thank you very
12 much. Anything further?

13 MR. ABLE: No, sir.

14 MR. WISE: Nothing further.

15 THE COURT: Ladies and gentlemen of the jury, I am
16 going to have to ask you to adjourn for a few moments.
17 There are some matters that I need to take up with the
18 attorneys involved in this case. We will have you back
19 shortly. Don't discuss the case.

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

21 THE COURT: The jury is out. I want to take up with
22 y'all in a moment and I am going to email you the proposed
23 jury charges. I see Mr. Able does not have a computer so
24 Madam Clerk I am going to send these to you as well and
25 print them out for Mr. Able. And, Ms. Mayes, can you

1 access your email?

2 MS. MAYES: Yes sir, Your Honor. We have no
3 objection to any of the proposed charges from the Court.

4 THE COURT: Mr. Wise, on your email this morning you
5 asked for an intent charge of some kind. I have taken the
6 intent charge from the bench book as well as the one from
7 State versus McKnight which I believe you should have
8 intimate familiarity with.

9 MR. WISE: I have heard about it.

10 THE COURT: And merged those two in a way so I am
11 going to be sending that to you as well. I did have one
12 question and I have not sent the charges yet to you. But
13 with regard to the actual charge of homicide by child
14 abuse, there are three types of conduct which could rise
15 to that abuse. I only see potentially two that would
16 apply. There is no issue in this case on abandonment so I
17 was not going to instruct the jury on abandonment of the
18 child.

19 MR. WISE: Your Honor, it would seem to me, we could
20 probably dismiss the jury and come back about 1:00 or
21 1:30.

22 THE COURT: I was going to bring them out and dismiss
23 them in just a second, I just want to make sure that I
24 have got this, that I have got a copy of this printed off.
25 I will go ahead and email this to y'all and Ms. Lancaster.

1 As I was saying, the homicide by child abuse charge, it
2 would appear the only two potential acts which could
3 constitute based on the evidence of this case or which
4 could support a verdict based on the evidence which has
5 been presented in this case will be, the first, inflicted
6 or allowed to inflict physical injury on a child which
7 caused the child's death or failing to supply the child
8 with healthcare would be the only one to be implicated
9 under this section. Clothing or shelter is not in play.
10 This failure caused the physical injury or condition which
11 caused the death. I was about to eliminate the second one
12 but perhaps there was some evidence in which a reasonable
13 juror to conclude that there was a failure to provide
14 timely healthcare.

15 MS. MAYES: Yes sir, Your Honor, that is the State's
16 position and that is included in our argument. As to C,
17 abandonment of child, we have no objection to that not
18 being charged.

19 MR. WISE: I don't really see the failure to give
20 healthcare because no doctor even remotely testified that
21 if the child got to the hospital thirty minutes earlier
22 the child would have survived, not a chance of survival
23 even or would not have died. All the testimony was that
24 this was instantaneous and very severe from the beginning.

25 MS. MAYES: Your Honor, the testimony from the

1 physicians is that the symptoms would be immediate however
2 there was testimony from Dr. Ward that the hypoxia or
3 swelling from the brain condition set in because she did
4 not receive immediate resuscitation.

5 THE COURT: There is some evidence in which a
6 reasonable jury could conclude the earlier to provide
7 health care to the child, the timeliness of the health
8 care that was provided.

9 MR. WISE: In that case then, as far as Brandon Lewis
10 is concerned I don't think there is a duty on his part to
11 provide health care, it is all on the mother's part. He
12 is not the father, he was not a guardian, he was not
13 anything other than someone who had been told earlier in
14 that same day don't discipline my children.

15 MS. MAYES: Your Honor, that is actually the State's,
16 one of the State's objections that I had mentioned
17 earlier, that the State had an objection to two of the
18 requests for charge for Mr. Wise. As to the first charge,
19 charge number one, no objection to that. As to charge
20 number two, the implication of this charge is that there
21 should be some type of legal duty and that is not this
22 statute. There is another statute out there called
23 unlawful conduct towards a child that applies to people
24 who do have charge of custody. That is not this
25 situation, he is not charged under that statute. The

1 homicide by child abuse statute specifically states that
2 it applies to any person, there is no role to find, no
3 requirement for parental duty or even legal duty. And it
4 is exactly for this type of situation where you could have
5 several people in a home, a child critically injured and
6 basically the law does not support the idea that they can
7 all turn their head and do nothing.

8 MR. WISE: Actually the statute, it says nothing
9 about who is responsible, it doesn't say anybody with
10 connection with the child. As I pointed in my email,
11 under the State's theory, if I go to a grocery store
12 tomorrow and see a woman or man unmercifully beating their
13 child in the grocery store, if I don't act I am guilty of
14 unlawful conduct toward a child, that is not the law.

15 THE COURT: Because this discussion will take a while
16 I will bring the jury in to excuse them so they will have
17 enough time to get something to eat. Bring the jury in,
18 please.

19 (Whereupon, the jury came into open court at
20 approximately 11:45 a.m.)

21 THE COURT: The record will reflect that the jury is
22 back. Ladies and gentlemen of the jury, we have some
23 additional work to do, I see no reason for you to wait
24 back there. When you return from your lunch break, I
25 would ask you to return by 1:15. At that time you will

1 have an opportunity to hear the arguments of counsel and
2 you will receive my charge of the law. It is not time to
3 start talking about the case, please do not discuss the
4 case. You are excused and see you back at 1:15.

5 (Whereupon, the jury is excused from open court for a
6 lunch break.)

7 THE COURT: Mr. Wise, you have the floor again.

8 MR. WISE: Your Honor, there has to be some duty on
9 the part of the defendant in a child, homicide by child
10 abuse case or whatever. The failure to act is so broad it
11 makes it unconstitutional, no one knows when they would
12 cross the line. It is easy to tell somebody you crossed
13 the line when the facts are such that any reasonable
14 person would know there is a duty. But here where he is
15 an occasional visitor at night sitting there, you know, he
16 has no duty, he has no idea when he crosses the line and
17 that is the problem with it. If I am a visitor in
18 somebody's home and they all of a sudden get up and start
19 accusing the child, morally maybe I should do something
20 but legally or as far as criminal prosecution is concerned
21 unless I take some affirmative action to encourage that
22 action by the person I am under no duty to intervene and
23 stop it.

24 THE COURT: Ms. Mayes, what do you say to that.

25 MS. MAYES: Yes sir, Your Honor, this particular

1 statute does not require a legal duty and it is for
2 exactly this situation where there have been cases in the
3 past where a boyfriend or an occasional visitor is
4 involved with the child and ultimately the child is killed
5 and you have more than one person involved and more than
6 one person charged. Now the unlawful conduct statute is
7 completely different. That one has a duty put into it, I
8 believe that is--

9 THE COURT: Which section are you referring to, are
10 you referring to 16-3-95 or are you referring to something
11 under the--

12 MS. MAYES: The children's code, yes sir, it is under
13 the children's code. I believe it is recently recodified.
14 But I mentioned that solely because Mr. Wise had given
15 that example earlier that if he were in the grocery store
16 he could be charged unlawful conduct towards a child if he
17 saw someone injure a child. And that is not the case,
18 that statute is completely different and does have a duty
19 built in. That is 63-5-70. But the homicide by child
20 abuse statute is different. This statute is meant to be
21 broad, it is meant to apply to a person is guilty of
22 homicide by child abuse without any legal duty or
23 responsibility to the child. And the example Mr. Wise is
24 correct. If he is not a resident of the home, that he is
25 a visitor to the home and he gains knowledge that the

1 child has been critically injured and there is a
2 substantial risk of death, yes, at that point it is not a
3 question of duty, it is a question of under this
4 particular statute. It would apply to him and could
5 potentially apply to him and any other participants in the
6 homicide of that child due to child abuse and neglect.

7 MR. WISE: If that is an interpretation then I move
8 to quash, it is a little late to quash the indictment but
9 I move to dismiss the charges against Brandon Lewis on the
10 grounds that he is faced of a statute that is so vague
11 that he knows not when--

12 THE COURT: I am looking at the homicide by child
13 abuse statute and there are two kinds of conduct. The
14 first subsection as I read it, criminalizes one who
15 actively participates in inflicting the abuse or neglect
16 on the child. The second subsection, under subsection
17 (a), addresses situations where one aids or abets another
18 person to commit child abuse or neglect. I have given and
19 I will be giving a mere presence instruction to the jury
20 as applies to Mr. Lewis based upon these facts, I cannot
21 find that the statute that he is charged with is over
22 broad or that the statute does not cover potentially the
23 conduct that Mr. Lewis engaged in. There has been
24 testimony that he was, of course, the boyfriend or the
25 significant other of Ms. Hepburn. He obviously at

1 different points and times, I believe Mr. Wise, you have
2 indicated through your own witnesses that he has
3 undertaken certain activities at least at the birthday
4 party as well as the night in question where he acted in
5 loco parentis towards the children. I would assume that
6 certain responsibilities that would naturally flow to one
7 who has a close relationship with the child, with the
8 children. I believe that the statute would apply to your
9 client but your objections and your constitutional
10 reservations are noted.

11 MR. WISE: Clearly if he attacked the child it
12 applies, we are not going to talk about that case. The
13 only theory then by which the subsection (b) or subsection
14 (2) would apply is because he didn't go in there when he
15 heard something. I think that is unduly broad application
16 of this law.

17 THE COURT: Ms. Mayes, I would ask that you address
18 that because I do have some hesitation on the aiding and
19 abetting. Where does the aiding and abetting come from,
20 where is there evidence that Mr. Lewis aided and abetted
21 in the abuse of the child. And I realize this is a
22 circumstantial case so if you could lay out the State's
23 case for aiding and abetting.

24 MS. MAYES: Yes sir, Your Honor. I will begin by the
25 fact that Mr. Lewis has given multiple inconsistent

1 statements. First there is the statement that he was the
2 only one up and during the time that the child was
3 injured, second is the statement that he heard his
4 girlfriend go into the baby's room and according to him
5 stomp into the room and shake the child and she was
6 crying, her voice was breaking as if she was being shaken
7 according to him. And at that point the crying and the
8 voice breaking suddenly stopped and he heard not another
9 sound from the child. He heard his girlfriend stomp back
10 to the room and according to him up to fifteen minutes
11 transpired between that event which he described as
12 occurring at 12:45 a.m. and then ultimately when EMS was
13 called at approximately 1:20 a.m. after he claims, after,
14 not doing anything for some period of time and checking on
15 the girlfriend he then went into the child's room and
16 discovered her lifeless. Now, we also have a situation
17 where the State's position is that at some point someone
18 attempted to provide some type of aid or clean up this
19 child. There is blood and saliva on a white towel that,
20 according to Ms. Hepburn, was kept in the bathroom yet
21 neither defendant has acknowledged going into the bathroom
22 and taking out that white towel and attempting to clean up
23 the child or provide some type of aid to the child prior
24 to calling or prior to the arrival of EMS or even calling
25 911. And both of them deny knowledge as to how the towel

1 with the child's blood on it and saliva on it got into the
2 crib. So, at some point they call 911, EMS arrives and
3 Mr. Lewis begins giving the false story about not knowing
4 how she was injured, not relating any information about
5 Ms. Hepburn possibly abusing the child and that that was
6 the last time he heard from the child. And withholding
7 that information, Your Honor, the State contends was
8 critical to her healthcare. The doctor had no idea that
9 the child had a head injury, she was originally being
10 treated for a possible allergy, she was given Benadryl.
11 The doctor took on her own, after her arrival at the
12 emergency room to diagnose the retinal hemorrhages and
13 then sent the child to CT's out of an abundance of caution
14 and it was determined that she had a massive head bleed.
15 It was also the testimony of Dr. Ward that hypoxia or
16 cerebral edema had set in which was catastrophic
17 ultimately to the child's condition. He testified that
18 that type of hypoxia, cerebral edema most commonly would
19 occur in this situation because the child was not rendered
20 medical assistance or went some period of time without
21 receiving medical assistance. And in this particular case
22 Mr. Lewis withheld the information about when he had last
23 heard the victim or about Ms. Hepburn's, hearing Ms.
24 Hepburn go into the room or any possible injuries that she
25 may have inflicted on the infant. He withheld that

1 information as we now know for hours and hours and hours
2 even as the child was transferred to the pediatric
3 intensive unit in Greenville, he was still being
4 interviewed by law enforcement and withholding that
5 information which the State's position is that, he never
6 provided the adequate medical history which is essential
7 healthcare to this child, he nor Ms. Hepburn.

8 THE COURT: All right.

9 MR. WISE: That talks about accessory after the fact.
10 None of that talks about aiding and abetting in the
11 commission of the crime. Assuming for the moment,
12 although there is not a scintilla of evidence in this case
13 or in the case that I am getting ready to cite, assuming
14 for the moment that she injured the child, he then went
15 and got the towel and wiped the child off and left it in
16 the crib, that is accessory after the fact, that is not
17 aiding and abetting in the commission of the act.

18 MS. MAYES: Your honor, the child was still alive,
19 that is the key point here, this is not a deceased child
20 and somebody finds the body and it is accessory after the
21 fact. This child was still alive, she was still
22 breathing, she was still in desperate need of adequate
23 healthcare and medical assistance. And it is the State's
24 position that both Mr. Lewis and Ms. Hepburn failed her in
25 that regard. As far as the aiding and abetting it

1 includes advancing the crime and in this particular case
2 by withholding information both from law enforcement and
3 from medical personnel about the true and accurate events
4 of that night, what he himself knew about the child's
5 condition, what he knew about may have led to her critical
6 injuries and the failure to relay that information as the
7 State contends is part of advancing the crime of child
8 abuse and neglect which ultimately led to her death four
9 days later.

10 THE COURT: I do find that there is some evidence
11 from which for the finders of fact to reasonably conclude
12 that Mr. Lewis is guilty of aiding and abetting and
13 homicide by child abuse. I will charge the jury on aiding
14 and abetting with regard to Mr. Lewis. Number three, Ms.
15 Mayes.

16 MS. MAYES: We would just ask for the basis of the
17 charge or any cite in reference to the charge, it is just
18 a charge I am not familiar with.

19 THE COURT: Do you have a case that you focused from.

20 MR. WISE: Many times I try to operate on the theory
21 that the law should be original. Let me get my third
22 charge back up. It makes sense, Your Honor. It simply
23 makes sense. If the State argues she killed this child
24 and then her, you don't believe that and Brandon Lewis
25 killed this child then I think the inability of the State

1 to point out which one is a factor the jury can consider
2 of determining whether or not of a reasonable doubt. It
3 basically it is, it basically says to me, to the jury, you
4 can't flip a coin. If you have to flip a coin then there
5 is a reasonable doubt. So if the State argues two
6 positions that are inconsistent with each other the State
7 in essence and I think is asking the jury to flip a coin.
8 But to tell you there is a precise case out there that
9 says that, no there is not.

10 THE COURT: Perhaps you would care to cite, United
11 States, Smith versus G-R-O-O-S-E, Missouri Attorney
12 General, the proposition that due to the process of laws
13 forbids the State from using any inconsistent theories to
14 secure convictions against two or more defendants for
15 prosecutions for the same offense arising out of the same
16 event.

17 MR. WISE: But that was what we argued earlier but
18 was not based upon a jury charge. We had argued earlier
19 that under judicial estoppel that they couldn't do it
20 because it violated due process. And that was denied, the
21 same principle would apply I think to the jury charge.

22 THE COURT: I think that this is different, what I
23 was getting at or what I thought your request to charge
24 number three was getting at were due process concerns with
25 the State taking the position that there is evidence

1 indicating both defendants could have committed this crime
2 yet it appears only one of them could have in fact, would
3 have committed the crime. Is that what you are getting
4 at?

5 MR. WISE: That is what I am getting at. What is the
6 cite for that case?

7 THE COURT: 205, F3d, 1045.

8 MR. WISE: 1045?

9 THE COURT: 1045.

10 MR. WISE: That would be the basic principle of it,
11 yes.

12 THE COURT: There is also perhaps U.S. of America
13 versus Paul, this is 217 F3d, 989 which appears to
14 indicate that where, in that case we are dealing with a
15 homicide where the prosecutor in two separate trials
16 argued at both trials that the defendants on trial pulled
17 the trigger. One of them at appeals and argued to the
18 prosecution and that case had inconsistent actions. And
19 in that case the Court held that, "when it cannot be
20 determined of two defendants guns caused a fatal wound
21 neither defendant could have been convicted under either
22 theory. The prosecutions argument at both trials that the
23 defendant on trial pulled the trigger is not factually
24 inconsistent thus because there was evidence that
25 supported both theories and could have been convicted

1 under aiding and abetting under either theory we find no
2 error." Ms. Mayes, assuming for a moment the State, the
3 Court has an issue with the State bringing charges against
4 both which, I think you would agree only one individual
5 could have, in all likelihood only one individual
6 inflicted the injuries here. Normally it is much more
7 prominent that the State to have a clear target in any
8 sort of prosecution and having a much clearer theory of
9 which defendant was primarily culpable. Am I correct that
10 in this case the State is not entirely sure who shook the
11 baby?

12 MS. MAYES: Well, Your Honor, there is more involved
13 than just the shaking as well because there were impact
14 injuries which the testimony has supported would have been
15 multiple. So we have a situation where according to this
16 statute it covers acts and omissions and inflicting and
17 allowing to be inflicted. So, it is a situation where it
18 is more broad I would propose than perhaps some of the
19 other statutes such as a general murder statute. But it
20 is one where if hypothetically Mr. Lewis inflicted the
21 injuries the implication would be or the State's argument
22 would be that the injuries were allowed to be inflicted
23 because of Ms. Hepburn's proximity. And secondarily if
24 Ms. Hepburn inflicted the injuries there are acts and
25 omissions which cover Mr. Lewis as well. And ultimately

1 it is the State's position that both are involved. This
2 is not an either or situation. The jury may very well
3 find that the fatal blow was delivered by one person and
4 it may be that they don't determine who that person is.
5 And I believe the law does support them having the
6 opportunity to find them both guilty of aiding and
7 abetting, homicide by child abuse without finding any of
8 the two guilty of homicide by child abuse. I believe that
9 is yet another option for the jury. So the State's
10 position is that both are involved by acts or omissions,
11 that both know more and are more involved than their
12 testimony as elicited thus far.

13 MR. WISE: Under that representation then and I am
14 not conceding that aiding and abetting should go to the
15 jury, then the jury, if they convict someone of the
16 actual, causing the death of the child they cannot convict
17 both, they have to convict one or the other.

18 THE COURT: I would tend to agree.

19 MS. MAYES: I think, Your Honor, that was originally,
20 well, there was a case from 2004 on the State versus Smith
21 case and there were two defendants charged. That was a
22 hotel case where neither acknowledged inflicting the
23 injuries, in fact both claimed they weren't sure where the
24 injuries had come from but they were both--

25 THE COURT: That was the one that arose out of Horry

1 County?

2 MS. MAYES: Yes sir, Your Honor. And in that
3 particular case which was 2004 both defendants were
4 convicted of homicide by child abuse and both were
5 convicted of aiding and abetting homicide by child abuse.
6 But since then, within the past, I believe six weeks, a
7 new decision has come down and that decision is also State
8 versus Smith, that is a Court of Appeals decision. That
9 was a homicide by child abuse charge where he was not even
10 charged or indicted for aiding and abetting but the Court
11 submitted aiding and abetting as a lessor included offense
12 and it went to the jury and they ultimately convicted him
13 of aiding and abetting. That would be our concern at this
14 point. That case does seem to imply that aiding and
15 abetting may be a lessor included offense. If that
16 situation, the result of this most recent Court of Appeals
17 decision and I would agree that a defendant can be guilty
18 of homicide by child abuse or aiding and abetting and the
19 second, homicide by child abuse or aiding and abetting,
20 could be both homicide, could be both aiding and abetting
21 but I am not sure if it could be both even though the
22 Smith case from 2004 did support both being convicted on
23 both charges.

24 THE COURT: So you believe it is either or
25 proposition with regarding to the current state of the law

1 and this case you cited from six weeks ago, the Court is
2 unfamiliar with.

3 MS. MAYES: Right, I believe I have that case, Your
4 Honor.

5 THE COURT: So you believe it is either or with
6 regard to both defendants?

7 MS. MAYES: I am going to submit that particular case
8 to the Court and let the Court make that determination,
9 Your Honor, that is a Court of Appeals decision. And I
10 don't believe that it has been addressed any further since
11 that time. This is State versus Wesley Smith, this is
12 only the advance sheet, the published advance sheet.

13 MR. WISE: January of this year?

14 MS. MAYES: Yes, January the 26th.

15 MR. WISE: My opinion is of the Smith case is they
16 have a real problem with the South Carolina Supreme Court
17 holding that aiding and abetting is a lesser included of
18 the actual act. I mean that is to me a stretch.

19 THE COURT: Let's address it this way. Mr. Able, Mr.
20 Wise, do y'all desire a lesser included charge?

21 MR. WISE: I don't.

22 MR. ABLE: No, sir.

23 THE COURT: I assumed that will be your position.
24 All right, basically the job of the jury is to find the
25 facts in this particular case and certainly there is

1 evidence which reasonable minds could conclude that based
2 upon how they view the evidence and how they judge
3 credibility. There is evidence that would support Ms.
4 Hepburn being the principle. There is evidence which
5 would support Mr. Lewis being the principle. And I am
6 using the principle in general terms here which meaning
7 the person who factually injured the child. And it is the
8 jury's job to find the facts and that will be their task
9 in this particular case. Unless you cite me something a
10 little bit more compelling, Mr. wise, I am inclined to not
11 charge your request to charge number three. I am also
12 concerned that it may be a charge on the facts by this
13 Court but although that is not as much a concern to the
14 Court, it is basically the jury's job to find the facts
15 and that is their sole province. The State's evidence is
16 what it is. I don't believe it is proper for the Court to
17 necessarily charge your request to charge number three.
18 Do you have any request, Mr. Able?

19 MR. ABLE: No, sir.

20 THE COURT: Have you had a chance to review--

21 MS. MAYES: No objection, Your Honor.

22 THE COURT: All right. I typically, I have been
23 sending the jury charge back to the jury on most cases. I
24 know Judge Keesley has been doing, I believe Judge Hyman
25 who also does this as well as some other judges.

1 MR. WISE: I am requesting that you send twelve
2 copies.

3 THE COURT: Twelve copies.

4 MR. WISE: Each individual juror could, the fear I
5 have, the law out there, let me put it that way, it is a
6 little wavy. But I think if you send twelve copies then
7 you don't have a problem with somebody becoming the keeper
8 of the law so to speak. That each individual can read it
9 and I just have a feeling that some juror who is not as
10 assertive as some other juror not wanting to say, well,
11 let me read that.

12 THE COURT: Does anybody have a problem with me
13 sending back twelve copies?

14 MS. MAYES: No sir, Your Honor.

15 MR. ABLE: No objection.

16 THE COURT: I will send back twelve copies. We will
17 be at ease for about an hour.

18 MR. WISE: For the record we would like to make a
19 motion for a directed verdict. Which in essence we have
20 discussed but without formally doing it. And on behalf of
21 Richard Brandon Lewis I move for a directed verdict first
22 on the aiding and abetting on the ground that there is
23 really no substantial circumstantial evidence to establish
24 aiding and abetting in this matter. And then on the other
25 one, I think the substitutive charge of homicide by child

1 abuse I think taking the evidence in light of the most
2 favorable for the State, again, there is no substantial
3 circumstantial evidence that Richard Brandon Lewis did
4 anything other than what he said in his second statement
5 about hearing her footsteps down the hall.

6 MR. ABLE: Judge, I would renew my motion for
7 directed verdict on behalf of Ashley Hepburn. Addressing
8 the issue of the aiding and betting, again it would be our
9 position that there is no substantial circumstantial
10 evidence that would indicate that she is guilty of that
11 crime and that she aided or abetted anyone of any nature.
12 As to the homicide by child abuse, there doesn't appear I
13 believe from the record that there is substantial
14 circumstantial evidence to find that she had committed
15 that crime and we would move for a directed verdict on
16 those grounds.

17 THE COURT: Any comment, Ms. Mayes?

18 MS. MAYES: Yes sir, Your Honor. As the State has
19 previously indicated in reference to the charge, we do
20 believe that there is substantial circumstantial evidence
21 concerning the involvement of both defendants by an act or
22 omission. As to the aiding and abetting the participation
23 of each at some point along the way in knowingly allowing
24 these events to occur which led to the death of Audrina by
25 child abuse and neglect.

1 THE COURT: In light most favorable to the State, at
2 this point and time gentlemen, I would deny your motions,
3 very well argued however. I have forwarded the charge to
4 you.

5 MR. WISE: A couple of other matters?

6 THE COURT: Sure.

7 MR. WISE: First of all, I would request the State be
8 required to open fully on the law and the facts. I think
9 the Court is aware of my position on that. I would say
10 that if any case ever pries out for the State to open
11 fully on the law and the facts this is the one. As we sit
12 here today, after a week of trial and ready to start
13 closing arguments I am still somewhat at a loss to
14 understand exactly what the State's theory is going to be
15 in this case as to which one of these defendant's actually
16 committed this crime. To require us to open and then the
17 State gets to present its theory after we have presented
18 ours, for us to have no rebuttal to that I think clearly
19 would be unduly prejudicial and violate the due process
20 clause of the United States Constitution and the State
21 Constitution. This case of all cases that I have ever
22 been involved in is, I think, the one that in order to
23 have a fair closing argument where they have the burden of
24 proof and then reply to us, they should be required to
25 fully open on the law and the facts and then reply only to

1 the matters that we bring up and not closing arguments.

2 THE COURT: Do you join in that motion?

3 MR. ABLE: Judge, I would join in that motion based
4 upon the due process clause and the Federal Constitution
5 and the State Constitution. I believe it would only be
6 fair.

7 THE COURT: Ms. Mayes, your position.

8 MS. MAYES: Yes sir, Your Honor. Both defendants,
9 Ms. Hepburn and Mr. Lewis have provided evidence in this
10 case by the witnesses. They have both testified as well
11 as providing evidence through documents. And with that
12 being the law the State is entitled to last closing.

13 MR. WISE: The question, as you know, whether that is
14 the law. Because originally in this State the State fully
15 opened on the law and the facts and then they changed it
16 in conjunction with the civil rule. When the civil rule
17 was changed and the plaintiff didn't have to open, then
18 when the civil rule came back the plaintiff had to open
19 fully on the law. I just never has migrated over to the,
20 back the way it used to be in State court.

21 THE COURT: I understand your position, Mr. Wise.
22 Perhaps rectifying that law, if that is in fact the law,
23 is for another Court, it is not for this Court. Your
24 motion is denied, Mr. Able and Mr. Wise.

25 MR. WISE: Then one final matter.

1 THE COURT: Yes.

2 MR. WISE: I would also move to prohibit the State
3 from arguing in any respect that the obligation of the
4 jury is to find the truth because that is not their
5 function. Their function is whether or not they have
6 proven this case beyond a reasonable doubt as to Brandon
7 Lewis and whether or not they have proven beyond a
8 reasonable doubt as to Ashley Hepburn. If the jury truly
9 knows not wherein the truth lies a proper verdict is not
10 guilty. And to tell the jury that they have to find the
11 truth basically tells them they have to decide which
12 defendant told the truth on the stand and that is not
13 their function and I think it is misleading to the jury to
14 instruct them that they are to tell the truth. There are
15 some South Carolina Supreme Court cases that talk about
16 Judges really should reframe from telling the jury their
17 function is to find the truth. And I think in this
18 particular case the State should be prohibited from
19 arguing that because it does that, put the jury in the
20 position of one or the other and that is not the true
21 criteria here. That is one of the disadvantages of trying
22 these two cases together, with the argument by the State
23 that the jury is to find the truth. The jury really sits
24 there and says, well, we have to convict one of them.
25 Well, they don't, they can actually acquit both of them

1 because they don't know what the truth is.

2 MR. ABLE: Judge, I would join in that motion as
3 well.

4 THE COURT: Thank you, Mr. Able. Ms. Mayes.

5 MS. MAYES: Yes sir, Your Honor. I believe the
6 Court's charge to the jury will state that they are the
7 sole and exclusive judge of the facts in the case and with
8 them being the judge of the facts in the case it is their,
9 it is within their province to determine the credibility
10 of the witnesses. And in evaluating the credibility of
11 the witnesses that is ultimately a determination as to who
12 they believe may be telling the truth. And I believe your
13 charge on credibility of the witnesses talks about the
14 fact that they may believe all of the testimony or part of
15 the testimony or none of the testimony. So, I do believe
16 it would be proper for me to address that they are the
17 finders of fact at some point during closing arguments and
18 they, it is within their province to determine the
19 credibility and the truthfulness of witnesses which may
20 lead them to ultimately their determination.

21 THE COURT: That is fair game. I don't think that
22 you should argue, you have to convict. I do tend to agree
23 that there might be overstepping the line a little bit if
24 you were to agree or if you were to argue, ladies and
25 gentlemen of the jury, one of them did it, convict one of

1 them. I don't think that is going to be your argument, is
2 it, Ms. Mayes?

3 MS. MAYES: That is correct, Your Honor. In other
4 words, you mean are we going to single out a defendant or
5 we are going to state that they must convict a defendant.
6 No sir, Your Honor, the State's position is that both
7 defendants could be obviously found not guilty but both
8 defendants could also be found guilty of aiding and
9 abetting homicide by child abuse without a finding as to
10 homicide by child abuse. Without a finding as to guilt
11 for either defendant on the homicide by child abuse
12 charge.

13 THE COURT: Here is how we are going to address this.
14 Mr. Wise and Mr. Able, if you feel that at any point her
15 argument crosses that line alert me at that moment and
16 time and I will make a ruling at that moment and time.
17 But I am hesitant to tell any lawyer that you must argue
18 this or you must not argue this. We are talking about
19 reasonable doubt here, there is certainly evidence, based
20 upon how they view the evidence and that is solely a
21 province for them to determine. It is obviously the
22 possibility that they can find reasonable doubt as to both
23 defendants. Similarly there is the possibility that they
24 can convict either or both of the defendants of some of
25 the charges.

1 MR. WISE: Then I have my final one. Now, this is
2 probably going to be quicker. I would actually require
3 the State to elect as to which defendant they are going to
4 seek a verdict for homicide by child abuse against.
5 Because as the Court has pointed out I don't think it can
6 be both.

7 THE COURT: How is that inconsistent with your prior
8 argument.

9 MR. WISE: How is that inconsistent?

10 THE COURT: How is that consistent, rather, with your
11 prior argument you just made.

12 MR. WISE: I think it is very consistent because I
13 think the State can't argue inconsistent positions and
14 that makes it easier for them not to argue these
15 inconsistent positions if they are required to elect.

16 THE COURT: Ms. Mayes?

17 MS. MAYES: Yes, Your Honor. And I believe Smith,
18 the 2004 Smith, the State versus Chad Smith, the Horry
19 County case is on point here. Both of those defendants
20 were convicted of homicide by child abuse and this is a
21 situation where the State's position is ultimately both
22 could because it includes acts or omissions. And the jury
23 is going to sort through all of the facts and all of the
24 evidence to consider exactly what role each of these had
25 ultimately in the child's death. So, I do not believe the

1 State has to elect between seeking a homicide by child
2 abuse conviction against either. I believe the jury can
3 find them both guilty of homicide by child abuse just as
4 they could find them both guilty of aiding and abetting
5 homicide by child abuse.

6 THE COURT: All right. Mr. Able, you join in Mr.
7 Wise's motion?

8 MR. ABLE: Yes, sir.

9 THE COURT: The motion is denied. Thank you. We are
10 at ease for forty-five minutes.

11 (Whereupon, a lunch break was taken.)

12 THE COURT: We are back on the record. Anything
13 before we bring the jury out, Ms. Mayes?

14 MS. MAYES: Yes sir, Your Honor. We just need an
15 equipment check.

16 THE COURT: Yes, ma'am. Do you have anything, Mr.
17 Able?

18 MR. ABLE: No, sir.

19 THE COURT: Mr. Wise?

20 MR. WISE: The only one I had, Your Honor, is what I
21 mentioned earlier, where you say evidence. I think that
22 you should also put in lack of evidence or tell the jury
23 at the very least that every time you say evidence that
24 means lack of evidence also.

25 THE COURT: I will consider doing something like

1 that. I will have some time to think about that.

2 MR. WISE: There is one other too, Your Honor. You
3 got the words, defendants. I am trying to get to it now.
4 It is toward the very end. Under intent, in order to
5 establish criminal liability with respect to the charges
6 against the defendants the State must prove the defendants
7 acted with extreme indifference.

8 THE COURT: So you would request that I strike the S
9 and make that singular.

10 MR. WISE: At the bottom of page 11 and also at the
11 top of 12, yes.

12 MS. MAYES: I have no objection to that, Your Honor.

13 THE COURT: Mr. Able?

14 MR. ABLE: No objection.

15 THE COURT: I will do that on the copies.

16 MR. WISE: When you refer to on page 12, the first,
17 second, third, forth line. Conscious of knowing, failure
18 to exercise ordinary due care, I don't think extreme
19 indifference is a failure to exercise ordinary or due
20 care. I think it should basically be stricken.

21 THE COURT: What is the State's position, Ms. Mayes?

22 MS. MAYES: That is on what page, Your Honor?

23 THE COURT: On page 12 where it talks about extreme
24 indifference.

25 MS. MAYES: I believe that is from the Holder Case, I

1 believe.

2 MR. WISE: I don't know why they left that in there
3 like that but the big issue is whether or not ordinary
4 negligence was qualified for it.

5 MS. MAYES: I will leave that up to the Court's
6 discretion, Your Honor.

7 MR. ABLE: Judge, we would join in Mr. Wise's motion.

8 THE COURT: The State has no preference one or the
9 other, Ms. Mayes?

10 MS. MAYES: Which portion would it be, stricken in
11 its entirety?

12 THE COURT: Mr. Wise, striking for a conscious or
13 knowing failure to exercise ordinary or due care?

14 MS. MAYES: I believe McKnight has been upheld by the
15 Supreme Court as well. The State would prefer to leave it
16 in.

17 MR. WISE: Are you taking it from the first McKnight
18 care or the second one. There are two McKnight cases. I
19 think that is McKnight versus the case, the PCR case.

20 THE COURT: You are right. What is the State's
21 position?

22 MS. MAYES: We would prefer to leave it in if it is
23 from a Supreme Court decision.

24 THE COURT: This language is from State v. McKnight,
25 the 3, 2.

1 MR. WISE: I think they changed that in McKnight
2 versus State.

3 THE COURT: Do you have a cite for that case?

4 MR. WISE: 378 SC 333. 661 SE2d 354. It says there
5 that McKnight argues that counsel improperly charged the
6 jury, the Court had improperly charged the jury that,
7 negligence, recklessness or mere indifference. When a
8 conviction of homicide by child abuse requires a finding
9 of extreme indifference. They said it was not deficient
10 in that.

11 THE COURT: Say again.

12 MR. WISE: They said it was not deficient in failure
13 to that, I apologize.

14 THE COURT: It would require criminal negligence
15 which would be akin or recklessness, correct?

16 MR. WISE: That is correct. They kind of talk like
17 negligence is okay and then they said that a subsequent
18 charge by the Judge was improper.

19 THE COURT: It was the erroneous supplemental charge
20 to the jury. But that otherwise, my reading of it is that
21 the intent charge which is the standard charge was
22 acceptable or the initial charge. Is that correct, Mr.
23 Wise. I actually pulled the, in the standard charge, if
24 you were to go to the next paragraph where it starts,
25 criminal intent must be proven by the State beyond a

1 reasonable doubt. I actually pulled the next sentence
2 that appears in the standard charges because that did
3 reference negligence and I agree with you, I didn't want
4 there being this impression on behalf of the jury that we
5 are dealing with a preponderance or negligent under the
6 civil law. I have got criminal intent as a mental state,
7 a conscious wrongdoing. I will on page 13 eliminate that
8 last sentence which precedes the charge, homicide by child
9 abuse or neglect. I neglected to do that. That is where
10 it says criminal intent to arise from action or failure to
11 act. I will strike, it may arise from negligence,
12 recklessness or an indifference from duty or consequences
13 considered by the law to be the equivalent of criminal
14 intent. Would you agree that it would perhaps be proper
15 to strike that?

16 MR. WISE: Right. It goes back to the negligence.

17 MR. ABLE: Where are we at?

18 THE COURT: Page 13, the sentence that immediately
19 precedes the bold type, homicide by child abuse, neglect.
20 Is there any objection to me, because we have already made
21 twelve copies per your request, just me to penciling in
22 through?

23 MR. WISE: That is fine.

24 THE COURT: I will do that for all the copies. As a
25 whole, I believe the charge conveys what the proper mental

1 state is so I am going to leave the portion in the first
2 paragraph about the conscious or knowing failure to
3 exercise ordinary due care. That does appear to still be
4 the law. If they have an issue with that we will address
5 it at that point and time. Is that acceptable, Mr. Wise?

6 MR. WISE: That is fine.

7 THE COURT: All right. Bring the jury in, please.

8 (Whereupon, the jury came into open court at
9 approximately 1:36 p.m.)

10 THE COURT: Let the record reflect the jury is
11 present. Ladies and gentlemen of the jury, we have
12 reached that portion of the trial where the attorneys will
13 be giving you their final argument or their final
14 summation. I remind you that the argument of counsel is
15 not evidence in this case. You must judge the evidence
16 based upon the testimony that you have heard from the
17 sworn witnesses from this witness stand as well as any
18 exhibits or other evidence which has been introduced.
19 Additionally it is customary that the attorneys may make
20 reference to certain facts which they believe have been
21 proven in this case or evidence of which has come in in
22 this case. If any assertions by the attorneys concerning
23 facts, that they assert there is a fact in evidence which
24 reflects what your recollection of what that fact is you
25 are to go with your recollection because you are the sole

1 judges of the facts in the case. So, if the lawyers say
2 something about the facts and your recollection is
3 different you are free to and you should rely upon your
4 recollection of what those facts are. Again, the argument
5 of counsel is not evidence in this case. It is however
6 their contention as to what they believe the facts have
7 proven are failed to prove in this case therefore you
8 should pay close attention to the argument of counsel.
9 Ms. Mayes will open the law which will then be followed by
10 the closing argument by Mr. Able on behalf of Ms. Hepburn
11 and then Mr. Wise on behalf of Mr. Lewis. Ms. Mayes will
12 then have an opportunity to get back up and deliver her
13 final summation. With that, Ms. Mayes, you are recognized
14 for your closing argument, ma'am.

15 MS. MAYES: Thank you, Your Honor, may it please the
16 Court.

17 THE COURT: Yes, ma'am.

18 MS. MAYES: Ladies and gentlemen, I would like to
19 start by asking you to consider whether these defendants,
20 Ashley Hepburn and Brandon Lewis have told the full truth
21 about what happened that night to Audrina. And I submit
22 absolutely not. What we have heard, what we have spent
23 the last seven days hearing including your testimony on
24 the stand, does it include the full truth. I submit it
25 does not. And the State's position and both of the

1 defendants, Ashley Hepburn and Brandon Lewis were involved
2 in the events of the night of October 13th of 2009, early
3 morning hours that ultimately led to the death of Audrina
4 Hepburn by child abuse and neglect. And this portion is
5 fairly brief because the stage where we are right now
6 requires me to address the law. So, we are going to talk
7 about the law in this particular case and then when I am
8 done both Mr. Able and Mr. Wise will address you on behalf
9 of their clients. And let me start by saying when we talk
10 about homicide by child abuse we are talking about a
11 completely different type of crime than murder because
12 murder is one of those crimes that requires what we call
13 malice aforethought, it requires like premeditation. That
14 is not what this case is and I submit that is why they
15 have separate statutes on homicide by child abuse.
16 Homicide by child abuse is one of these crimes that is a
17 secret crime. It is not a crime that happened on a video
18 camera inside of a convenient store where somebody goes
19 into the store and robs it and catches them right there on
20 the video tape. These are secret crimes that happen
21 behind closed doors because it involves child abuse. And
22 it does not require that only one person be involved. In
23 a case like this it includes act and omission. And that
24 is what I am going to address at this point. Homicide by
25 child abuse and I will start by saying that in this

1 particular case Ashley Hepburn and Brandon Lewis are
2 charged equally. Both are charged with homicide by child
3 abuse and both are charged with aiding and abetting
4 homicide by child abuse. And at the end of the case the
5 Judge will charge you on exactly what the different forms
6 of the verdict are. But you, the jury, have the ultimate
7 right to determine whether one or both are guilty by
8 homicide by child abuse and whether one or both are guilty
9 of aiding and abetting homicide by child abuse or whether
10 one and both are not guilty of any crimes. When we talk
11 about the first charge as to both defendants, the charge
12 is homicide by child abuse. And the element, what the
13 State is required to prove is that the death of a child
14 under the age of eleven has occurred due to child abuse or
15 neglect. And while the action was committing child abuse
16 or neglect under circumstances manifesting an extreme
17 indifference to human life. And I submit in this case
18 that it has been proven beyond a reasonable doubt that
19 Audrina died as a result of child abuse, abuse of head
20 trauma as all of the doctors put it. Her homicide
21 determined by Dr. Ward in Greenville and ultimately him
22 agreeing with all the other physicians that this was a
23 clear cut case of child abuse, abuse of head trauma and
24 Audrina would of had a sudden immediate onset of symptoms.
25 And we know that she was healthy into the late hours of

1 October 12th and we know that her death was caused while
2 she was in the care of Ashley Hepburn and Brandon Lewis.
3 Now child abuse or neglect, it includes an act or omission
4 by any person which causes harm to the child's physical
5 health or welfare. So again we are talking about an act
6 or omission meaning failure to act. So in a situation
7 where one person is the actor and the other person allows
8 the injuries to be inflicted that makes both an actor and
9 a person who allows the injuries to be inflicted by
10 failure to act guilty under this particular statute, child
11 abuse and neglect. Harm, harm occurs when a person
12 inflicts or allows to be inflicted upon the child's
13 physical injury. So, again this is not a situation where
14 only one person can be guilty and that is the person who
15 inflicts the injury. This is a situation where according
16 to this statute it covers both the person who inflicts the
17 injury and the person who allows the injury to be
18 inflicted. Harm also includes a separate definition. So,
19 it can be inflicting or allowing injury to be inflicted or
20 it can be the failure to supply the child with adequate
21 food, clothing, shelter or what is relevant in this case,
22 health care. And the failure to do so causes a physical
23 injury or condition resulting in death. In this
24 particular case did Audrina Hepburn get adequate health
25 care. You heard the testimony from Dr. Ward that a

1 contributing cause of her death was hypoxia, swelling of
2 the brain, cerebral edema. His testimony was that
3 although she would of been almost immediately unconscious,
4 had a sudden onset of symptoms that would of been apparent
5 to any caregiver, that when a child goes for a long period
6 of time without medical assistance or significant period
7 of time without medical assistance that that is the result
8 of hypoxia and cerebral edema that he saw in Audrina's
9 case. So, we are talking about a situation I submit where
10 Audrina did not get immediate medical assistance,
11 immediately after she was injured. And then when
12 ultimately EMS was called what happened, these two
13 defendants sat down there at Self Hospital in Greenwood
14 going along with this story that Audrina was just found
15 this way and neither one of them knows anything. That was
16 their story and they were sticking to it. And you heard
17 the testimony of the Chaplin, Alex Brown. He goes into
18 the family room and he is trying to find out what happened
19 just like Dr. Curry was. They are desperate to find out
20 what could of happened, they are desperate to save
21 Audrina's life. And they sit in there telling even the
22 Chaplin, we don't know what happened. Brandon Lewis says
23 I was just watching a movie, I don't know anything. And
24 Ashley Hepburn goes along with his story, she was asleep
25 the whole time, never heard anything, never saw anything.

1 Ladies and gentlemen, is that believable, is that
2 credible. I submit it absolutely is not. You heard the
3 testimony of Ashley Hepburn that she hears everything in
4 the house on any other night. She hears the footsteps of
5 Brandon Lewis. Her daughter hears the footsteps of
6 Brandon Lewis, it can wake them up any other night except
7 this night. You heard the testimony about the fact that
8 her room is five feet, six feet away from Audrina's room.
9 Heard the testimony that the door was open. You heard
10 testimony that she can be in there reading a book and she
11 can hear Audrina say mama. You heard the testimony that
12 she can come inside the kitchen door, completely farther
13 part of the house, she can hear Audrina saying mama. Her
14 testimony in this courtroom was that on this night she
15 heard nothing, saw nothing, noticed nothing, not credible.
16 You heard the testimony of Brandon Lewis, first that he
17 was watching a movie, he doesn't know anything. That was
18 his first statement to law enforcement, that he admits was
19 a lie. The same story he was telling Dr. Curry, the
20 emergency room physician that he was trying to save
21 Audrina's life. The same story he is telling the
22 Chaplain, the same story he even told law enforcement for
23 hours and hours and hours. According to him that lie was
24 to protect Ashley Hepburn. But ultimately that lie was
25 also to protect himself because their story was we don't

1 know anything, we just found her this way. Did Audrina
2 Hepburn get adequate health care, I submit she did not,
3 not when the people she is relying on the most to help her
4 that night was lying and ultimately extreme indifference
5 to human life. Can there be any question that this child
6 being beaten with multiple points of impact to the head in
7 addition to rapid acceleration and deceleration forces to
8 the brain, that were so severe it caused her eyes to bleed
9 out, her vision to completely and immediately impaired,
10 covered in bruises, sixteen months old. There is no doubt
11 that is extreme indifference in a life.

12 The second charge before you for consideration is
13 aiding and abetting homicide by child abuse. This is when
14 the actor knowingly aids and abets another person to
15 commit child abuse or neglect. And that child abuse and
16 neglect results in the death of a child under the age of
17 eleven, knowingly aides and abets another person. Again,
18 knowingly aiding and abetting another person to commit an
19 act or omission resulting in harm. And once again that
20 harm can be inflicting or allowing to be inflicted injury
21 or the failure to supply proper health care. And in this
22 particular case it is for your consideration whether one
23 or both committed the act of aiding and abetting to the
24 other. And in this particular case, you heard the
25 testimony of Brandon Lewis, he lied knowingly, he lied

1 with the full understanding of what he heard that night
2 and the decision not to report it, according to him
3 because he wanted to protect his codefendant. That was
4 far more important that night than Audrina's life. So for
5 your consideration as to the charge of aiding and
6 abetting. Now, the Judge is going to give you a charge on
7 some other factors of law that he is going to address at
8 the final point in the case but I want to touch on those
9 briefly. When we talk about the charge you will get from
10 the Judge in addition to the homicide by child abuse and
11 the aiding and abetting, first of all he will charge you
12 on what we call circumstantial evidence. Well, what does
13 that mean, does that mean that because there are
14 circumstantial evidence in this case that it is not good
15 evidence. No, absolutely not. That is not the law in the
16 State of South Carolina, it is not the law in the United
17 States. There are two types of evidence, direct evidence
18 and circumstantial evidence. Direct evidence, like I
19 mentioned before, it is one of those cases where you are
20 in a 7-11 and there is a video camera right up there on
21 the ceiling. And if someone comes in and commits a
22 robbery that video camera is playing and it captures it.
23 And you can come into the courtroom and you can show that
24 videotape to the jury, and you can see it with your own
25 eyes. That is direct evidence. But a case like this is

1 different. Circumstantial evidence is good evidence under
2 the law. And circumstantial evidence is when there is a
3 chain of events and the chain of events is like a separate
4 length in a chain and together they form a picture of the
5 crime that was committed. And in this case there is no
6 question that Audrina was killed that night, killed that
7 night while in the care of these two defendants. And I
8 submit both of them know full well what happened to
9 Audrina, both were involved. As to reasonable doubt which
10 the Judge will charge you on. A reasonable doubt does not
11 mean that the State has the burden of proving a case
12 beyond every doubt, beyond any doubt. Reasonable doubt
13 means that the State has the burden of proving a case that
14 leaves you firmly convinced of the guilt of one or in this
15 case both defendants as to the charge of homicide by child
16 abuse or aiding and abetting homicide by child abuse. You
17 will also get a charge that mere presence at the scene of
18 a crime does not amount to guilt. And I submit that
19 particular charge does not apply in this case because this
20 isn't a situation where one of them was merely present and
21 knows nothing, saw nothing, heard nothing, has nothing to
22 add. That is not the situation here. They were more than
23 merely present at the scene. Also I want to address the
24 fact that when we talk about homicide by child abuse who
25 does it apply to. Does it apply to any person, yes. In

1 South Carolina under South Carolina law it does. Homicide
2 by child abuse does not mean that it only applies to a
3 parent or it only applies to a step parent who has a legal
4 duty and responsibility to a child. Homicide by child
5 abuse and aiding and abetting homicide by child abuse can
6 apply to any person, not just a parent such as Ashley
7 Hepburn but also someone like Brandon Lewis who was in the
8 home regardless of the fact that he is not legally a
9 parent. And that, ladies and gentlemen, is the law and I
10 will step down now and allow defense counsel to address
11 you and I will address you at the final portion of this
12 case concerning the specific facts for you.

13 THE COURT: Thank you, Ms. Mayes. You are
14 recognized, Mr. Able.

15 MR. ABLE: Thank you, Judge.

16 THE COURT: Yes, sir.

17 MR. ABLE: Good afternoon. I would like to thank
18 each of you for being here over the past week and not just
19 from myself but from my client, Ashley Hepburn. This is
20 an important day. It is not an unusual thing in this
21 world that people get tried by a jury, usually people get
22 tried by Judges in other countries. This is something
23 that is unique here and it is the best system that we have
24 to determine these type cases. Now, when we started this
25 last week, last Wednesday I told each of you as a jury it

1 was your job to decide what the facts were in this case.
2 There is one fact that is in dispute, one fact that we
3 learned yesterday that doesn't have to be decided. And
4 that fact is Richard Brandon Lewis is a liar, he said so.
5 He told us that, he sat right there in that chair and
6 related to us that he tells lies. The trouble with Mr.
7 Lewis is being able to know when he is telling a lie and
8 when he is not telling a lie. I submit to you, ladies and
9 gentlemen, that when Mr. Lewis gave that second statement,
10 that is the point of contention here, that is the issue.
11 Now, when he gave that second statement he was telling a
12 lie. Not all of it is false, now we know that because
13 parts of it he related before. The morning of October the
14 13th, parts of it he told, this is what happened, these
15 are the secrets of events. But when he sat there on
16 October 13th at 11:52 or whatever it was in the morning
17 the portion of that statement that he gave about hearing
18 footsteps, about hearing the sounds of a baby being shaken
19 were not true. He had spoken to no less than six people
20 that morning before giving that second statement. He had
21 gone to the hospital on October the 13th of 2009, he said
22 he spoke to Officer Garrison. He spoke to Chaplin Brown,
23 he spoke to Dr. Curry, he spoke to Officer Plaxico and
24 Blackmon and we heard he spoke to the DSS worker, Dee
25 Deal. He spoke to all of those people at Self Hospital

1 before he was ever brought to the Laurens County Sheriffs
2 office to give a formal statement. Now, Mr. Lewis
3 testified yesterday from that stand, when he spoke to
4 Officer Garrison he told him several things and this is
5 what he said he told Officer Garrison. Number one, that
6 Ashley and Owen had gone to bed. Number two, that he was
7 the only person awake in that home. Three, that he was
8 the last person to have contact with Audrina. Four, he
9 found Audrina and when he found her he took her to her
10 mother that was still asleep in the other bedroom. He
11 said nothing to Officer Garrison about any footsteps, he
12 said nothing to Officer Garrison about hearing any noises,
13 that is what he said and that is what Officer Garrison
14 testified to. Mr. Lewis testified yesterday that when he
15 spoke to Chaplin Brown at the hospital he told him the
16 same things. Ashley and Owen were asleep in the bed, he
17 was the only one awake in the home, he found Audrina and
18 had last contact with her and when he found her he took
19 her to her mother. But he did add one other thing for
20 Chaplin Brown, he added that baby doesn't like me but I
21 love her. What kind of person says that about a sixteen
22 month old baby, what kind of person would even verbalize
23 that statement, that a sixteen month old baby doesn't like
24 me. And he added that and it caused Chaplin Brown to have
25 some concerns. We heard Dr. Michelle Curry testify last

1 week that she spoke to Mr. Lewis that very morning and
2 that he related the same story to her. Ashley was in bed
3 with Owen, she was asleep. He was the only one up in the
4 home. He found the child, he was the last one to have
5 contact with her. When he found the child he took the
6 child to his mother. He spoke to Dee Deal with law
7 enforcement, they interviewed him, told the same story
8 again. Ashley and Owen were in bed, he was the only one
9 up, he tried to wake up Ashley to see if she wanted to eat
10 something, to go watch a movie and she said no. He said
11 she went back to sleep. He went to check on Audrina, he
12 was the last one to have contact with Audrina. And when
13 he took her, he took Audrina to her mother upon his
14 discovery. And then he added for Mr. Dee Deal, he
15 testified, that baby doesn't like me but I love her. He
16 said that about a sixteen month old baby. That was all at
17 the hospital, those are the people that he talked to at
18 the hospital that morning before coming over to the
19 Laurens County Sheriffs Office. And during all of those
20 interviews, during each of those interviews he never once
21 said anything to anybody about hearing footsteps or about
22 hearing the noise of a baby being shaken, he never once
23 mentioned any of that to anybody. Then he was brought to
24 the sheriffs office, they wanted to interview him. He
25 spoke to Officer Ben Blackmon at 6:42 a.m. on October the

1 13th of 2009. And what did he tell him, what did Mr.
2 Lewis tell Mr. Blackmon in that interview. The same thing
3 that he had said to everybody else. Ashley was asleep, he
4 was the only one awake, he took Audrina to her mother upon
5 his discovery. He reported that same series of events no
6 less than five times that morning. I submit to you,
7 ladies and gentlemen, that that morning of October the
8 13th of 2009 Richard Brandon Lewis was telling the truth.
9 He was the only one awake in that house. My client,
10 Ashley Hepburn had gone to bed, she had gone to sleep, she
11 was in there with her son, she didn't know what was going
12 on, she was asleep. And the next thing she knew Richard
13 Brandon Lewis was standing over her holding the body of
14 her lifeless baby. Now, as I said a moment ago, I submit
15 to you that that morning of October 13th Richard Brandon
16 Lewis was telling the truth because he hadn't had a chance
17 to think about it. He hadn't had a chance to think about
18 what he was saying, he didn't realize what he was saying
19 to everybody. He didn't figure out that by telling the
20 truth, by telling the series of events that recounted over
21 and over he was incriminating himself. He realized that
22 what he had done was tell everybody I was the only one
23 awake, Ashley was asleep, I was the last one to be in the
24 room with that baby. I was the last one to have contact
25 with that baby. He realized that, he told the truth at

1 that point. And then he said I have messed up here, he
2 realized he had messed up and he had to say something
3 else, he had to do something to cast the blame off of
4 himself because he had blamed himself. He told us all, he
5 told everybody that morning he was the only one awake. So
6 he thought about it, from that first statement to that
7 second statement. He got five, he took five hours and he
8 thought about it and said, I have got to say something
9 else, I have messed up. I have got to go back and I have
10 got to tell these people something to save myself. And
11 yesterday Mr. Lewis testified the reason he changed his
12 story, the reason he changed his story was his professed
13 love for Ashley Hepburn. He said I love her, I wanted to
14 protect her. I submit to you, ladies and gentlemen, that
15 it was not his love for Ashley but his love for himself to
16 try to save himself that prompted the change in the story.
17 Now, when you get a chance to, well when you go back to
18 the jury room you are going to have a chance to take that
19 statement with you, the thing that we referred to as the
20 second statement, the second voluntary statement. You are
21 going to have a chance to look at that and you are going
22 to have a chance to read it. You are going to see where
23 he said in there, the part had been changed, I heard her
24 give Owen an intense spanking. Yesterday he changed that,
25 he added to it a little bit. She jerked him up by the arm

1 then she gave him an intense spanking. He still changes
2 his story. But you remember Dr. Curry last week testified
3 from the ER room she had examined Owen. She examined
4 Owen, she didn't find any marks on him, didn't find any
5 bruises on him. But his story was that he got an intense
6 spanking, he was wearing his bed clothes, she jerked him
7 up by the arm. There is no evidence of that, just his
8 statement. That is all. She said she popped him on the
9 backside for not wanting to brush his teeth, she said
10 that, she told SLED that, she testified to that. The only
11 person who said she gave an intense spanking was Richard
12 Brandon Lewis, that was a different story there. Nobody
13 else saw any bruises or marks on him. The unbelievable
14 part of this second statement, of course as I said a few
15 moments ago, starts when he says I heard these loud
16 footsteps, I heard what sounded like a baby being shaken.
17 A baby being shaken, he heard that, that is what he says,
18 he heard. I heard the crying stop and then at that point
19 I heard loud footsteps going back. That is unbelievable.
20 He never said anything to anyone else about anything like
21 that that morning and that was the moment, I will submit
22 to you, that he decided that I am going to protect myself.
23 I have given all of these other statements and I pretty
24 much said I am in the room, I am the only one there that
25 is awake, Ashley is asleep. I have got to protect myself.

1 That is why he changed his story. His earlier mistake was
2 telling the truth all of those times before. Now, when
3 you read that statement and you go over it in the jury
4 room just look at how unbelievable it is. He hears these
5 loud footsteps, he hears what he says Audrina starts
6 crying as if being shaken. And then he says he sat there.
7 I asked him yesterday, what does it sound like to hear a
8 baby being shaken, what does that sound like. You heard
9 Dr. Croswell yesterday, last week, she is an expert. I
10 asked her, what does that sound like, Doctor. She didn't
11 know, she said she didn't know about any studies about
12 anything like that. But his statement was I heard what
13 sounded like a baby being shaken but he couldn't tell us
14 what that sounded like yesterday. But there he was
15 writing the statement, while dictating a statement saying
16 that is what it was. He was wanting to tie back to what
17 Dr. Curry was talking about at the ER room, he wanted to
18 put something in there to make it sound right. He wanted
19 to put something in there to make it sound like it was
20 something he did hear but he couldn't tell what it sounded
21 like. He hears all of this, this is in his second
22 statement, he hears all of this, the footsteps, the
23 crying, the shaking is what he says he hears, the alleged
24 shaking. Now, what does he do. He sat there, that is his
25 story, I sat there. I submit to you, that is

1 unbelievable. Anybody would of gotten up and gone in
2 there and said, what is going on, why is Audrina crying,
3 why am I hearing these sounds I have never heard before.
4 It is not believable, ladies and gentlemen. What does he
5 give, after hearing what he says he heard, when he does
6 get up what does he do. He comes out of that den, he
7 walks around into the eating area, passes through the
8 kitchen, comes into the foyer, you have got Ashley's room,
9 Audrina's room and the bathroom right there. What does he
10 do. Does he do what any rational person would do, any
11 level headed person who says I heard that. No. Instead
12 of turning left he turns right and he goes into Ashley's
13 bedroom and says do you want to watch a movie with me. Do
14 you want some hash my grandmother sent over here. That is
15 unbelievable. And then he leaves that room, he walks out
16 of the bedroom and walks straight into Audrina's room to
17 investigate, would anybody else I submit to you would have
18 gone in there and said what was going in here, let me go
19 find out. Is that what he did? He turned left and went
20 got him a plate of food and sat down and watched a movie.
21 He described what he says he heard, he sat down and
22 watched a movie after checking on his girlfriend. It is
23 unbelievable, ladies and gentlemen. You can't believe
24 that. And in his statement, his second statement he goes
25 on to say I noticed that there was blood on the outside of

1 Audrina's mouth. Now, let's think about that a minute.
2 He said he noticed on the outside of the child's mouth, he
3 is the only person to have said that. He is the only
4 person who has said that. Ashley testified, I asked her
5 about it specifically. I said do you remember seeing
6 blood on that child's mouth, on Audrina's mouth. She said
7 it looked red, but no, she didn't see any blood. Doris
8 Davis, the grandmother, gave the child two quick breaths,
9 she put her mouth to that baby's mouth, did she see blood,
10 no. The EMS worker, Mr. Duckett, Calvin Duckett, he never
11 mentioned about seeing blood on the outside of the child's
12 mouth. Richard Brandon Lewis saw the blood on the outside
13 of the child's mouth. And you went in there and got
14 scared and you got that towel and you wiped that blood off
15 before taking that child to Ashley. That is how that
16 towel wound up in that crib. Never did Ashley say
17 anything about that towel. He got scared, he knew what he
18 had done, he hurt that baby and he is going to try to
19 cover it up. Mr. Lewis was the only one that saw that
20 blood and he was the only one who could of gotten that
21 towel and wiped that blood off before giving that child to
22 the mother who then went and woke up. He had been in that
23 room, he had gone in that room not to check on Audrina.
24 There is a picture that you are going to be submitted with
25 or you will have in the jury room with you, excuse me one

1 moment. State's exhibit 62, it is a picture from the
2 doorway into the bedroom of the children, it shows the
3 crib and the bumper pad. It would of been very hard for
4 him to see in that room that night and see that baby given
5 the way of the bed's position and the way that bumper pad
6 is so high up. That is not something he had in his
7 statements either. He said I saw her laying horizontally,
8 I stuck my head in that time and I saw her laying
9 horizontally in the bed. There was low light, he never
10 put any of that in the statements. But you will have that
11 photograph with you. He went in that room that night with
12 intent on hurting this child. He was mad, he was upset,
13 Ashley and he had argued, she had told him you are not the
14 father of these children, you will not tell me how to
15 raise my children, you will not tell me how to discipline
16 my children, you will not discipline my children. He was
17 mad, he told her, he said, he testified yesterday, he is a
18 better parent. He was telling her what she was going to
19 do and they got upset. He was mad. He was also jealous,
20 he was jealous of those children. You heard Ashley
21 testify that he would often ask her what about you and
22 Daniel, are y'all going to get back together, are y'all
23 going to reconcile. Are your feelings greater for Daniel
24 than they are for me. And every time he looked at
25 Audrina's blue eyes he saw that. He was jealous of those

1 children because Ashley Hepburn put her children before
2 him. He went in that room with the intent of hurting that
3 baby and he did. But it went too far, he got scared, I
4 have got to cover this up. He knew what he was doing. He
5 knew that mother across the hall knew he had to make up a
6 story. And he took that child in there and what did he
7 say, I think she had a seizure. Why would he of said
8 that. You find a baby in that condition, in that shape
9 and the first thing you want to say is I think she had a
10 seizure. He was calm, Ashley testified he was calm. I
11 think she had a seizure. He was trying to offer an
12 explanation when he was trying to give the child to the
13 mother about what he thought was wrong with the child.
14 Instead of saying we have got to get help for her, we have
15 got to find out, we have got to get her to a doctor, we
16 have got to get EMS. He is trying to offer an explanation
17 of what he had done. He was trying to offer an
18 explanation so what he could tell everybody. I think she
19 had a seizure. And he didn't normally tell Ashley that,
20 he told David Crumley that, he told Doris Davis that. I
21 think she had a seizure. But he knew what he had done, he
22 knew what he had done.

23 Now, let's look at the State's case for a little bit.
24 Now, the State has brought up several different things
25 about a chipped tooth, the bruise on the forehead and this

1 petechiae. And they want you to believe that Audrina had
2 been abused prior to October 13th of 2009. About the
3 chipped tooth, you heard Ms. Davenport's testimony,
4 Ashley's grandmother. She had the child over at her
5 house, Audrina was learning how to pull up, was getting up
6 on her legs. One of these little plastic swimming pools
7 and she flips over, she pulls herself up and flips over
8 and hits herself square in the face. Ms. Davenport didn't
9 think much about it, she wiped off the blood and put the
10 baby back in the water and she started playing. But when
11 Ashley got there she looked at her child and said, Memaw,
12 Audrina has got a broke tooth. Children fall down, every
13 doctor that was up here last week, every expert, Dr.
14 Croswell, the expert in child abuse said sixteen months
15 olds learning to walk fall. And where do they fall,
16 forehead, face, elbows, shins, she fell over and chipped
17 her tooth playing in a swimming pool. Now, you heard
18 about Ashley's attempts to get it repaired. She wanted to
19 find a doctor who could do it without having to traumatize
20 the child, without having to strap the child down, could
21 put her to sleep and correct that problem. She didn't try
22 to hide it. If she had wanted, if she had caused that
23 injury she could of said, well, I am not going to allow
24 you to have visitation, Daniel. I am not going to bring
25 Audrina over to see you. She didn't do that. She took

1 the child to see her father, she took Owen to see his
2 father, she took them over there so they could visit. She
3 didn't try to hide it. There is no evidence that that
4 chipped tooth was caused by abuse. There has also been
5 talk about the bruise to the forehead. Doris Davis,
6 Ashley's mother testified that when Ashley found the baby
7 in the crib with the bruise, she had gotten up from a nap
8 Ashley immediately brought the child in there and said
9 what is this. There is a bruise on Audrina's forehead,
10 what do you think caused this, mama. Ashley testified she
11 got in the car and went to Walmart and tried to find some
12 pads to put on the rail of the crib so it wouldn't happen
13 again. Again, all the experts testified, the State's
14 witnesses, just like the chipped tooth, the State's
15 witnesses testified babies fall down. Dr. Croswell
16 testified that the bump to the forehead, that is not
17 indicative of child abuse, when babies fall they hit their
18 foreheads. There is no evidence that bruise to the
19 forehead was caused by any type of abuse. Then they raise
20 the issue about the petechial rash around Audrina's neck.
21 September the 11th of 2009, she took the child to the
22 doctor, she had the well baby checkup. She had the well
23 baby checkup scheduled that day and the day before she
24 found that rash, excuse me, I am sorry. The day before
25 she had found that rash on the child's neck, she knew she

1 had a doctor's appointment on September 11th and she took
2 the child to the doctor. She said it appeared to be one
3 type of rash but the nurse told her, no, it is different.
4 The one on the trunk appears to be viral and then got to
5 the petechiae. Well, Dr. Philpott last week testified
6 that petechial rashes can be viral. Viruses can cause
7 those, she said a whole lot of things can cause those.
8 But about that rash, Ashley took Audrina to the doctor,
9 not once on September the 11th of 2009, but when she took
10 the child in she saw Nurse Wolkekette. Nurse Wolkekette
11 said if it gets worse we want you to come back. If you
12 think it is spreading bring her back so we can see her
13 again. Now, Nurse Wolkekette, if you recall, when we
14 called her as a witness said that the petechial rash could
15 be caused by a stressful cough and or her opinion it was a
16 stressful cough or irritated skin. She didn't have any
17 concerns about child abuse and she told you if she thought
18 it was child abuse she would of reported it as she is
19 required to do by state law. But Ashley was told if it
20 gets worse come back and see us. What did she do.
21 September 12th, Saturday she was sitting in that doctors
22 office saying I think it is worse. She saw Dr. Pike and
23 Nurse Platt at that time over the period of that six day
24 period, no less than two nurses and no less than two
25 doctors looked at that rash. On the second day she went

1 they told her again if it gets worse come back to see us.
2 That was Saturday, the 12th. She was back in that office
3 on September the 16th of 2009 saying look at my baby
4 again, it is not any better, tell me what this is, tell me
5 what is wrong with her. She had three doctors visits in
6 six days. Dr. Philpott testified that Ashley appeared
7 concerned about, that she and Audrina acted appropriately
8 within each other. It was Dr. Philpott who testified,
9 Audrina reached for her mother. They interacted
10 appropriately. Both Nurse Wolkekette and Dr. Philpott
11 testified, had they believed at any time that any of this,
12 that rash was a result of any abuse they would have
13 alerted the authorities. They looked at it, they couldn't
14 tell what it was. They even set up a test for the 17th,
15 September the 17th to go to Self Memorial to have a test
16 done there to help try to determine what was going on.
17 Did Ashley try to hide that, did she try to keep the child
18 away saying, oh, I don't want anybody to see this on the
19 child. No, she took Audrina and Owen to their father's
20 home for a visit and asked Daniel, you need to take
21 Audrina to the hospital tomorrow so she can have a test,
22 so we can figure out what this is. She didn't try to hide
23 the fact. She took the child to the doctor, that is what
24 you would expect a caring, loving mother to do is when a
25 doctor says that it gets worse bring your child back, that

1 is what you would expect a mother to do. That is what you
2 would expect Ashley Hepburn to do and that is what she
3 did. There is no evidence that the bruise to the
4 forehead, that the bruise to the forehead or that rash or
5 the chipped tooth were caused by abuse. Now, in their
6 case the State also wants to lead you to believe that the
7 bruises on Audrina while she was in the hospital were a
8 different color, they kept bringing that up, these bruises
9 were a different color, trying to indicate that they were
10 old bruises and new bruises. You heard Dr. Seigler and
11 Dr. Croswell, both State's witnesses, both experts, they
12 both testified you can't date bruises by their color or
13 appearance. They both said that. Dr. Seigler even
14 testified when I cross-examined him, the bruises may have
15 been inflicted at the same time as the injury that caused
16 Audrina's death. He couldn't tell you, they can't tell
17 when a bruise, depending upon what color it is, they can't
18 tell how old that bruise is. That is the experts that the
19 State called. The State then wants to keep raising this
20 issue about fingernails. Ashley may of had fingernails,
21 there is a photograph of her the summer of 2009 showing
22 she had fingernails. And she told you she had had an
23 event to go to. But there is no evidence that she had
24 fingernails. As a matter of fact, you heard Dr. Ward who
25 is a pathologist I believe, he performed the autopsy. He

1 testified that the injuries to Audrina's back were caused
2 by fingernails but he couldn't tell how long they were.
3 He even told Ms. Mayes on direct examination that they
4 wouldn't have to be long, they wouldn't have to be long to
5 cause those type injuries. Again, that was the State's
6 expert. And Agent Kirkland testified that her
7 investigation was not depending as to whether or not
8 Ashley Hepburn had long fingernails on that day of October
9 the 13th of 2009. And it didn't matter because Dr. Ward
10 had said it could of been long fingernails, it could of
11 been short fingernails. As a matter of fact when Ms.
12 Mayes was questioning one of the experts she was asking
13 about fingernails, they started talking about right hand
14 versus left hand. Ashley is left handed. Ms. Mayes asked
15 the doctor, can you tell from the blow, can you tell from
16 the injuries to this child if it was a left handed or
17 right handed person. No, he couldn't. Could you tell if
18 it was a man or a woman. No, you couldn't. The
19 fingernails, left hand, right hand, the experts don't
20 know. Those were the State's witnesses. That is what the
21 State produced for you.

22 Now, let's talk a few minutes about some of these
23 State's witnesses. You had Mr. Duckett, Calvin Duckett,
24 the EMS driver. What did he describe. He described
25 Audrina's condition when he picked her up, when he got

1 there in the ambulance and they took her to the hospital.
2 And these are all the State's witnesses. You heard from
3 Dr. Michelle Curry from the hospital, what did she tell
4 you about this. She described Audrina's condition, she
5 related Mr. Lewis' statement that he was the only one
6 awake in that house. Dr. Curry related that Mr. Lewis'
7 statement that Ashley Hepburn was asleep and that he took
8 the child to her. Dr. Curry related Ms. Hepburn's
9 statements that she had put the child in the bed, the baby
10 was fine and that she had gone to bed with Owen and was
11 only awakened and was awakened by Mr. Lewis when he
12 brought the child to her. You heard David Crumley, Ms.
13 Doris Davis' boyfriend, Ms. Davis being Ashley's mother.
14 Mr. Crumley testified that on the evening of October the
15 12th of 2009 the baby was fine. They sat there and they
16 ate dinner but that was both Mr. Crumley and Ms. Davis'
17 testimony. The baby was fine the night before. The baby
18 sat there and had dinner, the baby played with her
19 brother, the baby was crawling trying to walk. Ms. Davis
20 picked the baby up and picked Audrina up and carried her
21 into the bathroom to get a bath. Audrina was fine that
22 night. And they both, Mr. Crumley and Ms. Davis related
23 that they were awakened by the screams of Ashley screaming
24 for help for Audrina. The State called Alexander Brown,
25 the Chaplain from Self Memorial. He related that Mr.

1 Lewis' statement that he was the only person awake in the
2 house. That Ashley Hepburn and all others were asleep.
3 He also said that Mr. Lewis never said anything about Ms.
4 Hepburn doing anything except being in bed. We heard from
5 the medical experts, Dr. Seigler, Dr. Croswell, Dr.
6 Johnson and Dr. Philpott. And Dr. Seigler, the attending
7 physician, he described her injuries. He said that the
8 head injuries were not old and he said, again, like I said
9 before that the bruises may have occurred at the same
10 time. Dr. Croswell who interviewed and talked with Ashley
11 at the Greenville Hospital reported the history of events
12 as Ashley gave them to her. Mr. Lewis was awake and found
13 Audrina and Ms. Hepburn was asleep and she talked about
14 the condition of the child and her injuries. Now, when I
15 spoke to Mr. Lewis yesterday, when I cross-examined him I
16 asked him on the morning of October the 13th he was at the
17 sheriffs office giving his first statement. It doesn't
18 say anything about hearing footsteps, it doesn't say
19 anything about hearing babies being shaken or a baby being
20 shaken, nothing like that in there. It is the same thing
21 that he basically told everybody that morning up to that
22 last statement. Ashley Hepburn, well Mr. Lewis was taken
23 from Self Regional Hospital to the Laurens County Sheriffs
24 Office where he gave this statement. Ashley Hepburn had
25 left Self Regional Hospital and went home, put on some

1 shoes because she had ran out of the house with no shoes
2 or socks on, she was in her bed clothes. And she went to
3 Greenville Hospital, Greenville Memorial. And she was
4 relating to Dr. Crosswell at that time while Brandon Lewis
5 was down there relating this statement, Ashley Hepburn was
6 in Greenville talking to the doctors, talking to Dr.
7 Croswell, relating the same history. She was telling the
8 same thing that Brandon Lewis was telling down here, she
9 was telling the truth just as he was at that time. Dr.
10 Philpott described the rash, the child had been taken to
11 the doctor by the mother three times. She also testified
12 that she didn't make a diagnosis of child abuse. She said
13 that was part of the differential diagnosis basically
14 meaning we need to look at this, we need to figure out
15 what the problem is. She doesn't say this was child
16 abuse. We have to go through, a differential diagnosis
17 she testified is just a matter of elimination. That
18 diagnosis was never made and you heard her say that if she
19 had thought that she would have reported it. Dr. Philpott
20 and nurse Wolkekette both testified that that type rash
21 could be caused by a cough. Nurse Wolkekette said it was
22 her opinion that it was caused by a stressful cough or
23 irritation of the skin. You heard from Ben Blackmon who
24 took the first statement from Mr. Lewis which I just
25 referred to and in that statement Mr. Lewis again said he

1 was the only one up in the house and that Ashley was
2 asleep. And he gave that statement at the same time she
3 was in Greenville giving her statement to Dr. Croswell.
4 We heard from Dee Deal, I have already discussed what he
5 told Dee Deal. We heard from Calvin Hill from DSS, from
6 the Department of Social Services and Mr. Hill said,
7 Ashley said she had gone to bed and left Brandon up. We
8 heard from the SLED DNA analyst, basically Ms. Brown, Ms.
9 Simmons and Mr. Fitts who basically said you would expect
10 to find the mother's DNA in a child's crib, you would
11 expect to find the mother's DNA in a child's room and on a
12 child's things because the mother has access to all of
13 those things. You would expect that from being in a
14 child's room. We heard from Officer Garrison basically
15 telling the same story that Brandon had told everybody
16 that morning, I have already gone over that, heard from
17 Officer Plaxico. And we also heard from Agent Kirkland
18 about the statement that she had taken or the notes she
19 had taken and made into a memorandum as to her statement
20 from Ashley that Ashley said she was asleep and that Mr.
21 Lewis was the only one awake. The only thing in the
22 State's case-in-chief that they were able to prove or not
23 to prove but they were able to show was that Ashley had
24 gone to bed, Mr. Lewis was the only one awake. Mr. Lewis
25 took Audrina to Ashley and woke her up, that is her proof.

1 Now, or course that didn't end it. You heard from the
2 defendants as well. You heard from Mr. Lewis and I am not
3 going to go back into all the things that I just spoke
4 about of Mr. Lewis and what he testified to. But you
5 heard from Lieutenant Plaxico this morning, you heard him
6 say that when he spoke to Ashley on October the 13th of
7 2009 down here at the Laurens County Sheriffs Office that
8 he allowed Ashley to look at that statement of Richard
9 Brandon Lewis I believe is marked as defendant's exhibit
10 number 2. And he allowed her to read that statement and
11 she made the statement, "Oh my god all of this is true but
12 I don't remember hurting my baby." Now, ladies and
13 gentlemen, as I asked Mr. Plaxico this morning, when I
14 first talked with him about this case in December of '09
15 there was a preliminary hearing and I got to ask him
16 questions. And the last question, one of the last
17 questions I asked him is what evidence do you have other
18 than Mr. Lewis' statement that my client was involved
19 causing the injuries to Audrina Hepburn. In December of
20 2009, less than three months after he interviewed Ashley
21 Hepburn on October the 13th of 2009 he said nothing, that
22 he had no other evidence other than the statement of
23 Richard Brandon Lewis. He said nothing, he testified to
24 that this morning. He didn't make any mention at that
25 preliminary hearing about hearing any, about, I am sorry,

1 he didn't make any mention at the preliminary hearing
2 about Ashley making any statements to him about saying, oh
3 my god all of this is true. He never said that. As a
4 matter of fact on October, subsequent to October 13th, I
5 think it was dated October 19th he went back, Mr. Plaxico
6 and he made a supplemental report where he said they had
7 gotten the second statement from Richard Brandon Lewis and
8 he went and he interviewed Ashley on the 13th and the only
9 thing that she told him was I didn't hurt my baby. That
10 was October 18th, I believe, 18th, 19th, somewhere in
11 there, 2009. He made a supplemental report saying when I
12 interviewed Ashley all she told me was she didn't hurt her
13 baby. And in November of 2009 I had talked to him at the
14 preliminary hearing and he said is the only thing I have
15 that connects Ashley Hepburn to this is the statement of
16 Richard Brandon Lewis. He didn't say anything about her
17 making these statements. He didn't say anything about it
18 until May of 2010 at the DSS hearing. He doesn't, then he
19 doesn't bother to even make a report about it until a year
20 after the incident. October, I can't remember, October of
21 2009, 2010. He waits a year to put in writing this
22 statement and Ashley Hepburn, after reading that statement
23 that Richard Brandon Lewis prepared, said, oh my god all
24 of this is true. He didn't even put that in writing until
25 a year after it was supposedly said. He had no notes, he

1 had no video, he had no recording and he makes that
2 statement. I think the thing that is important here is
3 after this so called statement, this supposed Ashley
4 Hepburn confessing, basically saying, oh my god all of
5 this is true, everything in this statement is true. A
6 statement that says that I stomped across the house, I
7 shook my baby and then I stomped back and got in the bed
8 and went back to sleep. After she supposedly made this
9 statement confessing to that did Lieutenant Plaxico put
10 handcuffs on her, no. Did he take her to jail, no. She
11 left, he released her. He let her go. You as the jury
12 can weigh that, you as the jury can decide the credibility
13 of the witnesses who have testified. You can weigh the
14 credibility of each witness up here to determine their
15 credibility. I submit to you, ladies and gentlemen, that
16 that is not credible. If that young girl over there had
17 made those statements, oh my god all this is true, she
18 would of been arrested right that moment. She would not
19 have been allowed to leave. What happened again was what
20 was in that first supplemental report that Officer Plaxico
21 testified to, he went and spoke to Ashley Hepburn, she
22 said she didn't hurt her baby. That was it. That was the
23 first supplemental report in October of 2009, not October
24 of 2010. That is all he mentioned, was that he had talked
25 to her and she said she didn't do anything to hurt her

1 child. Now, the State's position will probably say, well,
2 why didn't she say all of it was lies, this second
3 statement. Why didn't she say everything contained in
4 there is all lies. Well, it wasn't. You heard Ashley
5 testify, it wasn't all lies. There were parts in there
6 that were true. And she said I looked at it and I said I
7 put Audrina to bed, that is true. Owen and I went to bed,
8 that is true. Richard Brandon Lewis came in my room, that
9 is true. Richard Brandon Lewis brought my baby to me
10 holding her in his arms, that is true. But I submit to
11 you she never said, oh my god all of this is true. That
12 is not true. She told him what was the truth and it was
13 not until, as I said, eight months later that he ever
14 mentioned anything, Officer Plaxico ever mentioned
15 anything about this statement, this declaration, all of
16 this is true in the statement. I submit to you that
17 didn't happen that way. Ladies and gentlemen I submit to
18 you that in the early hours of October the 13th of 2009
19 what happened is just as Mr. Lewis said to everyone before
20 that second statement. Ashley had gone to bed, Ashley was
21 asleep with Owen in that bed, she had previously had put
22 Audrina down, Audrina was in her room. He, Richard
23 Brandon Lewis was the only one awake. He is the only one
24 who could of done this to this child. Mr. Lewis caused
25 the death of that child while her mother laid in the bed

1 asleep in her room with Owen.

2 Now, as the Solicitor has already gone over with you,
3 she has talked about the elements of homicide by child
4 abuse and those elements are, causing the death of a child
5 under the age of eleven while committing child abuse and
6 neglect under circumstances showing extreme indifference
7 of human life. The only evidence, ladies and gentlemen,
8 they have to prove anything that my client did are the
9 statements of Richard Brandon Lewis. That is it, that is
10 the only thing tieing her to this is what that man said.
11 He is a liar, he told us that. She is also charged with
12 aiding and abetting homicide by child abuse which is
13 knowingly aiding and abetting another person to commit
14 abuse or neglect of a child under the age of eleven and
15 the abuse or neglect results in the death of a child.
16 Again, all we have left are the unbelievable statements of
17 Richard Brandon Lewis. The Judge is going to charge you
18 about reasonable doubt and I want you to listen to his
19 charge, I am not going to go through all of that. But he
20 will charge you that reasonable doubt is a doubt in which
21 you can give a reason and he will charge you that it is
22 the burden of the State to prove that Ashley Hepburn
23 committed both of these crimes and it is their burden of
24 proof to prove each element of the crime beyond a
25 reasonable doubt. Ladies and gentlemen, there sits

1 reasonable doubt as to the guilt of Ashley Hepburn.
2 Richard Brandon Lewis is the reasonable doubt. Richard
3 Brandon Lewis told the truth the early morning hours of
4 October 13th of 2009. The only reason he changed his
5 story was to save himself. I believe that once you have
6 had an opportunity to hear the charge from the Judge and
7 you take the evidence that has been submitted in this case
8 and you apply that evidence to the facts as you find them
9 you will find that Ashley Hepburn did not commit the
10 crimes of homicide by child abuse or aiding and abetting
11 homicide by child abuse. You will find that Richard
12 Brandon Lewis is the one that is responsible for the
13 injuries to this child, Audrina Hepburn. And that only
14 Richard Brandon Lewis caused the injuries that led to that
15 child's death. Thank you.

16 THE COURT: Thank you, Mr. Able. Ladies and
17 gentlemen of the jury, do you need a break. I am getting
18 a couple of head nods there. We are going to take five
19 minutes and allow you to use the restroom and don't
20 discuss the case yet. See you back here in about five
21 minutes. Thank you.

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

24 THE COURT: We will take a five minute break.

25 (Whereupon, a short break was taken.)

1 THE COURT: Let's get the jury in, please.

2 (Whereupon, the jury came into open court at
3 approximately 3:00 p.m.)

4 THE COURT: The record should reflect that the jury
5 is back. We are continuing with the final argument of
6 counsel. Mr. Wise, you are recognized for your argument,
7 sir.

8 MR. WISE: Mr. Foreman and ladies and gentlemen of
9 the jury, if you go into the jury room and say to yourself
10 and say among yourself, you know, Richard Brandon Lewis is
11 probably guilty, he probably shook that child, she died.
12 What should your verdict be, your verdict should be not
13 guilty because when we talk about proof beyond a
14 reasonable doubt we are not talking about what probably
15 happened, what might of happened, what could of happened,
16 what possibly happened that morning of October the 13th of
17 2009, it is the highest standard known to man short of an
18 absolute certainty. It is the standard by which we go out
19 and brag to people about our criminal justice system. And
20 we have said that that standard is there to protect the
21 defendant and that is partly true but it is also to
22 protect y'all. When the State comes in here and says we
23 are going to prove this case beyond any and all reasonable
24 doubt you don't go to bed two days from now, two weeks
25 from now or two months from now and say, did I make the

1 right decision. Because when it is that high of a
2 standard you know the right decision and that is what
3 proof beyond a reasonable doubt is all about in a
4 nutshell. Spent 40 years doing this, argued reasonable
5 doubt, give illustrations to the jury, like a couple of
6 football games last fall is really what I think truly
7 illustrates what it is about. They have instant replay
8 for football. You have all seen the cameras when you
9 watch football, they will stop and have instant replay.
10 And the announcers will tell you this, they will say the
11 question is, is it in-controversial, incontrovertible
12 evidence that the call on the field is wrong. And if that
13 evidence doesn't meet that standard, if they look at that
14 video replay and the call on the field stands then you see
15 them look at the replay, you have seen the replay being
16 thrown on the screen and you say, well, I wouldn't have
17 necessarily made the same call. That is what reasonable
18 doubt is about. The call on the field is not guilty.
19 That is the call that the State then has to come in here
20 and prove there is incontrovertible evidence. You may say
21 I would of made a different call, you may say it is close,
22 you may say it is questionable but until it reaches that
23 pure standard they cannot prove in this case beyond any
24 and all reasonable doubt. That standard by which you must
25 judge the defendant.

1 Now, let's talk briefly about Richard Brandon Lewis'
2 statement or Richard Brandon Lewis in this case. Mr. Able
3 made much to do about his statement given by Brandon Lewis
4 on October the 13th. Read this statement carefully, what
5 you will see in this statement is a complete absence, a
6 complete absence of any negative comment about the woman
7 that Brandon Lewis was in love with, Ashley Hepburn.
8 Nothing, it doesn't say a word in here about the fact that
9 she had been up all night before, that is uncontroverted
10 in this case, she admitted it. It doesn't say a word in
11 here about the fact that they had had an argument that
12 day. That would put her in a negative light, she admitted
13 it. It doesn't say a word in here about spanking Owen.
14 For the first time in her life, not a word in here of it
15 had there ever been something bad about it. His purpose
16 here was to cover up for anything she did because he was
17 in love with her. He came from a home, as you learned
18 from Dr. Jacobs, it wasn't the best in the world. He
19 looked at her and her two children as his family, his
20 world, the way he was going to be. And then it came
21 crashing down and he didn't say a word about her, bad
22 about her. When you are in love with someone you don't
23 turn it off like a faucet, if they do things that
24 disappoint you no matter how serious you don't turn that
25 feeling off like a faucet, it stays there and it builds on

1 you. And he stayed there at the police station mainly
2 because the police said we don't think we have got the
3 complete truth yet. Let's let him stay around. They even
4 went and got his grandmother to come into the room with
5 him and talk to him. And his grandmother didn't tell him
6 what to say, she didn't know the facts. But she gave him
7 some good advice his grandmother should have. She said,
8 Brandon, if you know anything tell them. If you know
9 anything tell them. Still upset, still emotional, that is
10 when he knew he had to follow his grandmother's advice and
11 he did. He called the officers back in, the officers came
12 back in and then he gave them this statement. And in here
13 he does talk negatively about her. He does talk about the
14 argument they had, he does talk about her spanking Owen
15 and he does talk about hearing her footsteps stomping down
16 the hall into that child's bedroom. That is the truth and
17 that is the truth that also caused Richard Brandon Lewis
18 to almost take his life. Several days later he tried.
19 His psychiatrist comes in here and tells you he was upset
20 over this loss, it was tremendous to him. With his
21 background, his family background it would of been a
22 bigger loss than most people. He was upset about
23 testifying about it. If Richard Brandon Lewis had said so
24 much as a scintilla of evidence in that, several touchings
25 from his psychiatrist that had said he had inflicted any

1 harm whatsoever on this child you would of heard it, you
2 would of heard it. She is talking to him when he is
3 depressed, when he is down, and he has literally been on
4 the verge of suicide and not one syllable comes out of his
5 mouth that he harmed that child in any way. The only
6 thing that came out of his mouth once, I am having to
7 testify against the woman I love. Now, what did Brandon
8 do after that. He gives a statement to the police, after
9 this statement he is interviewed twice more by Officer
10 Plaxico and nothing new came out. And then what did he
11 do. He goes and sits down for three hours, for three
12 hours in a room with a table, Bryan Able, Ms. Hepburn, him
13 and myself and a court reporter and answers every single
14 question Bryan Able wanted to ask for three hours, for
15 three hours he is grilled and for three hours he answered
16 those questions under oath. He did not run from his
17 responsibility. And then what does he do. There was a
18 DSS hearing involved in this case. Again Bryan Able is
19 there, Ashley Hepburn is there, Daniel Hepburn is there,
20 Brandon Lewis is there and I am there. And what happens
21 in that hearing. The Department of Social Services
22 lawyer, Laura Hock, stands up and says, I call Richard
23 Brandon Lewis. And he testifies, he testifies, he answers
24 all of her questions, he answers every single question she
25 has about this incident and he gets to be cross-examined

1 again by Bryan Able and answers his questions. He did
2 what he was suppose to do in answering those questions.
3 And how much incidences is there in his testimony between
4 those two events, zilch, none, zero, call it what you want
5 to and I will tell you how you know. Because never once,
6 never once did anybody in this courtroom pick up the
7 transcript from either of those two hearings and say,
8 didn't you say something different at those hearings.
9 Didn't you say this at that hearing and you are saying
10 this now. They did it with those two statements, you saw
11 it ad nauseam because obviously they are different. But
12 not once did anybody catch him in any contradiction in his
13 testimony from his depositions, to his testimony at the
14 DSS hearing, his testimony today. So, we will point out
15 one little thing though, it was represented to you,
16 closing argument and during the trial that he made up for
17 the first time on this stand that the statement that he
18 had jerked Owen, excuse me, that Ashley Hepburn had jerked
19 Owen up by the arm and carried him into the bathroom to
20 give him a spanking. Represented to you and it was made
21 up on the stand. As you recall, when we got back up on
22 redirect I had Mr. Lewis from page 63 of the transcript,
23 of the deposition where he stated at that point she jerked
24 Owen up by the arm. That was not something that was made
25 up on the stand today. He testified and it is something

1 that was there on March of 2010. Obviously law
2 enforcement is not going to question Brandon extensively
3 as we did in this courtroom or the depositions or the
4 testimony in the DSS hearing. Those are going to be much
5 more thorough, they didn't get all the complete details,
6 if they had asked him about it they would of. And it is
7 quite obvious if they had wanted to sit down and ask him
8 more questions they could had. That is what Richard
9 Brandon Lewis has done to cooperate with this. And his
10 reward for it was to cause him a semester at Clemson when
11 he got arrested eleven months after the incident, eleven
12 months after the incident they decide, whoops, we need to
13 arrest Brandon Lewis also. That you can consider. Now,
14 Mr. Able gives opening statements, gives a statement in
15 closing arguments and he talks about his theory of Brandon
16 Lewis causing all of this and it goes on until he gets to
17 one point. And then he gets to the idea that all of a
18 sudden he was mad and that is what did it. Where is the
19 evidence that he was mad, where is the evidence he was
20 upset, where is the evidence that he was in the least bit
21 angry that night. It does not exist. And there is an old
22 phrase and I wish I could remember the Latin phrase, it
23 translates to this and it says that which is not proven
24 and that which does not exist are the same. If it is not
25 proven he was mad and he was upset and he was in a

1 terrible mood that night then it doesn't exist in this
2 courtroom. Because there was no testimony about it.
3 There is no testimony about it, there is no rhyme or
4 reason why Richard Brandon Lewis sitting there watching
5 television would decide and go into that child's room and
6 shake that child to cause that child to die. Nothing in
7 this case. Now, there are a few pieces of evidence that
8 we need to look carefully at in this case. Actually we
9 may even lower it down to one. The testimony from Ashley
10 Hepburn was and kind of common, she gave Audrina a bottle
11 before she went to bed that night. Come in the next
12 morning, there is no bottle in the crib, there is no
13 bottle on the floor, there is no bottle in the child's
14 room where they take the pictures, there is no bottle
15 there. There is only one baby bottle in that house found
16 by anybody with SLED when they went in, it is in Ashley
17 Hepburn's bedroom. Ashley Hepburn's bedroom and her
18 explanation, the other bottle was on the table in the
19 other room and I saw it but I don't know where it is now.
20 And her explanation for this, oh, that was from the
21 previous afternoon and I just never got around to cleaning
22 it up. I never got around to cleaning it up, that is the
23 bottle that was in Audrina's crib that night. They talked
24 about Brandon seeing blood on the lip, the tongue was cut,
25 there should of been blood on the lip. Everybody admits

1 the tongue was cut, I believe the medics even admitted
2 saying they saw blood on the lip. The tongue was cut,
3 there is no disputing that fact and should have been blood
4 there. The other thing about Richard Brandon Lewis you
5 need to remember he was arrested unexpectedly in September
6 of last year. Agent Kirkland knowing the facts of this
7 case checked his fingernails, they were non-existence,
8 they were gone, he had fingernails but they were very,
9 very short. Because she knew that that was a mark on the
10 back of the child that was consistent with a fingernail,
11 where someone would grab the child with their fingers and
12 squeeze and shake. Now, I have sat here for a week and I
13 have said to myself, what is the State's theory of this
14 case. What is the State's theory going to be as to how to
15 convict Brandon Lewis and Ashley Hepburn. And I finally
16 concluded and actually did not conclude it until today,
17 that the State's theory is going to be that Ashley Hepburn
18 shook that child until she died. And the reason I say
19 that it has to be, it is the only thing that hits with
20 some of the other things that the State wants you to buy
21 in this case. And what they want you to buy is that
22 Brandon Lewis has some culpability in this and if they
23 come up here and argue to you or try to convince you that
24 Brandon Lewis shook that child until she died then that
25 woman is not guilty. Because that woman did not do

1 anything, if that theory is correct, except wake up, get
2 the child medical help and go to the hospital and never
3 told the first untruth about this incident. The State's
4 theory is that Brandon Lewis shook this child until she
5 died and the State has to ask you to turn her loose but
6 they are not going to do that because they are going to
7 contend that she shook the child and therefore what is the
8 responsibility of Richard Brandon Lewis. They say that
9 Richard Brandon Lewis' responsibility was that he gave
10 this false statement to the police and he told the
11 personnel at the hospital that night, did not tell him he
12 thought maybe the child had been shaken, didn't tell them
13 that and therefore that is why he is liable because he did
14 not assist in helping the child be taken care of. There
15 is not a scintilla of evidence in this case that says that
16 Brandon Lewis had said when you first got to Self Hospital
17 she shook, that child that would of been any different
18 result, there is not a scintilla of evidence in this case,
19 not a scintilla. If you go back to the night at the time
20 of the incident when he says he heard the child crying
21 differently which he then believed to be shaken, at the
22 time he heard it he didn't know about shaking, that was
23 told to him at the hospital by the hospital personnel.
24 Looking back at what he heard that is what he concluded
25 and that is what his testimony was, that is correct.

1 Looking back at what he heard that is what he was looking
2 for. So if he at the time of the incident simply heard
3 Ashley Hepburn disciplining her child there is no
4 culpability on the part of Brandon Lewis because he is not
5 entitled to interfere with the discipline, she had already
6 fussed at him early that day about doing it. There is no
7 knowledge that this child has been seriously injured so
8 there is no duty on his part at that point to do anything.
9 And there is not a scintilla of evidence that if he had
10 told DSS, not DSS, the EMS people at the scene that I
11 heard Ashley Hepburn walking, stomping to her room and I
12 heard the child crying differently that there would of
13 been any other outcome than the tragic outcome that came
14 about. And unless his actions caused there to be a tragic
15 outcome that otherwise would not have occurred he has
16 committed no crime.

17 Now, let's talk about the testimony of Ashley
18 Hepburn. I think it can be summed up in three words.
19 Confusion, excuse me, confession, admission and
20 manipulation. When she got on the stand she testified
21 Officer Plaxico read her the statement of Brandon Lewis.
22 There is something interesting about the scenario of her
23 testimony if you didn't notice. I asked her, did Officer
24 Plaxico ask you to read this statement and then, what did
25 you tell him. Well, I told him this part was correct and

1 this part was correct. And in her direct testimony before
2 she got the reply that is all she said, she told him it
3 was correct about I think them having an argument and it
4 was correct about spanking Owen and all of that. That was
5 it. Now, let's step back a moment and look at this a
6 little more objectively. If a mother whose child is in
7 critical condition in the hospital, in intensive care, on
8 life support is given a statement in which a person
9 accuses her in that statement of stomping into the room
10 and shaking the child and stomping out your first reaction
11 would not be to say it is correct about spanking Owen, it
12 is correct about us having an argument, it is correct
13 about what was television. Your first reaction would be
14 to say, that statement is wrong, that statement saying
15 what I did is wrong, wrong, wrong. That would of been
16 your first reaction, that would of been any human being's
17 first reaction but it wasn't her's according to her
18 testimony on the stand. She said part of this is right,
19 this part is right. Then she gets back on the stand today
20 and for the first time today says and then I told Officer
21 Plaxico this part is wrong. He has got it reversed. If
22 she truly was in sense and knew that was wrong the first
23 thing she would of said is this is wrong, I did not stomp
24 in that room and the rest wouldn't make a hill of beans.
25 Because she was being accused of injuring her child. She

1 didn't say that. Then she wants to get up here and say
2 that when Officer Plaxico says, oh my god all of this is
3 true. Well, he is not telling the truth and I am going to
4 tell you, that admission is a confession, it is a
5 confession by Ashley Hepburn that she did this crime. And
6 if that confession is true Brandon Lewis didn't do it. In
7 order to convict Brandon Lewis you have to find beyond a
8 reasonable doubt that that confession did not happen, you
9 don't have to find it did happen, you have to find it did
10 not happen. You have to be willing to say beyond any and
11 all reasonable doubt what Officer Plaxico said is not
12 true. Because the Judge will tell you that if you have
13 any doubt about the testimony you are to resolve that
14 doubt in favor of the defendant. So, if you have any
15 doubt about Officer Plaxico's testimony you have to
16 resolve that doubt. The thing about Brandon Lewis, you
17 have to conclude beyond a reasonable doubt that testimony
18 is just a flat lie. You have an admission, admission.
19 Officer Kirkland gets on the stand and says did you talk
20 to her. Yes, I did. What were you doing. Well, I was
21 asking her open questions, called open ended questions
22 which means questions like, what happened next, what did
23 you do, what did you see, what did you hear, what did so
24 and so do, those are open questions. Leading questions
25 are things that you can imply the answer. You shut the

1 door, didn't you. That is a leading question, basically
2 telling the person you shut the door. She asked open
3 ended questions so the person can just freely answer. And
4 she asked the question, what was Brandon doing and the
5 answer was, wasn't I don't know, I think he was watching
6 television. It wasn't, Brandon told me he was watching
7 television. It wasn't, I don't know, I was asleep. What
8 was Brandon doing. Her answer to Major Kirkland was,
9 Brandon was watching TV during it all, during it all, that
10 is the only other implication you can have from that. And
11 one reason we know that is the only implication you can
12 have from that, she denies making the statement. She says
13 Agent Kirkland was wrong, she didn't say that. And in
14 order and that in an essence, while not necessarily a
15 confession is a strong admission in that Richard Brandon
16 Lewis is not guilty. And again in order to convict
17 Richard Brandon Lewis you have to say beyond a reasonable
18 doubt, Agent Kirkland is wrong, Agent Kirkland did not
19 copy that statement down right, Agent Kirkland
20 misinterpreted what she said. And there is no evidence to
21 back that up. And then when you weigh into that, Agent
22 Kirkland's statement that her attitude was angry,
23 defensive, yelling at her while she is asking open ended
24 questions trying to find out what happened to her
25 daughter. She is yelling at Agent Kirkland. That isn't

1 normal. And then when Agent Kirkland says would you give
2 us a written statement she says no, I won't. Your
3 daughter is in the hospital in critical condition, I will
4 not give you a written statement. And she said Agent
5 Kirkland never said that to her. She didn't say that, was
6 Agent Kirkland wrong about that too, wrong about this,
7 wrong about that. And then what even gets more amazing
8 about these admissions, Agent Kirkland asked a very open
9 ended question and the open ended question was basically,
10 do you know who did it. Her answer was, doesn't put it
11 past their father to do this. In other words, doesn't put
12 it past Daniel Hepburn to do this. Daniel Hepburn hadn't
13 been around these children in three or four days. But she
14 had so much hatred or whatever it is in her heart for
15 Daniel Hepburn that she wants to blame it on him. She
16 doesn't blame it on Brandon, she wants to blame it on him
17 saying he has resented her for the divorce. It makes no
18 sense that anybody would say that. I don't know if it
19 surprised y'all, somewhat surprised me. During the course
20 of the testimony it was learned that since this incident
21 that Daniel Hepburn and Ashley Hepburn had been seeing
22 each other and having sex together, since this incident in
23 the last several months. She was only trying to
24 manipulate Daniel Hepburn. And I will say that because
25 Daniel Hepburn made a statement on the stand when he

1 testified that was very harmful to her, very harmful. He
2 says that he noticed marks on Audrina's neck, had been
3 told by medical personnel that those could of been caused
4 by some choking marks. So, when he talks to Ashley again
5 he asked her, is Audrina wearing a necklace or a bib or
6 something. And what was her remark, I didn't choke her.
7 That is what Daniel Hepburn said, I didn't choke her. She
8 had to know Daniel was going to say that. Now, she denies
9 Daniel Hepburn, she denies on the stand that she ever told
10 Daniel Hepburn that. So, I guess Daniel Hepburn is also a
11 person that is not telling the truth in this case
12 according to Ashley Hepburn. I didn't choke her. She
13 said I never told him that. Well, I assume her little
14 tress with Daniel Hepburn was important that he wouldn't
15 say that on the stand but it didn't work out. She tried
16 to manipulate it and it didn't work. He came up here and
17 he told the truth as he recalled it. Now, let's look at
18 her testimony. She has a Facebook comment in which she
19 says I hate and HATE is in capital letters, being at home.
20 I hate being at home. And how long has she hated being at
21 home, well I can give you a guess. I would say she has
22 hated being at home since she was in Washington, the State
23 of Washington about a year earlier. Because in the State
24 of Washington she was complaining that she had no help
25 with the two children, that she needed help with the two

1 children. She wasn't working but she needed help with the
2 two children, she didn't want to be pinned up at home with
3 the two children. How many people, how many mothers had
4 to raise more than two children without any outside help,
5 with no problem. And then she says, well, really what I
6 meant is I needed the family. That is not what she said
7 earlier. She said I needed help. And she couldn't say a
8 single thing that she needed help for except to dump those
9 children off with somebody while she left the house
10 because she hated being at home. She was in the State of
11 Washington and she didn't like being at home. And then we
12 find out that she had been up all night the night before,
13 for what purpose. Basically I think she said I wasn't
14 working so it didn't matter. I am sorry, you have got a
15 full time job, you are raising two children. They are
16 asleep and you need to be. What purpose was she up all
17 night. It wasn't that she was sick, it wasn't that
18 something else happened to cause her to be up all night.
19 She never would say, she just decided to stay up all
20 night. She also had missed an opportunity to have a good
21 job with Skypes. It looked like she was going to have it
22 and lost it at the last minute. So, you lose your job and
23 you are up all night. That is going to create some stress
24 in somebody. What did we find out what happened the next
25 day. One she said she was happy and in a good mood and

1 yet for the first time in her life she struck Owen, for
2 the first time in her life she struck Owen. She got in an
3 argument with Brandon that day. He went home and they
4 talked later and he came back. She was stressed that day,
5 there is no question about it. Now, the injuries to this
6 child scientifically cannot be established beyond a
7 reasonable doubt as to whether it was caused by a person
8 right handed or left handed. The injuries to this child
9 scientifically cannot be established beyond a reasonable
10 doubt as to whether it was caused by a person of a left
11 hand or a right hand. That is correct. But we do know
12 that the injury to the right side of the child's head is
13 consistent with a hand or any other similar type blunt
14 trauma, a hand. We do know that if someone is facing that
15 child and they were to lead with their dominant hand the
16 person who struck that blow would be left handed, we do
17 know that. We do know that only one of these two people
18 is left handed. We do know that. And I am sure Mr. Able,
19 when he got up and did cross-examination, he said you
20 could do it with your right hand, couldn't you, if you
21 came up from behind. Yes, it is possible to do with the
22 right hand if you came up from behind. But is it likely,
23 is it reasonable, is it the most plausible explanation.
24 But the person that inflicted the blow to the head is left
25 handed, more than likely, more than likely. Second, the

1 bruise along the jaw of Audrina is consistent with a
2 thumb, consistent, could have been. If you grab a child
3 so that you leave a thumb mark on the left side you are
4 left handed. You are left handed if you grab that child
5 on the jaw and shake it, you are left handed. So, those
6 facts are facts that you have to consider in determining
7 whether or not Brandon Lewis, a right handed person,
8 committed this crime. And then she gets on the stand and
9 very proudly says in answering her questions from Mr. Able
10 that I have not given an inconsistent statement in this
11 matter. And then I asked her if she had ever given a
12 statement in this matter since October the 14th of 2009
13 and she says no. So, of course, she has never given an
14 inconsistent statement. Brandon Lewis is out there
15 answering her lawyers questions ad nauseam. She is not
16 saying a word. While Brandon Lewis, he is testifying to
17 the Department of Social Services she is not saying a
18 word. He stepped up on the plate when his grandmother
19 said, tell them what you know. And he has stepped up to
20 the plate since then and remains so. I am going to talk a
21 little bit about comments that were made by the State.
22 They talk about this being a secret crime. If you ever
23 have a more tragic case than this in your life, this is as
24 tragic as a case gets. But for the purpose of analyzing
25 the evidence in this case it cannot be based upon emotion,

1 it has to be based upon whether or not the State has
2 produced evidence on this stand, from these witnesses to
3 convince you beyond any and all reasonable doubt that
4 Richard Brandon Lewis is the one that shook that child and
5 caused that child's death. The fact that it may be
6 difficult does not lesson the State's burden of proof, it
7 does not lesson your obligation, not only to Audrina but
8 to Richard Brandon Lewis and to the State of South
9 Carolina to look at this evidence hard and to look at this
10 evidence in the matter that you should be. This is an
11 emotional case, it should be a emotional case. If it
12 weren't I would worry about you frankly. But that does
13 not lesson the burden on the State in this case. And then
14 they are going to say that mere presence doesn't apply in
15 this case. The Judge will charge you mere presence,
16 listen to what he says. He does not say mere presence but
17 if you saw something you are guilty or if you heard
18 something you are guilty. He says mere presence, there is
19 no exceptions to it. If you are merely present and don't
20 do anything to actively participate in the crime you are
21 not guilty regardless of what you saw, heard, on that
22 particular time. Mere presence is not sufficient and that
23 is the most the State can have in this case. He talks
24 about the fact that Ashley Hepburn was up in Greenville
25 giving her statement and Brandon Lewis was down in Laurens

1 at 6:42 giving his statement and they were exactly the
2 same. This is exactly the same statement that Brandon
3 Lewis gave to the hospital personnel at the time that
4 Ashley Hepburn was standing next to him and they were
5 talking to them. She knew what Brandon Lewis would say or
6 thought she knew until his grandmother talked to him. So,
7 what does that mean, the fact that she can remember what
8 he said when they got to the hospital when she is in
9 Greenville, that is all that means. It doesn't mean that
10 she was giving a statement independent of him. She had
11 heard everything. There is absolutely no motivation on
12 the part of Brandon Lewis ever did anything to harm those
13 children. If you recall back on August the 22nd there was
14 a party. Brandon was there, he was the primary caretaker
15 to the children, he took care of them, he fed them,
16 carried them to the swings and everything, he played with
17 them. There was no jealousy on his part, there was no
18 resentment. The psychologist said if anything these
19 children were the family he had been seeking. These
20 children were his life even after just five months. These
21 children were important to him, they were not a
22 hinderance, they were not in the way, they were not a
23 burden. There is no evidence of that whatsoever in this
24 case and it shouldn't be. Now, the defense made a nice
25 presentation, pictures of Audrina, playing and walking

1 with her mother, with her brother. I am sure that Susan
2 Smith had produced the same pictures before that
3 inexplicable--

4 MR. ABLE: Objection, Judge. I don't think it is
5 relevant in this case.

6 THE COURT: Mr. Wise, if you can avoid perhaps fact
7 specific illusions to other cases. That might be proper.

8 MR. WISE: Okay. No one is saying that Ashley
9 Hepburn had always been a mean mother, no one is saying
10 that Ashley Hepburn had neglected her children for years.
11 All that is being said is that on October the 13th of 2009
12 her life got to the point where she lost control. And
13 unfortunately that was the tragic ending to it. I think
14 if you look at all of this testimony and consider
15 everything the question you have to answer from my
16 perspective what did Richard Brandon Lewis do to make him
17 guilty whatsoever. I am sure he heard a sound that he
18 later learned to be like shaking baby. Yes, he did not
19 tell the police the complete truth when he was at the
20 hospital. But the second act did not cause any injury to
21 this child, the cause of death to the child. The first
22 act you would have to find beyond any and all reasonable
23 doubt that he knew that child was being hurt and he had a
24 duty to go in there and stop it and he didn't. And that
25 is not the testimony in this case either. The testimony

1 that he never believed that she would hurt the children.
2 He never believed, he didn't want to believe. He
3 unfortunately later had to accept that is what happened.
4 Simply because he doesn't believe something is happening
5 doesn't mean he is guilty of any act as the result of any
6 injury to this child. And also even if you concluded that
7 he knew or should have known that child was being injured,
8 can you conclude, not that there is some evidence but can
9 you conclude beyond any and all reasonable doubt that that
10 child would be alive today if he had immediately walked
11 into that room and called EMS. The evidence in this case,
12 the injury to that child unfortunately say that is not
13 likely to have happened, that is not likely to have
14 happened. And you certainly cannot say beyond any and all
15 reasonable doubt Audrina would of been alive today had he
16 done that. Richard Brandon Lewis is not guilty, Richard
17 Brandon Lewis is guilty of falling in love with somebody
18 that he wanted to start a family with, there is no
19 question about that, got emotionally involved with her.
20 That is all he had. He was only trying to protect the
21 woman he loved with his first statement. There is not a
22 scintilla of bad words about her at all, not the first
23 word. Only when his grandmother said, son, if you know
24 something you got to tell it. And since that moment he
25 has been a cooperative witness that the State really

1 needed. The proper verdict in this case is not guilty for
2 Richard Brandon Lewis. The State hasn't proven it, the
3 State has not proven it. Thank you.

4 THE COURT: Thank you, Mr. Wise. Ms. Mayes, your
5 closing.

6 MS. MAYES: Yes sir, Your Honor, may it please the
7 Court. Ladies and gentlemen, at the outset one of the
8 things when we all first met here last week for opening
9 arguments is what this case was really about is broken
10 trust. And that is still the case because here Audrina
11 was failed by the people that she should of been able to
12 rely on to protect her the most, to keep her from harm.
13 That didn't happen so here we are and as I have stated
14 earlier, it is a situation where according to the State
15 and the evidence presented and the evidence proven beyond
16 a reasonable doubt, both of these defendants are involved,
17 Ashley Hepburn and Brandon Lewis. Now, this is not a
18 situation where we can come in and say, as Mr. Wise has
19 suggested, well the theory that this statement must be
20 completely one-hundred percent true. It doesn't work that
21 way. The State doesn't adopt a theory when it comes from
22 two people who are not and have not told the truth. And I
23 submit that the problem here is that even after both of
24 these defendants have taken the stand we still have not
25 gotten the full truth about what happened to Audrina.

1 Because from the beginning they were interlocked together
2 in lies and knowledge and they had a story and they were
3 going along with it down there at the hospital with the
4 Chaplain and Mr. Lewis was telling the whole story about
5 how he was up and he was watching a movie and Ms. Hepburn
6 was asleep and she is nodding her head and she is going
7 along with it. And that was going to work for a while and
8 then Mr. Lewis found himself in a whole lot of trouble
9 once he was down at the law enforcement office hours and
10 hours later still trying to tell that story, the story
11 that you have got here in the written statement. And it
12 obviously was false. They knew it was false because they
13 had talked to the doctors way back at Self who knew right
14 away, thank goodness right away, Dr. Currie had recognized
15 retinal hemorrhages and had a chance to save Audrina. Not
16 because of any help she got from these two but because due
17 to her training and her experience down there at the
18 emergency room, when that child came in and they are
19 giving this ridiculous story about how we just found her
20 this way or Brandon Lewis saying I just found her this way
21 and mom saying I am asleep and I heard nothing, saw
22 nothing, know nothing right then the red flags went off.
23 She sees this child with bruises, she looks in her eyes
24 and right away she diagnosed retinal hemorrhages. She saw
25 those retinal hemorrhages and knew this could be child

1 abuse. And minutes, precious minutes were going by and
2 they are still not telling the truth, they are still
3 sticking to this story. Dr. Currie on her own said, let's
4 get her to CT, not because anybody had suggested head
5 injury, they certainly hadn't. Brandon Lewis had
6 certainly not said a word about hearing her cry and then
7 hearing it sound as if she had been shaken and then
8 hearing nothing but silence for minutes and minutes and
9 minutes and minutes before he ever went to check on her
10 and for EMS to ever come. So, none of that was said.
11 This doctor on her own run CT's suspecting a head injury
12 and it is confirmed that she is right. EMS did their
13 best, they see a swollen tongue and they are thinking it
14 could be an allergy, they give her Benadryl. They had no
15 idea what could of happened because they are not getting
16 the truth. And so once Dr. Currie sees the CT results and
17 realizes it is a massive subdural hematoma, massive head
18 bleeding, her life is on the line, it is a critical
19 condition, she is transferred to Greenville Memorial.
20 Even then the truth wasn't coming out. And that is the
21 real tragedy here, ladies and gentlemen. One person may
22 have done it, both of them covered it up, both of them had
23 knowledge. That is where we get into the whole aiding and
24 abetting scenario. So, let's talk a little about the
25 situation that led us to this. Did it just happen out of

1 the blue, did somebody just snap that night and for no
2 reason at all go into Audrina's room and harm her this
3 way, absolutely not. As I said before, child abuse, yes,
4 it is a secret crime because it happens in homes and it
5 happens behind closed doors of a home. It doesn't happen
6 out in front of people. But with that said it is not a
7 silent crime, this didn't happen in dead silence. This
8 child was abused in that room, she was hit. And what
9 brought it on. In all likelihood she was crying, she
10 needed something, she needed her bottle or she needed her
11 mom, she needed something and that is how they acted out
12 towards her. She was beaten to death and it wasn't quiet.
13 Dr. Ward reported to you there were at least three
14 different locations impact in her head alone and in
15 addition to that she was grabbed on the body, she was
16 beaten, she was clawed. This did not happen in silence.
17 And the people in proximity to that crime knew it. Let's
18 talk a little bit about the inconsistencies we have heard
19 along the way starting with Ms. Hepburn. First of all,
20 there were prior injuries to Audrina and you have heard a
21 lot about that. But the bottom line is this bruise out of
22 her own mouth when she is describing it to other people
23 who are investigating this case, she called it a
24 fingerprint bruise, a bruise that she was never able to
25 explain, she just woke up that way. Yes, kids fall, kids

1 have accidents. But it had gotten to the point where the
2 injuries that Audrina had could no longer be passed off as
3 just accidents, things that just happen normally to
4 toddlers. And let's talk about the lies. This particular
5 injury, the stomach bruise. One of the first things that
6 happened when EMS got there that night and you heard the
7 testimony from Calvin Duckett, EMS worker. One of the
8 first things he did when he got there was he immediately
9 cut her onesie off, cut onesie off to see what might be
10 going on. And one of the first things he sees is that
11 abdominal bruise. And it is big and it is prominent
12 because it had been there, that bruise wasn't part of that
13 night. That particular bruise was not fresh and who
14 admitted that, Ashley Hepburn. She admitted that to SLED.
15 She had a chin bruises and a stomach bruise. And then she
16 gets on the stand and says, oh, no, no, no. I just meant
17 I was only, I thought I was only being asked about the
18 injuries that I saw in the hospital. Well, that is
19 ridiculous. She knew about that bruise and EMS told you
20 they saw that stomach bruise right when they cut her
21 onesie off. And they also noted seeing the chin bruise as
22 well. And they talked about those bruises being different
23 colors. And you know, the good thing about being jurors
24 is, even though an expert like a doctor can't come in and
25 say that bruise is exactly three days old because they

1 can't do that. What you as jurors get to do is rely on
2 your own common sense, the common sense that you have
3 always had with you as a mom, as a grandmom, as a parent
4 and you know when you see a bruise that has been there and
5 you know how bruises progress with age. And then when
6 Ashley Hepburn was talking to these doctors who needed to
7 know about Audrina's final night, tell me about it when
8 you last saw Audrina, tell me what condition she was in.
9 And you know you get all of these changing stories. On
10 the 911 call both of them are in their together, both of
11 them are in there together talking to the 911 dispatcher
12 and Mr. Crumley makes the call and he says to them, well,
13 what time did you last see her, what time did she go to
14 bed. And you can hear the two of them talking and the
15 answer that they give to him is 11:30, really, 11:30
16 because after that all of a sudden everybody changed the
17 time. That call was fresh and so at that point they were
18 saying 11:30 and then all of a sudden things started to
19 back up. And so Ashley Hepburn talks to the doctor at the
20 ER, she talks to different people who wanted to know what
21 has happened to Audrina and she never mentions going in
22 her room to give her Orajel until she gets to Greenville
23 and talks to Dr. Croswell. So before that it was just,
24 well, I put her to bed and Brandon, he was up and he came
25 in and asked me if I wanted to watch a movie and she

1 talked about Audrina being fussy because she was teething.
2 But she didn't mention that Orajel and going in there to
3 give her that Orajel until finally she was with Dr.
4 Croswell. She said she gave her the Orajel and then that
5 was that. And it wasn't until she testified that for the
6 first time she is now saying, well, the Orajel wasn't the
7 last time I saw my daughter that night. The last time I
8 saw my daughter that night was when I had gone into her
9 room later to get a book and I saw her turn and look at me
10 and I knew she was okay. How in the world would she have
11 left that out of her history when these doctors want to
12 know when was Audrina last okay. This is too many missing
13 pieces, too many changing stories going on here, too many
14 excuses to try to explain away what the evidence is. Then
15 Dr. Croswell mentioned that according to her notes she
16 spoke with Ashley directly. In fact Brandon Lewis was not
17 even at Greenville Hospital. Dr. Croswell was getting all
18 of her stories from Ashley directly. She talked about
19 giving Audrina the Orajel, she talked about the fact that
20 she had put her bed around 10:30 and then she talked about
21 waking up and finding Brandon holding Audrina. And she
22 also noted there was blood on her mouth and tongue. So,
23 then Ashley takes the stand and says, well, I never saw
24 the blood on her mouth or tongue. I just got that
25 information from Mr. Lewis. Too many inconsistencies.

1 Then we have, I submit the most inconsistent aspect of
2 all, that according to Ms. Hepburn she is sleeping here in
3 this room with the door open and her daughter is directly
4 across the hall. This is the same home where she has
5 talked about hearing footsteps all the time, footsteps
6 that wake her up, being able to hear her daughter from
7 virtually anywhere in the house even when her daughter
8 only says mama. But on this night she claimed she heard
9 nothing, she saw nothing, she saw no one enter the room,
10 she saw no one come out of the room, she never heard a
11 footstep, she never heard her daughter crying and she
12 never heard a sound. She claims she knows absolutely
13 nothing until Brandon Lewis found her daughter. That,
14 ladies and gentlemen, is not credible. They haven't told
15 the full story, they haven't told the truth. Then in
16 addition to that aspect of the story completely not
17 fitting any of the evidence or what we know happened based
18 on what the doctors have described, we also have the
19 bathroom where according to Ashley the white towel is
20 kept. That same white towel that ended up in Audrina's
21 crib when the search warrant was served with Audrina's
22 blood in at least two locations mixed with saliva. Now,
23 why would blood be mixed with saliva, because something
24 had wiped her mouth with it after she is bleeding. And
25 yet both of these defendants say I have no idea where that

1 white towel came from, I don't know anything about it. It
2 is not credible. And then according to Ms. Hepburn is the
3 testimony about the mysterious missing bottle. Now, that
4 bottle is interesting because when she saw the photograph
5 of the bottle in her room she stated that bottle must be
6 left over from lunch. Here we go, State's exhibit 38.
7 Her testimony to explain this bottle is that must of been
8 left over from lunch. And according to her Audrina's last
9 bottle was a bottle that was in her room. And then all of
10 a sudden it mysteriously disappeared according to Ms.
11 Hepburn. According to Ms. Hepburn the mysterious bottle
12 was placed somewhere on a dresser in her room and than all
13 of a sudden, I am sorry, in Audrina's room and than all of
14 a sudden when the search warrant is executed the
15 mysterious missing bottle can't be located. She has no
16 explanation for where it went even though her own mother
17 said she never went in the baby's room and did anything
18 with the evidence, so did Mr. Crumley. Why would they go
19 in that baby's room and move a bottle around, they
20 wouldn't. Again, this bottle found in Ms. Hepburn's room
21 in all likelihood, I submit, was Audrina's last bottle.
22 There was more to this story than they have told. We talk
23 about the injuries to Audrina, as I mentioned before, this
24 is far more than just going in a child's room and in a
25 heated moment a parent shakes the child. This was rapid

1 acceleration, deceleration injuries but there was also
2 impact injuries. As noted by Dr. Ward there were at least
3 three different impact injuries, at least one of which is
4 here. And then on her back you can see abrasion marks.
5 And you see them again here in addition to injuries on her
6 back, stomach and then the older stomach bruise. Here you
7 can see them slightly better in a pattern formation, here,
8 here, here and here. And you heard the testimony from Dr.
9 Ward, these are consistent with claw marks, fingernail
10 marks where somebody dug into the top of her shoulder with
11 fingernails. And here once the autopsy was performed her
12 bruises were more prominent and it was apparent the
13 pattern of bruising along her neck, the lower jaw in
14 addition to claw marks that could be seen if this
15 photograph were reversed and you were looking at her back.
16 Here again she is grabbed by the shoulders, she has marks
17 in the back and then abrasions here which were much more
18 prominent at autopsy. Brandon Lewis stated, first of all,
19 he knew nothing, he lied to everybody there was to lie to.
20 He lied to EMS, he lied at the hospital to Dr. Currie, he
21 lied to law enforcement. He told so many lies he couldn't
22 even keep up with them all. He lied, lied, lied because
23 he knew more just as Ms. Hepburn lied as well. Both of
24 them knew more. And you as the jury, you are the finders
25 of fact, you determine the credibility of the witnesses

1 that you heard from, you determine who is telling part of
2 the truth, what is mostly the truth, you make that
3 determination as to what happened to Audrina that night.
4 And ultimately, I submit, to Brandon Lewis' testimony,
5 consider that. Let's talk about aiding and abetting, it
6 is aiding and abetting not only to cover up a crime but to
7 do so to advance the commission of the crime. And if his
8 testimony is the truth then that is exactly what he was
9 doing. He was covering up this crime even as Audrina was
10 fighting for her life because he wanted to protect Ashley
11 Hepburn. Assisting her, helping her in the worst way
12 possible, in a way that gave Audrina no chance at all.
13 She has already laid there for how long, how long until
14 somebody got her help. And even when she got help people
15 she relied on was still lying. Audrina would be two and a
16 half years old today. She could be two and a half, she
17 should be two and a half, her life was taken from her.
18 This crime calls out for justice, this crime cries out for
19 justice. You have before you the most noble of
20 opportunities, the chance to strike back against injustice
21 and deliver a verdict that is fair and true and just. The
22 correct verdict as to both defendants, they were both
23 involved and they both have guilt. Thank you.

24 THE COURT: Thank you, Ms. Mayes.

25 Ladies and gentlemen of the jury, it is my obligation

1 to charge as to the law that applies in this case and it
2 will take me approximately fifteen to twenty minutes to
3 read this to you. Do you need a break at this time or
4 does anyone need a break. There is no one nodding or
5 raising their hand so we will go forward with the charge
6 at this point and time.

7 Now, ladies and gentlemen, the way that this is
8 traditionally done is the Judge would read to the jury the
9 law that applies in any particular case. It has been my
10 experience that perhaps it is unreasonable to expect a
11 jury to take in eighteen pages of law that I read to you
12 just by me saying it. So, I made copies of the charge
13 that I am about to read to you, I made twelve copies of
14 them or rather the Clerk has so you will have that in the
15 jury room and just follow my instructions with regard to
16 those jury charges that you will have with you in the
17 event that you have need to refer to them.

18 Now, ladies and gentlemen of the jury, the
19 indictments in this case charge the defendants with two
20 offenses, homicide by child abuse and aiding and abetting
21 homicide by child abuse. I remind you that the fact that
22 the defendants were arrested, charged and indicted in this
23 case is not evidence in this case and cannot be considered
24 by you as evidence of guilt in this case, nor does it
25 create any presumption or inference of guilt. These

1 documents, these indictments are simply the formal written
2 instruments which contain the charges made against the
3 defendants. It is the formal document by which these
4 cases are brought into court.

5 Now, ladies and gentlemen, in this case I charge you
6 that there are two defendants each of whom is charged with
7 homicide by child abuse and aiding and abetting homicide
8 by child abuse. The case of each defendant and the
9 evidence and the law concerning that defendant should be
10 considered separately and individually. Your verdict does
11 not have to be the same for both defendants. The fact
12 that you may find one defendant guilty or not guilty
13 should not control your verdict as to the other defendant.
14 Where more than one person is charged with a crime, if the
15 evidence warrants it, you may convict one and acquit the
16 other, or you may acquit both, or you may convict both.
17 It will depend upon your view of the testimony and
18 evidence. You must take each defendant and consider the
19 evidence as to that defendant and my instructions to you
20 on the law. You will then write a separate verdict of
21 guilty or not guilty for each individual defendant for
22 each charge that that defendant is facing.

23 Now, ladies and gentlemen, the defendants in this
24 case have plead not guilty to the indictments and that
25 puts the burden on the State to prove the defendants

1 guilty. A person charged with committing a criminal
2 offense in South Carolina is never required to prove
3 himself or herself innocent.

4 I charge you that it is an important rule of the law
5 that the defendant in a criminal trial, no matter what the
6 seriousness of the crime charged will always be presumed
7 to be innocent of the crime for which the indictment was
8 issued unless guilt has been proven by evidence satisfying
9 you of that guilt beyond a reasonable doubt. This
10 presumption of innocence does not end when you begin your
11 deliberations, but it accompanies the defendant throughout
12 the trial until you reach a verdict of guilt based upon
13 the evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 Ladies and gentlemen, the presumption of innocence is
16 like a robe of righteousness placed about the shoulder of
17 each of the defendants. This robe remains with the
18 defendants until it has been stripped from the defendants
19 by evidence satisfying you of their guilt beyond a
20 reasonable doubt. The presumption of innocence is not a
21 mere legal theory. It is not just a legal phrase. It is
22 a substantial right to which every defendant is entitled
23 unless you, the jury, are satisfied from the evidence of
24 the defendant's guilt beyond a reasonable doubt.

25 What is a reasonable doubt in the law? Ladies and

1 gentlemen, a reasonable doubt is the kind of doubt that
2 would cause a reasonable person to hesitate to act. The
3 State has the burden of proving the defendant's guilt
4 beyond a reasonable doubt. Some of you may have served as
5 jurors in civil cases where you were told that it was only
6 necessary to prove that a fact is more likely true than
7 not true, such as by the greater weight or the
8 preponderance of the evidence. In criminal trials, ladies
9 and gentlemen, the State's proof must be more powerful
10 than that. It must be beyond a reasonable doubt. Proof
11 beyond a reasonable doubt is proof that leaves you firmly
12 convinced of the defendant's guilt. Now, ladies and
13 gentlemen, there are very few things in this world that we
14 know with absolute certainty, and in criminal cases the
15 law does not require proof that overcomes every possible
16 doubt. If based upon your consideration of the evidence,
17 or the lack thereof, I am sorry, correction. If based
18 upon your consideration of the evidence you are firmly
19 convinced that the defendant is guilty of the crime
20 charged you must find the defendant guilty. If on the
21 other hand, you think there is a real possibility that the
22 defendant is not guilty you must give the defendant the
23 benefit of the doubt and find him or her not guilty.

24 Ladies and gentlemen of the jury, I remind you that
25 during this trial you and I have certain duties to

1 perform. As the trial Judge it is my responsibility to
2 preside over the trial of this case. And I also have the
3 duty to rule on the admissibility of the evidence offered
4 during this trial. You are to consider only the competent
5 evidence before you. If there was any testimony ordered
6 stricken from the record in this case you must disregard
7 that testimony. You are to consider only the testimony
8 which has been presented from the witness stand, any
9 exhibits which have been made a part of the record in this
10 case and any stipulations of counsel.

11 I have the additional duty to charge you the law
12 applicable to this case. As the presiding Judge I am the
13 sole Judge of the law in this case. And it is your duty
14 as jurors to accept and follow and apply the law as I now
15 state it to you. If you already have any idea as to what
16 the law is or what the law ought to be and it doesn't
17 purport or agree with what I now tell you the law is you
18 must abandon this idea because you are sworn to accept and
19 apply the law as I state it to you now.

20 Ladies and gentlemen, in every case tried in this
21 court before a jury the jury becomes the sole and
22 exclusive judges of the facts in a case. A trial Judge
23 cannot intimate, state, comment on or make any statement
24 to a trial jury about the facts in a case. Since you the
25 jury are the sole judge of the facts in this case you are

1 not to infer from what I have said during the progress of
2 this trial in ruling on admissibility of evidence or
3 otherwise or anything that I say now during the course of
4 this instruction to you that I have any opinion about the
5 facts in this case. Ladies and gentlemen, the law does
6 not allow me to have an opinion about the facts in this
7 case and I do not have an opinion concerning the facts of
8 the case. This is an area solely for your consideration.
9 This is a matter solely for you, the jury, to determine.
10 As jurors, it is your duty to determine the effect, value,
11 weight and truth of the evidence presented during this
12 trial.

13 Ladies and gentlemen, there are two types of evidence
14 which are generally presented during a trial, direct
15 evidence and circumstantial evidence. Direct evidence is
16 the testimony of a person who claims to have actual
17 knowledge of a fact, such as an eyewitness. It is
18 evidence which immediately establishes the main fact to be
19 proved. Circumstantial evidence is proof of a chain of
20 facts and circumstances indicating the existence of a
21 fact. It is evidence which immediately establishes
22 collateral facts from which the main fact may be inferred.
23 Circumstantial evidence is based on inference and not on
24 personal knowledge or observation. Ladies and gentlemen,
25 the law makes absolutely no distinction between the weight

1 or value to be given to either direct or circumstantial
2 evidence. Nor is a greater degree of certainty required
3 of circumstantial evidence than of direct evidence. You
4 should weigh all of the evidence in the case. After
5 weighing all the evidence if you are not convinced of the
6 guilt of the defendants beyond a reasonable doubt you must
7 find them not guilty.

8 Necessarily, you must determine the credibility of
9 witnesses who have testified in this case. Credibility,
10 ladies and gentlemen, simply means believability. It
11 becomes part of your duty as jurors to analyze and to
12 evaluate the evidence and determine which evidence
13 convinces you of its truth. In determining the
14 believability of a witness, witnesses who have testified
15 in this case you may believe one witness over several
16 witnesses or several witnesses over one witness. You may
17 believe a part of the testimony of a witness and reject
18 the remaining part of the testimony of that same witness.
19 You may believe the testimony of a witness in its entirety
20 or reject the testimony of a witness in its entirety. You
21 may consider whether any witness has exhibited to you any
22 interest, bias, prejudice, or other motive in this case.
23 You may also consider the appearance and manner of a
24 witness while they are on the witness stand.

25 Ladies and gentlemen, the rules of evidence normally

1 do not permit witnesses to testify to opinions or
2 conclusions. An exception to this rule exists for
3 witnesses we call expert witnesses. A witness who by
4 education and experience has become an expert in some art,
5 science, profession or calling may state an opinion as to
6 relevant and material matter in which the witness claims
7 to be an expert and may also state the reasons for their
8 opinion. You should consider any expert opinion received
9 in evidence in this case like you would any other
10 evidence, give it the weight you think it deserves. If
11 you decide that the opinion of the expert witness is not
12 based on sufficient education and experience or if you
13 conclude that the reasons given in support of the opinion
14 are not sound or that the opinion is outweighed by other
15 evidence you may disregard the opinion entirely. An
16 expert witnesses testimony is to be given no greater
17 weight than that of other witnesses simply because the
18 witness is an expert. Further you are not required to
19 accept an expert's opinion even though it is not
20 contradicted.

21 Now, as I said a moment ago, ladies and gentlemen, I
22 will give you a copy of these instructions in written
23 form. During your deliberations you can refer to the
24 instructions to guide your decision-making. You must
25 consider the instructions as a whole and not follow some

1 and ignore others. When you are done I would ask that you
2 return all twelve copies of these instructions to the
3 Court at the time that your verdict is rendered.
4 Additionally, ladies and gentlemen, on the copies that you
5 have on page 13 you will notice that a section was blacked
6 out, it is still possible to see what is written there.
7 The reason I have blocked that out, blacked that out was
8 that was erroneously put in there before I asked the Clerk
9 to make twelve copies for me. Instead of asking her,
10 instead of asking her to make an additional twelve copies
11 I just told her or told my Clerk to black out that
12 portion. So the portion which is blackened out on page 13
13 or struck through, you are not to consider that because
14 that was simply erroneously inserted in there in my
15 initial draft on the charge to you.

16 Now, ladies and gentlemen, in order to establish
17 criminal liability with respect to the charges against the
18 defendant the State must prove that the defendant acted
19 with extreme indifference, not just acted, disregarding
20 the risk which a person's conduct has created or a
21 conscious or knowing failure to exercise ordinary or due
22 care. Extreme indifference is a mental state akin to
23 criminal intent characterized by a deliberate act
24 culminating in death.

25 Criminal intent must be proven by the State beyond a

1 reasonable doubt. Criminal intent is always a matter that
2 must be determined by the jury from the circumstances
3 surrounding the situation. There is no way to prove
4 intent to a mathematical certainty. There is no way
5 medical science can dissect a person's brain and determine
6 what the person had in mind. So, the law says that
7 criminal intent may be inferred from the circumstances
8 shown to have existed. This is how you make a
9 determination of whether or not the element requiring
10 intent was present. It is not necessary to establish
11 intent by direct and positive evidence but intent may be
12 established by inference in the same way as any other fact
13 by taking into consideration the acts of the parties and
14 all the facts and circumstances of the case. Ladies and
15 gentlemen, criminal intent is a mental state, a conscious
16 wrongdoing. It is up to you to determine what the
17 defendants intended to do based upon the circumstances
18 shown to have existed. Criminal intent can arise from
19 action or a failure to act.

20 Now in this case, ladies and gentlemen, the
21 defendants are charged with homicide by child abuse. The
22 State must prove beyond a reasonable doubt that the
23 defendant caused the death of a child under the age of
24 eleven while committing child abuse or neglect. Child
25 abuse or neglect is an act or failure to act which causes

1 harm to the child's physical health or welfare. Harm to
2 the child's physical health or welfare means that the
3 defendant either inflicted, or allowed to be inflicted
4 physical injury on the child which caused the child's
5 death or failed to supply the child with health care and
6 this failure caused a physical injury or condition which
7 caused death. The State must also prove beyond a
8 reasonable doubt that the death occurred under
9 circumstances showing an extreme indifference to human
10 life.

11 In this case, ladies and gentlemen, both defendants
12 are also charged with aiding and abetting homicide by
13 child abuse. To convict either of the defendants of this
14 charge the State must prove beyond a reasonable doubt that
15 the defendant knowingly aided and abetted another person
16 to commit child abuse or neglect which resulted in the
17 death of a child under the age of eleven. To be liable as
18 an accomplice otherwise known as aiding or abetting the
19 defendant must have knowledge of the principal's criminal
20 conduct. Mere presence at the scene of the crime is not
21 sufficient to establish guilt as an accomplice. Aid means
22 to help, to promote the course or accomplishment of, to
23 give support to or to give assistance to. Abet means to
24 encourage or appear to favor or support. Intentionally
25 means willfully; intending the result which actually

1 occurs; not accidentally or involuntary.

2 Again, ladies and gentlemen, mere presence at the
3 scene is not sufficient to prove someone guilty of a
4 crime. A defendant's presence where a crime is being
5 committed or mere association with a person who commits a
6 crime does not make a defendant an accomplice or an aider
7 and abettor of the person committing the crime.

8 The burden is on the State to prove every element of
9 the crime charged. If you find after reviewing all the
10 evidence that the State has only proven that the defendant
11 was merely present at the scene of a crime and that they
12 have not proven beyond a reasonable doubt any other
13 participation in the crime then you must find the
14 defendant not guilty. The law is that proof of being at
15 the scene of the crime is not sufficient to find someone
16 guilty.

17 Ladies and gentlemen, I have prepared two verdict
18 forms and there are several possible verdicts which you
19 may find with respect to this case with respect to each
20 defendant. There is one verdict form for Ashley Hepburn
21 and there is a second one for Richard Brandon Lewis. Both
22 verdict forms state that you may find either, Mr. Lewis or
23 Ms. Hepburn guilty of homicide by child abuse or not
24 guilty of homicide by child abuse or guilty of aiding and
25 abetting homicide by child abuse or not guilty of aiding

1 and abetting homicide by child abuse. Ladies and
2 gentlemen, there is no significance whatsoever in the way
3 that I state the possible verdicts, it is simply that one
4 has to be stated first.

5 Ladies and gentlemen, your verdict must be a
6 unanimous one with respect to every charge and each
7 defendant. I remind you, ladies and gentlemen, that you
8 have no enemies to punish, you have no friends to reward
9 in this case. Mr. Foreperson, when the jury agrees
10 unanimously on a verdict I would ask that you initial in
11 the blank indicating next to the jurys verdict with
12 respect to the charge. There are two choices, they are
13 not guilty or guilty. This is pretty self explanatory.
14 Once you have considered all the evidence and rendered
15 your unanimous verdict as a jury you would sign your name,
16 Mr. Foreman at the very bottom where it is indicated after
17 initialing in the appropriate blanks, knock on the door
18 and let the bailiff know that you have reached a verdict
19 and then we will receive you shortly back in the
20 courtroom. Now, I ask that you return to the jury room
21 but please don't begin your deliberations until you are
22 instructed to do so by the Clerk or the bailiff. There
23 are some matters that I need to discuss with the attorneys
24 to make sure that I have charged you on everything that
25 they want me to charge you on that applies in this

1 particular case. Your cue to begin your deliberations
2 will be receipt of the verdict forms as well as all the
3 evidence and my asking the bailiff to bring out two
4 alternates out of the courtroom or out of the jury room.
5 That will be your cue to begin your deliberations. If
6 there is nothing else that I need to tell you you will
7 then receive, like I said, these forms and the evidence
8 and we will pull the alternates out. With that I would
9 ask that you retire again to the jury room, don't start
10 talking about the case yet. I will let you know when you
11 can start talking about it. I anticipate that I will not
12 have to bring you out but in the event I missed something
13 in terms of the charge on the law I will bring you out and
14 charge you. If you will adjourn to the jury room for just
15 a moment, don't talk about the case.

16 (Whereupon, the jury is excused from open court.)

17 THE COURT: The jury is out, exceptions or additions
18 from the State?

19 MS. MAYES: None from the State, Your Honor.

20 THE COURT: Mr. Able?

21 MR. ABLE: None, Your Honor.

22 THE COURT: Mr. Wise?

23 MR. WISE: Subject to my position and the little, at
24 one point you told the jury evidence or lack thereof and
25 then you took it back.

1 THE COURT: That is because I was talking about
2 evidence of lack thereof in terms of a guilt verdict.
3 That is what I was running into. If you find the evidence
4 that the verdict of guilt it is your duty, bla, bla, bla.

5 MR. WISE: All right. I agree with that. I missed
6 the context in which it was done. Secondly, I also would
7 request, I know the Courts are against me on this. But
8 what the heck. The old circumstantial evidence charge
9 where you, the jury is instructed to seek an alternative
10 explanation other than the guilt of the defendant. I have
11 sent your clerk my request to charge on that so he can
12 print it out and make it a part of the record.

13 THE COURT: All right.

14 MR. WISE: I realize the Courts have changed since
15 then.

16 THE COURT: Yes, sir. I believe when you raised
17 that, Mr. Wise, if you were to raise it you would need to
18 argue against precedence.

19 MR. WISE: That is correct.

20 THE COURT: Your objection is noted. Your request to
21 charge is noted. I declined to charge it. If y'all can
22 take a look at the exhibits and make sure that we know
23 what is back there.

24 (Whereupon, the court reporter and attorneys went
25 over the exhibits.)

1 (Whereupon, the jury started deliberations at
2 approximately 4:40 p.m.)

3 (Whereupon, the alternates were excused from the
4 trial of the case.)

5 THE COURT: Bring the jury in, we have a question.

6 (Whereupon, the jury came into open court at
7 approximately 5:42 p.m.)

8 THE COURT: Let the record reflect that the jury is
9 back in the courtroom. Mr. Foreman, I received your
10 questions for me, 1 through 4. And I am going to answer
11 in turn. The first question asked, if you could have a
12 court reporter's transcript of the case. Unfortunately it
13 takes a good bit of time for the court reporter to
14 actually make a transcript. If you need to rehear any
15 testimony, any specific testimony simply let us know the
16 witness that was involved and that portion of the
17 testimony that you are interested in hearing and we can
18 make arrangements to have that played back for you audibly
19 or for the court reporter to read her notes back. So a
20 transcript is simply not available at this point and time.

21 Can you have the bumper pad, towel, blanket, et
22 cetera and that be brought to the jury room or do we have
23 to rely on the photos. Those items weren't introduced
24 into evidence and it can't, they can't be introduced at
25 this particular point and time. So, unfortunately I can't

1 let you take those back to the jury room. You will need
2 to rely on the photos and your recollection of the
3 testimony concerning those items in trying to answer
4 whatever question or issue that you have concerning that.

5 Same answer for question number three where you asked
6 if the flip chart with the notes that Ms. Mayes used, if
7 that was available to you. It is not, it was merely a
8 demonstrative piece of equipment that Ms. Mayes employed.
9 So I can't send that back as well under the law.

10 Number four, can we have a list of both the
11 prosecutions and the defense attorneys witnesses. Simply
12 an ordered list of who was heard. We are preparing that
13 for you right now and we will have for you momentarily.
14 So, that is the answer to your questions and I will have
15 that list back for you shortly. If you need to, you need
16 any further guidance or you need to rehear something or
17 whatever do what you have done, send a note to me and we
18 will try and accommodate anything legally we can. If you
19 will return to your jury room and continue to deliberate
20 and we will have that list for you in a few moments.

21 (Whereupon, the jury continues deliberations at
22 approximately 5:45 p.m.)

23 (Whereupon, Court's Exhibit nos 10, 11, 12, 13 and 14
24 were marked for identification only.)

25 THE COURT: I have received a communication from the

1 jury, it basically states that, it speaks for itself.
2 They are tired and they feel somewhat spent from today's
3 proceeding. They want to stop for the evening and I have
4 spoken to counsel about this and there is no objection to
5 going ahead and adjourning for the evening and I will have
6 them back here tomorrow morning at 9:00 o'clock. Is that
7 acceptable with everyone. Ms. Mayes?

8 MS. MAYES: Yes sir, Your Honor.

9 MR. ABLE: Yes, sir.

10 MR. WISE: Yes, sir.

11 THE COURT: Very good. Bring the jury in, please.

12 (Whereupon, the jury came into open court at
13 approximately 6:50 p.m.)

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

16 THE COURT: The record will reflect the jury is
17 present in the courtroom. Ladies and gentlemen and Mr.
18 Foreperson, I have received your communication and I
19 concur. I have shared it with counsel and they concur.
20 So, we will call it a night tonight and I would ask that
21 you be back in the jury room tomorrow morning at 9:00
22 o'clock to resume. You can't talk about this case with
23 anyone. If anyone attempts to contact you or anything
24 like that you report it to me immediately. Report it to
25 law enforcement immediately but nobody is going to do

1 that. It is very important that you not view any, I don't
2 think there are going to be any news reports about this or
3 anything in the papers tomorrow. But should you happen to
4 cross something you are not to read it, you are not to see
5 it, you are not to listen to it. You must base your
6 decision in this case solely upon the evidence that you
7 have received here as well as the testimony and the
8 exhibits. I bid you a good evening and I will see you
9 tomorrow morning at 9:00 o'clock.

10 (Whereupon, the jury was excused from open court for
11 the evening.)

12 THE COURT: The jury is out, we will need to make
13 arrangements to have any evidence or exhibits secured for
14 the evening. Anything before we break for the night?

15 MS. MAYES: Nothing from the State.

16 MR. ABLE: No, sir.

17 MR. WISE: No, sir.

18 THE COURT: We will see you at 9:00 o'clock in the
19 morning.

20 (Whereupon, the trial will resume the next morning at
21 9:00 o'clock.)

22 March 3, 2011

23 (Whereupon, the jury started deliberations at
24 approximately 9:05 p.m.)

25 THE COURT: We are back on the record. Counsel for

1 the defendants are present, counsel for the State is
2 present. I have received a note from the jury which I
3 have shared with counsel in chambers. The jury is
4 requesting to hear the 911 audio again and they are also
5 requesting to see the testimony of both defendants. I
6 have spoken to counsel in chambers about how we are going
7 to address this. I will bring the jury out in a few
8 moments and we will play the audio tape for them and I
9 will explain to them that at this point there is no
10 transcript. And that we can only play the testimony of
11 the defendants which will last between five and a half to
12 six hours. And then I will instruct them to return and
13 resume deliberating and invite them to send another
14 message out if there is anything further that we can do.
15 Bring the jury in, please.

16 (Whereupon, the jury came into open court at
17 approximately 10:05 a.m.)

18 THE COURT: The record will reflect the jury is
19 present in the courtroom. Ladies and gentlemen and Mr.
20 Foreperson, I have received your note and your request.
21 Your first request you are asking to rehear the 911 audio
22 tape again and it took us a few moments to get that set
23 back up and that is the reason for the delay. We will
24 play that for you momentarily. Your second request is,
25 you express the desire to see the testimonies of both

1 defendants. Unfortunately, well I am interpreting this as
2 an indication that you want to see a transcript of the
3 testimonies of the defendants. At this point and time,
4 ladies and gentlemen, there is no transcript available, it
5 takes a great deal of time for the court reporter to check
6 her notes and to review the dictation that she has taken
7 and then compare it against any audio that she has taken.
8 So, it takes a good deal of time to prepare a transcript
9 and the only thing we could do would be to play the
10 testimony of the defendants again which would last between
11 five and a half to six hours. So, what we will do is
12 simply play the audio tapes, the 911 audio tapes for you
13 at this point and time. And after they are played I would
14 ask you to return to the jury room and continue your
15 deliberations. And of course if there is anything further
16 that you need from us or want from us just send out a note
17 letting us know what it is that you want to do or what you
18 need or what you feel like you need to assist in your
19 deliberations. We will be more than happy to try to
20 accommodate that as much as possible. If it was possible
21 to send the transcript back I would do it but it takes
22 time for the court reporter to prepare a true transcript
23 that is certain as to all the testimony that was taken.
24 So, with that, Mr. Hammack, if you will go ahead and play
25 the audio tape of the 911 call, please.

1 (Whereupon, the 911 tape was played starting at 10:09
2 a.m to 10:11 a.m.)

3 THE COURT: That concludes the 911 tape. If you need
4 to hear it again just let me know. I see a head nodding,
5 would you like to hear it again?

6 FOREPERSON: Yes, sir.

7 THE COURT: No objection to playing it again?

8 MS. MAYES: No, sir.

9 MR. ABLE: No, sir.

10 MR. WISE: No, sir.

11 THE COURT: We can play the 911 tape again.

12 (Whereupon, the 911 tape was played starting at 10:11
13 to 10:13 a.m.)

14 THE COURT: Ladies and gentlemen, that again
15 concludes the 911 tape. If you would resume your
16 deliberations at this point and time and if you need
17 anything further from us send a note out and we will make
18 every effort to accommodate anything that we can.

19 (Whereupon, Court's Exhibit 16 was marked for
20 identification only.)

21 (Whereupon, the jury continued deliberations at
22 approximately 10:14 a.m.)

23 THE COURT: All right, ladies and gentlemen, I am
24 informed that the jury has reached a verdict and before I
25 bring the jury out I just have a couple of quick remarks.

1 I think that everyone here can agree and appreciate that
2 the death of this child is nothing but short of an
3 absolute tragedy. The only way that the tragedy of her
4 death would be critical accounted would be for those in
5 attendance, if you were to fail to observe the solidity of
6 this particular occasion. I have got no idea what the
7 verdict is, ladies and gentlemen, I am told that the jury
8 has reached a verdict. Of course, if you feel that you
9 are not going to be able to control your emotions or
10 control yourself or that your emotions would compel you in
11 some way to act out or speak out or cry out or offer any
12 disparaging comments or otherwise disrupt these
13 proceedings I would invite you to leave at this time. I
14 am warning you, I am not going to tolerate any sort of
15 breach of decorum or any audible disruptions to these
16 proceedings. If after the verdict is returned you find
17 yourself unable to comply with these instructions, if you
18 feel an emotion overtaking you I would encourage you to
19 simply step outside until you have a chance to compose
20 yourself. This jury has worked hard. Obviously this is
21 not a sporting event, there are to be no cheers, there are
22 to be no boos, there are to be no disruptions at any time
23 when the verdict is received. There are additional
24 deputies that I have asked to be present just as a
25 precaution and to assist the court in maintaining proper

1 decorum to these proceedings. I trust everyone's behavior
2 over the last two weeks will prove their presence here is
3 quite supportless so I anticipate you will not have need
4 for them but I ask them nonetheless to join us. Anything
5 before I bring the jury out from the State, Ms. Mayes?

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

7 THE COURT: Mr. Able?

8 MR. ABLE: No, sir.

9 THE COURT: Mr. Wise.

10 MR. WISE: No, sir.

11 THE COURT: Bring the jury in, please.

12 (Whereupon, the jury came into open court with the
13 verdict at approximately 4:00 p.m.)

14 THE COURT: The record should reflect that the jury
15 is present with us. The defendants are present, Ms. Mayes
16 is present on behalf of the State. Mr. Foreperson, I am
17 informed that the jury has reached a verdict, is that
18 correct?

19 FOREPERSON: Yes, sir.

20 THE COURT: And all twelve of you have agreed?

21 FOREPERSON: Yes, sir.

22 THE COURT: If you will hand the verdict to the
23 bailiff, please.

24 (Whereupon, the bailiff handed the verdict form to
25 the Court.)

1 THE COURT: Madam Clerk, if you will publish the
2 verdict. Mr. Able, Mr. Wise, if you will ask your clients
3 to please rise.

4 CLERK OF COURT: Your Honor, in the case of the State
5 of South Carolina versus Ashley Nicole Hepburn, case
6 number 2010-GS-30-1773 and 1774. We the jury in the above
7 captioned case on the charge of homicide by child abuse
8 unanimously find Ashley Nicole Hepburn guilty.

9 In the case of the State of South Carolina versus
10 Richard Brandon Lewis, case number 2010-GS-30-1929 and
11 1930. We the jury in the above captioned case on the
12 charge of aiding and abetting homicide by child abuse
13 unanimously find Richard Brandon Lewis guilty. Signed by
14 the foreperson on both cases, David Corley, March 3rd,
15 2011.

16 THE COURT: Thank you, Madam Clerk.

17 CLERK OF COURT: Ladies and gentlemen, if that be
18 your verdict please indicate by raising your right hand.

19 (Whereupon, all jurors raised their hand.)

20 THE COURT: Let the record reflect that all twelve
21 jurors did indicate by raising their right hand that this
22 was their verdict. Anything before we discharge the jury,
23 Mr. Able?

24 MR. WISE: I would request the jury to be polled.

25 THE COURT: Madam Clerk, if you will poll the jury,

1 please.

2 CLERK OF COURT: Ladies and gentlemen, the verdict
3 that I just have published was the verdict you reached in
4 the jury room. I ask you, was it your verdict then and is
5 it your verdict now. When I call your name if you will
6 answer yes or no.

7 THE CLERK: David J. Corley.

8 JUROR: Yes.

9 THE CLERK: Russell M. Conner.

10 JUROR: Yes.

11 THE CLERK: Mary Parsons.

12 JUROR: Yes.

13 THE CLERK: Brian S. Landford.

14 JUROR: Yes.

15 THE CLERK: Patti S. Brown.

16 JUROR: Yes.

17 THE CLERK: Sara D. Barksdale.

18 JUROR: Yes.

19 THE CLERK: Shirley K. Medlin.

20 JUROR: Yes.

21 THE CLERK: Richard Detroia.

22 JUROR: Yes.

23 THE CLERK: Joyce Lance Lowry.

24 JUROR: Yes.

25 THE CLERK: Freddie W. Payne.

1 JUROR: Yes.

2 THE CLERK: Charnessa Latimore.

3 JUROR: Yes.

4 THE CLERK: Stephen Patton.

5 JUROR: Yes.

6 THE CLERK: Thank you.

7 THE COURT: Anything further before we discharge the
8 jury, Mr. Able?

9 MR. ABLE: No, sir.

10 MR. WISE: No, sir.

11 THE COURT: Y'all may have a seat. Ladies and
12 gentlemen of the jury, I know that this has been a very
13 difficult two weeks for you. I know it has been very
14 difficult for all concerned here. I want to thank you for
15 your consciousness, I want to thank you for the way you
16 paid attention, I want to thank you for your courtesy,
17 your promptness every day that we have been through this
18 together. I will tell you what I tell every jury, it is
19 your right to say what you want to about these proceedings
20 and it is your right to comment on or to say anything that
21 you may want to say to whomever you say. The tradition in
22 South Carolina is different that what happens in the jury
23 room stays in the jury room, whether you choose to follow
24 that tradition or not it is your business entirely. I
25 tell you this much, if you want to speak to somebody or if

1 you were to be contacted by someone who wants to speak to
2 you, if you want to talk to them you are free to do so.
3 If you don't want to talk to them, however, and they
4 persist and asking to speak to you you report that to the
5 Clerk of Court and she will immediately contact me and we
6 will deal with it. So, if there are any problems you
7 contact me immediately. Ladies and gentlemen of the jury,
8 I want to thank you for your consciousness, I want to
9 thank you for the difficult decision that y'all had to
10 make in this case. I understand that this was not an easy
11 case for anyone to sit through or for anyone to observe.
12 Than you very much for your service and no one has any
13 right to criticize your verdict under any circumstances.
14 With that you are excused and if you wish to remain what I
15 would ask that you do is simply exit out here, give the
16 bailiff your juror badges and we can make arrangements for
17 one of the rows in the courtroom to be made available to
18 you. You will just need to come around to the back and we
19 will make sure there is somebody there that can show you
20 which row you want to stay. With that I once again invite
21 you to return to the jury room and collect any items that
22 you may have and you have to leave the exhibits as well as
23 my instructions to you back there. Go ahead and collect
24 your personal belongings. And if you want to stay you are
25 welcome to do so. If not thank you very much for coming.

1 The Clerk does have your checks and she will disperse
2 those to you back there. Thank you all very much. The
3 jury is excused.

4 (Whereupon, the jury was excused from the trial of
5 the case at approximately 4:07 p.m.)

6 THE COURT: Ms. Mayes, I will need you to prepare
7 some sentencing sheets and we will take a brief break for
8 about five or ten minutes or so and then we will proceed
9 with sentencing if there is no objection. We will be at
10 ease for a few moments.

11 (Whereupon, a short break was taken.)

12 THE COURT: Ms. Mayes, are you ready to proceed or do
13 you need another moment?

14 MS. MAYES: The State is ready, Your Honor.

15 THE COURT: At this point any motions from the
16 defense, Mr. Able, Mr. Wise?

17 MR. ABLE: Judge, we would, on behalf of Ms. Hepburn
18 I move for a new trial on the basis that the evidence was
19 insufficient to support the jury's verdict.

20 THE COURT: Thank you, Mr. Able. Mr. Wise?

21 MR. WISE: Your Honor, on behalf of Brandon Lewis I
22 would request that a new trial be granted on the grounds
23 that there was no evidence, there is no substantial
24 circumstantial evidence supporting a verdict of aiding and
25 abetting in this case. I don't, quite frankly, understand

1 why it went to the jury in the first place or how the jury
2 arrived at aiding and abetting in this case. As the jury
3 believed that she is the one that shook the child and
4 killed the child, his sole actions all occurred after the
5 act occurred. All of that would be guilty of accessory
6 after the fact and the State so chose to charge him with
7 that but they did not. The slight window at best is the
8 way to put it, that his not telling EMS personnel that he
9 heard her stomp into the room certainly cannot be said if
10 there is credible evidence in this record or substantial
11 circumstantial evidence in this record that would justify
12 an aiding and abetting for not telling what he thought
13 happened to the child in that room. In order to convict
14 him of aiding and abetting under the State's theory there
15 has to be substantial evidence that from the moment she
16 shook the child he knew something that he did not report
17 or should have reported and that caused the death of the
18 child. At best, at best you can only say it is
19 speculative that had the incident been reported even
20 thirty minutes earlier this child would have lived. There
21 is certainly no substantial evidence in this record in
22 this case to say any, that any actions of Brandon Lewis in
23 this case caused that child to die beyond a reasonable
24 doubt, by which a jury could determine a reasonable doubt.
25 I think the State's theory and the State's argument

1 blended or confused the jury with accessory after the fact
2 and aiding and betting the commission of the crime. The
3 crime was committed when she shook the child. He was not
4 present, he did not aid and abet. There is not a
5 scintilla of evidence of that in his record. The only way
6 aiding and abetting can come into this record is by which
7 there was allegedly some act he did that caused further
8 injury to the child. And not a single medical person
9 testified that had, that had been reported even an hour
10 earlier than it was, that it would have been any result
11 different than this. So, I think the jury's verdict was
12 based upon misapprehension of the law, that not telling
13 the police the truth after the act was guilty of aiding
14 and abetting and was not based upon an accurate assessment
15 of the facts because there was nothing in the record by
16 which a reasonable jury could conclude that any of his
17 actions caused any sort of injury to this child.

18 THE COURT: Thank you, Mr. Wise. Ms. Mayes, what is
19 the State's position.

20 MS. MAYES: Your Honor, the State's position is that
21 there is sufficient evidence in the record to support that
22 the child was living and receiving medical treatment at
23 the point that Mr. Lewis was aiding and abetting Ashley
24 Hepburn in the act of child abuse or neglect by concealing
25 the crime, helping to advance the crime or promote the

1 crime by covering it up.

2 THE COURT: Gentlemen, I appreciate your motions.
3 Mr. Able, your motion for a new trial is denied. Mr.
4 Wise, Mr. Lewis' motion for a new trial, based on a lack
5 of substantial evidence is similarly denied.

6 MR. WISE: We also request that a new trial be
7 granted on the failure for the Court to charge any duty on
8 his behalf before the jury could convict him of any aiding
9 and abetting also. And of course, the other grounds that,
10 the failure to grant a mistrial on the grounds of his
11 being asked about the cocaine usage which was not proper.
12 And the comment by the Chaplain from Self Memorial
13 Hospital, it was a statement of a person of a guilty
14 conscious. I think when you look at the closeness of this
15 issue, at the very least, those little small things I
16 think easily could have persuaded the jury notwithstanding
17 Your Honor's instructions to the contrary, easily
18 persuaded the jury that that was what tipped the scales in
19 this particular case.

20 THE COURT: With regard to the failure to charge
21 concerning duty, Mr. Wise, I believe the record is
22 adequately protected on that particular question. I will
23 deny your motion on those grounds. And with regard to the
24 improper comments that the Court ruled were improper,
25 obviously curative instructions were provided at the time

1 the comments or the question was asked by Mr. Able as well
2 as at the time the statement from the pastor at the
3 hospital was elicited. I am quite certain beyond any
4 doubt that those instructions were sufficient to cure any
5 prejudice to your client. I was quite impressed with the
6 professionalism and dedication of that jury and it was
7 quite evident they took their obligations very seriously
8 and followed my instructions throughout the course of this
9 trial. I am satisfied that the jury instructions were
10 sufficient to cure any prejudice to your client and your
11 motion on those grounds are denied. Are there any further
12 motions from Mr. Able or Mr. Wise at this point?

13 MR. ABLE: No, sir.

14 MR. WISE: No, sir.

15 THE COURT: Ms. Mayes, if you have any member of the
16 family that wishes to offer any statements I will be more
17 than happy to receive those at this particular time. And
18 I will turn to the the defense for any issues of
19 mitigation. Specifically if the Court or if, the Court
20 can receive the benefit of any information, Ms. Mayes,
21 that you might have with regard to subsection (d), that is
22 the, 16-3-85. There are certain areas or certain things
23 that the Court must consider in aggravation and in
24 mitigation. I will be more than happy to hear anything or
25 any statements that you may have along those lines and

1 certainly we will receive.

2 MS. MAYES: Yes sir, Your Honor. Nothing in
3 aggravation beyond what the Court has already heard.
4 There are two family members which would like to address
5 the Court. The father of Audrina, Daniel Hepburn and also
6 her grandmother, Rita Hepburn Ebel.

7 THE COURT: Your victim's advocate would care to come
8 forward and just sort of stand over here at the side.
9 State your name, sir.

10 MR. HEPBURN: Daniel Hepburn.

11 THE COURT: Thank you, Mr. Hepburn, yes sir.

12 MR. HEPBURN: I would like to start by saying thank
13 you for everything that you have done here. You guys did
14 a great job on everything. I felt one way about this
15 before it started. Honestly it is hard to believe that
16 Ashley could have done anything. Watching her on the
17 stand lie changed my mind completely and then watching
18 Brandon Lewis get up on the stand and able to look me in
19 the eye and tell the truth made a big difference. And
20 seeing now what the truth is on this takes a huge burden
21 off of me. As far as concerns to Ms. Hepburn I couldn't
22 believe that she could ever do anything like this but
23 after seeing the evidence I see it now and I don't feel
24 she should be shown any leniency on anything in that
25 regard. With Mr. Lewis, in the situation he was in, I

1 know he was wrong in the aiding and abetting and I can see
2 that but in the same respect I could say what I would have
3 done in that situation as well. I would have no arguments
4 if he walked out today. I have nothing against him. With
5 Ashley, I hope she never comes out of prison. And that is
6 all I have to say, thank you.

7 THE COURT: Yes, ma'am.

8 MS. RITA HEPBURN: Thank you, Your Honor, we
9 shouldn't have to be here today, my granddaughter should
10 be turning three in June. My grandson should have his
11 little sissy to play and grow up with instead of visiting
12 her at her grave side and leave her toys to leave for her
13 because she might want to play with them. That is what he
14 tells me when we go to visit her. I agree with my son,
15 Ashley's, her temper got in the way this time and she went
16 too far and I want her to sit in jail every day for the
17 rest of her life and think of what she did to Audrina
18 Claire. And Brandon, I believe Brandon now, before I
19 didn't know the whole story and he should have got up and
20 done something sooner instead of leaving her sitting
21 there. And we shouldn't be here, my granddaughter, she
22 was born eleven weeks early, two pounds and nine ounces
23 and fought for her life to live. And then her last days
24 my son sat there with her in the hospital. And when the
25 doctor disconnected her from the tubes they said she would

1 live for about ten minutes. She went on for forty minutes
2 and then he sat there and rocked her and sang to her, you
3 are my sunshine. She did not want to leave this world,
4 she fought and had to tie her hand to the side of the bed
5 because she tried to pull the tubes out. So with that she
6 could not reach her hands, so she would scoot her little
7 self down with her one foot that was working to try to get
8 her mouth to her hands to pull those tubes out. Her
9 little body was at ninety-three degrees, she laid there so
10 cold in that bed and I could not do anything to get her
11 warm because they were trying to keep the swelling down.
12 There is no reason for this, she was an innocent baby with
13 bright blue eyes and a contagious smile that loved
14 everybody. She would go to a stranger in a heart beat if
15 they would put their hands out to her, she would go to
16 them and smile. And now we have been robbed of her life
17 as she was robbed of her life and we can never get it
18 back. Thank you.

19 THE COURT: Anything else from the State, Ms. Mayes?

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

21 THE COURT: Neither of the defendants, I assume, have
22 a substantial prior criminal history?

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

24 THE COURT: All right. Mr. Able, I will refer to you
25 first. I will be happy to certainly hear anything that

1 you may want to offer in mitigation at this point and
2 time, any statements from your client or any family member
3 who is here on their behalf. I will be more than happy to
4 hear from you.

5 MR. ABLE: Yes, sir. As the Court has said, this
6 case is obviously a tragedy. While we respect the jury's
7 verdict, of course we don't agree with it. By all
8 indications Ashley Hepburn was a good mother to her
9 children. The incidences of October 13th, like I said, we
10 respect the jury's verdict but we don't agree with it.
11 But prior to that, given the verdict, prior to that all
12 indications that she was a good mother, she was a stay at
13 home mom, she took care of her children. I would ask the
14 Court to take into consideration her age, I would ask the
15 Court to take into consideration the fact that she has no
16 prior criminal history. I have known her now for a year
17 and a half and every time that I have spoken to her she
18 has expressed to me the love of her children. We would
19 ask the Court humbly and for the most lenient, merciful
20 sentence that you can give, given the fact that she has
21 been convicted of this crime. Judge, Ms. Hepburn informs
22 me that she doesn't wish to speak. If I could have a
23 chance to ask if any of her family members would like to
24 speak.

25 THE COURT: Any family members, anyone wants to speak

1 on her behalf I will be more than happy to hear from you.

2 MR. ABLE: This is David Tolley.

3 THE COURT: Mr. Tolley, I will be glad to hear from
4 you.

5 MR. TOLLEY: I respect the verdict that they gave, I
6 do not agree with it but I just don't think the evidence
7 in the case was strong enough to convict her of this.
8 But, again, I do respect that. She is a 23-year-old
9 mother of two, never before this night had this ever
10 occurred and only with the presence of Brandon Lewis.
11 But, again, I know we are not trying the trial, I am
12 asking you for leniency. She has a four-year-old son and
13 we are heart broke at this verdict. Again, she has never
14 given us any real trouble in her life. She has been a
15 good daughter and this is just a tragic circumstance we
16 find ourselves in and again we do disagree with that
17 verdict and ask that you be lenient and consider her age
18 and the fact that this is the only run in with the law at
19 any point and time. Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Tolley. Yes sir, what is
21 your name?

22 PASTOR: Your Honor, I am Ashley Hepburn's pastor as
23 well as David Tolley's pastor as well. Your Honor, I
24 would ask you to consider, we saw some of those
25 photographs that were here, maybe a couple of hundred or

1 so. My family actually went through about a thousand
2 photographs from their family that of course weren't
3 prepared for the purpose of a trial. And out of those
4 thousands of photographs that we looked at there was never
5 one case that we didn't find Ashley in a loving position
6 with the children that she has. I would ask you also to
7 consider I have been counseling with the family and with
8 her for the past year and have met with Ashley numerous
9 times, probably at least a dozen times and never once has
10 she spoken or tried to accuse anyone else of the crime.
11 But her testimony to me and as we met together as we just
12 went over the word of god together was always to seek the
13 truth and God's truth in this situation and never did she
14 speak poorly about anybody else associated with the trial
15 whatsoever. I would ask you also to consider that for the
16 past year she has been the target of scathy websites and
17 attack in the community here which she had to endure but
18 never once did she respond to the negative way to those
19 attacks that were raised against her which was just
20 unconscionable that someone would do that to a grieving
21 mother. Her children have played with my children and I
22 have had my children in her presence. I trust her that
23 much because of the person that I know that I have met
24 with for this long. So I ask you to consider all of those
25 things in your decision and render a decision that is

1 equitable in this case.

2 THE COURT: Thank you. Mr. Wise, I will be happy to
3 hear from you, sir.

4 MR. WISE: Your Honor, I think I am in a unique
5 position of telling the Court that actually the jury
6 believed my client. They believed that she shook that
7 child and killed her beyond a reasonable doubt. Had he
8 not come forward under the advice of his grandmother and
9 made the statement he did they may not have been in the
10 position to arrive at that conclusion. As I pointed out
11 here in the trial, he not only came forward at that point
12 but any time he was called upon to testify he did. He is
13 a young man that, if Mr. Hepburn said he is not sure he
14 wouldn't have done the same thing, he could not believe
15 that this woman would do this to her child and yes he lied
16 to the police originally and that is the sole basis as I
17 see it of any thing that they say he did wrong as far as
18 the aiding and abetting is concerned. The jury
19 deliberations have been probably one of more unusual and
20 unique experiences I have ever had in my life because
21 while the jury was out Daniel Hepburn came up and hugged
22 Brandon Lewis and said he understood. I would dare say
23 uniformly there is not a member of Daniel's family that
24 has not come up to me and expressed concern for Brandon
25 and concern for what the Court does with him. And I think

1 if you were to poll the family today they would not be
2 anxious to see him go to jail for his participation, in
3 what the jury found and participated in this to be frank
4 with you. The statute carries up to 20 years. It says it
5 has a minimum of 10, it does not have a provision in there
6 that says no part of which may be suspended nor probation
7 granted. It doesn't even have a provision that says nor
8 shall probation be granted. I think under the law that
9 this Court can grant what Audrina's family is now asking
10 for and that is for Brandon not to go to jail and I think,
11 as I say, it is not the way this trial started and if you
12 had told me at the beginning of this trial the
13 conversations we were having in the hall would be of that
14 nature I would frankly never have believed it. It is a
15 very forgiving on their part, Brandon is, they said some
16 things about him before this trial, they have all met and
17 just basically said, we forgive each other for what we
18 have said and what we thought. I think his role in this
19 case is extremely minimal, I don't think his role was
20 found by the jury caused any additional damage, injury to
21 Audrina. He has a simple possession of marijuana charge
22 from years ago that went through PTI and that is it. He
23 has been anxious to proceed with his studies at Clemson
24 University. To be frank with the Court, the suicide
25 attempt in a weird sort of way may have been one of the

1 best things that happened to him mainly because he went to
2 see a psychiatrist and really got a lot of his thinking
3 together. Academically he was not a good student before
4 this incident. Academically now he is doing extremely
5 much better after the suicide attempt and after the
6 counseling. He is well on his way to making some decent
7 grades at Clemson and was making decent grades at Piedmont
8 Tech. He has absolute potential for being as much as he
9 wants to be. I can tell the Court personally, I think I
10 met Brandon about a year ago when he hired me shortly
11 before the DSS hearing, actually before the deposition was
12 given in March. The maturity I have seen him gain over
13 the past roughly eleven months has really to me been
14 surprising. If you had seen him eleven months ago, if the
15 jury had frankly seen him eleven months ago I am not sure
16 they would convict him of aiding and abetting because at
17 that point in his life he was a much meeker person, a
18 much, a person you could tell was easily dominated by
19 another individual. He has truly grown up several years
20 in the last eleven months. I think he is a perfect
21 candidate for a probationary sentence. I think the
22 statute allows you to give it. I think the family is not
23 going to oppose it, in fact I know the family will not
24 oppose it. They would encourage you to do it in that
25 respect as Mr. Hepburn did encourage you to do it when he

1 spoke. I think that is a proper disposition, I think the
2 Court should consider that had he not come forthrightly
3 when he did we may of had a different result in this
4 courtroom. And someone who did a tragic event may have
5 walked out the backdoor and because of Brandon Lewis that
6 didn't happen.

7 THE COURT: Thank you, Mr. Wise. Mr. Wise, does Mr.
8 Lewis care to address the Court?

9 MR. LEWIS: No, sir.

10 THE COURT: Does any member of his family would like
11 to speak on his behalf?

12 MR. JAMES LEWIS: I am James Lewis, I am his father.
13 I just would like to tell the family, we are grieving with
14 the loss that y'all have too. I know Brandon, he was so
15 much relieved yesterday when they told him that. He told
16 me that if he had to go to jail he could handle it, they
17 knew that he didn't do it. And I am proud of my son for
18 what, he might of made bad judgment, he is a better man
19 than I am and I pray that you take that.

20 THE COURT: Thank you, Mr. Lewis. Ms. Mayes, if you
21 will, I believe that the homicide by child abuse does
22 constitute eighty-five percent?

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

24 THE COURT: And the aiding and abetting?

25 MS. MAYES: That is also classified as violent,

1 eighty-five percent.

2 THE COURT: Plus eighty-five percent. Anything
3 further from anyone?

4 MR. WISE: I just would inquire to the Court as the
5 position of whether or not you can suspend the minimum 10,
6 I think you can.

7 THE COURT: I believe I could.

8 MR. WISE: Okay.

9 THE COURT: Would you concur with that, Ms. Mayes,
10 that it is possible to suspend the minimum?

11 MS. MAYES: Yes sir, Your Honor.

12 MR. ABLE: That is on both of them, I believe, Judge.

13 THE COURT: I think that might be correct.

14 MR. WISE: I think so. There is a case that clearly
15 gives the Court the authority to do that.

16 THE COURT: I am sorry, sir?

17 MR. WISE: There is a case that clearly gives the
18 Court authority to do that, the State versus Thomson.

19 THE COURT: I agree. All right. The provision of
20 law that we are concerned today in regards for the Court
21 to consider certain factors in mitigation and in
22 aggravation. And subsection (d), it states in sentencing
23 a person under the section the Judge must consider any
24 aggravating circumstances including but not limited to the
25 defendants past pattern of child abuse or neglect of the

1 child under the age of eleven as well as any mitigating
2 circumstances. The Court has taken into consideration a
3 number of factors in the sentences which I am imposing.
4 With regard to both Ms. Hepburn and Mr. Lewis, it would
5 appear that neither individual has a substantial prior
6 criminal history. All indications are that Ms. Hepburn
7 was a loving mother and a good mother up until this
8 particular incident. So I have taken that into account.
9 The potential sentence that Ms. Hepburn is facing is
10 between 20 years and life and she would have to serve
11 eighty-five percent of any sentence that this Court
12 imposes. Now, as far as Ms. Hepburn, I am sorry, Mr.
13 Lewis is concerned, obviously he has no prior criminal
14 history, no prior contact with this Court. I have taken
15 into account the fact that ultimately he did the right
16 thing after his grandmother spoke to him and tried to
17 mitigate his culpability in some way, shape or form.
18 Certainly those are mitigating circumstances and there is
19 no indication that either of these individuals have been
20 involved with any prior history of child abuse. I am
21 forced to conclude that for whatever reason, Ms. Hepburn,
22 something happened to you that night and for whatever
23 reason you violently shook that child. What affects me
24 more than anything else, however, is the testimony from
25 the physician who testified last week that stated that the

1 injuries that were inflicted on the child were worse than
2 as if a child had been dropped off a ten story building.
3 So, we are talking about some substantial force involved.
4 And more importantly, Ms. Hepburn, you and Mr. Lewis were
5 that child's first and last line of defense that night and
6 both of you failed and failed miserably and the child is
7 dead because of that. I sincerely believe that if you had
8 to do it all over again, if you could take back that
9 night, if you could do something different you would do it
10 in a heartbeat, you would do it in an absolute second. I
11 don't for one instance believe, Ms. Hepburn, that you
12 intended to kill your child. It is of course, however, it
13 has been established, however, that you did in fact kill
14 your child that night and those actions have to be
15 punished. Again, the sentence that you will have to
16 serve, you will have to serve eighty-five percent of that
17 sentence, Ms. Hepburn. It is the sentence of this Court
18 therefore that you be committed to the South Carolina
19 Department of corrections for 45 years. You are to
20 receive credit for the time that you have served in jail.

21 And, Mr. Lewis, it is the sentence of the Court that
22 you be committed to the South Carolina Department of
23 Corrections for 10 years, that is suspended upon the
24 service of 7 years. Good luck to both of you.

25 MR. WISE: Your Honor, on behalf of Mr. Lewis I would

1 like to move for an appeal and I will file a notice for an
2 intent to appeal tomorrow if you want to hear the
3 discussion on the appeal bond at that time.

4 THE COURT: If you wish to bring that up tomorrow I
5 will be more than happy to hear that issue tomorrow.

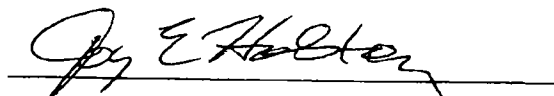
6 MR. ABLE: Just the same--

7 THE COURT: I will entertain that and file your
8 motions, gentlemen, and I will entertain that tomorrow. I
9 lose jurisdiction after tomorrow. These proceedings are
10 concluded. Ms. Mayes, you can have your people exit first
11 and then we will allow Mr. Lewis' family and then Ms.
12 Hepburn's.

13 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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4 CERTIFICATE OF REPORTER5 State of South Carolina)
6)
7 County of Newberry)
89 I, Joy E. Holston, Official Court Reporter for the
10 Eighth Judicial Circuit of the State of South Carolina, do
11 hereby certify that the foregoing is a true, accurate and
12 complete transcript of record of the proceedings had and
13 evidence introduced in the trial of the captioned case,
14 relative to appeal, in the County of Laurens, Laurens,
15 South Carolina on the 22nd day of February, 2010.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 September 10, 2011

20
21 

22 Joy E. Holston, Court Reporter

23 My Commission expires: March 13, 2016
24
25

STATE'S
EXHIBIT
65 EVO



1 THE COURT: You all have a good afternoon. I will
2 see you Tuesday. One thing I do want to provide to counsel is
3 my direct contact information, my cell phone and my home
4 number. Please just keep these to yourselves. If you're
5 calling me after hours and I'm at the house it's entirely
6 possible that the cell phone is on vibrate and is sitting on a
7 dresser somewhere being recharged, so you may want to try the
8 landline.

9 I think you've got those, Mr. Wise.

10 MR. WISE: I think you do, too.

11 (WHEREUPON, the hearing was concluded.)

12 Friday, March 18, 2011

13 THE COURT: We're on the record and we're reconvened
14 in the case 10-GS-30-1773, the State vs. Ashley Hepburn.
15 Ms. Hepburn is present along with some family members, and I
16 believe her pastor. Mr. Able is here with her, too. The
17 solicitor is present.

18 This is a motion for reconsideration which was filed
19 by Mr. Able. It just occurred to me, Mr. Able, I don't
20 believe I have the motion in front of me but is it pretty
21 standard that you would just seek reconsideration of the
22 sentence, or are there specifics in the motion that I need to
23 review?

24 MR. ABLE: No, sir. It's a motion for
25 reconsideration of the sentence. Yes, sir.

1 THE COURT: Very good. Mr. Able, I'm happy to hear
2 from you at this point in time, anything that you may want to
3 say or certainly Ms. Hepburn or her family.

4 MR. ABLE: Yes, sir. As you mentioned, this is a
5 motion for reconsideration of the sentence. Of course, you're
6 well aware that Ms. Hepburn was convicted on March 3rd, 2011
7 of homicide by child abuse. Your Honor sentenced her to 45
8 years. We are respectfully requesting the Court to reconsider
9 that sentence and hopefully reduce that sentence to a minimum
10 under the statute.

11 Judge, a lot of what I have to say to you this
12 morning you are aware of. There's nothing new to this;
13 however, we are asking the Court to reconsider the sentence.

14 My client is 23 years of age. She is married. Of
15 that marriage there were two children produced. Of course,
16 Owen, the older child, is with the father.

17 My client has no prior criminal history. Of course,
18 this type case and the facts that were elicited in this case
19 show that she had no prior involvement with the Department of
20 Social Services or any child protective agency or anything
21 like that. She was the primary caretaker of Audrina and Owen
22 up until this incident, had lived with them -- or they had
23 lived with her primarily since their birth.

24 Of course, you are aware of the relationship between
25 Ms. Hepburn and Mr. Hepburn, the fact that they had separated

1 several times, and each time during those periods of
2 separation of course she would be the one with the children.
3 Had filed for an order of separation or divorce and, of
4 course, Mr. Hepburn was agreeable at that time for her to have
5 primary custody of the children.

6 She had always been looked upon as a loving, caring
7 mother. I think the evidence bore that out. The children
8 were in good health. There was tremendous testimony as to her
9 in some respects being almost over protective, the number of
10 times that she would take the children to the doctor for
11 things such as minor colds and things like that, runny noses.
12 There was ample evidence that she was always there, always
13 caring for them, the one who did the daily things that needed
14 to be done for the children.

15 And, Judge, as I told you back on March 3rd when the
16 jury delivered its verdict, we respect the jury's verdict,
17 respect their decision, but obviously we don't agree with it.

18 You recall that the co-defendant, Mr. Lewis, was
19 convicted of aiding and abetting. You sentenced him. And I
20 don't intend to rehash the evidence in this motion but I do
21 want to point out a few things that I think need to be brought
22 out in this motion.

23 Basically, Judge, the State's evidence, you recall,
24 it was an eight-day trial. The State's evidence basically and
25 primarily showed three things, that Audrina was the victim of

1 child abuse, that the abuse resulted in her death and that
2 Ms. Hepburn and Mr. Lewis were the ones that were in the home
3 that night that were -- of course, you recall the grandmother
4 and her boyfriend had gone to bed, so Mr. Lewis and
5 Ms. Hepburn were the ones who were present. And, of course,
6 her testimony was that she was asleep in the other bedroom
7 when this occurred and that Mr. Lewis would have been the only
8 one up.

9 The evidence of the State, the evidence was void.
10 The case of the State was void of any evidence showing that
11 Ms. Hepburn had any knowledge of Audrina's injuries until she
12 was awoken by Mr. Lewis. The State's case didn't show
13 anything about her having been there or been in the child's
14 room or inflicting these injuries.

15 The morning that Audrina was hurt and injured
16 Mr. Lewis had, in fact, told five -- on five different
17 occasions that morning that he had been the only one awake and
18 that Ashley had gone to bed with Owen and was asleep in her
19 room when he was in the room with the child. His testimony
20 later was that he discovered the child, but he had told five
21 different occasions that morning before giving his
22 contradicting statement that he was the only one awake and
23 that my client was in the bed asleep.

24 The State's case relied primarily on just the mere
25 fact that Ms. Hepburn was present in the home and the State's

1 case showed no evidence of her having any involvement with the
2 injuries that night.

3 As I mentioned, Mr. Lewis, you recall from his
4 testimony, that he changed his story after repeating the same
5 story to all those people that morning. He had told law
6 enforcement that my client was asleep in the bed and that he
7 was the only one up.

8 He had told the doctor, the treating physician at
9 Self Memorial that my client was in the bed and he was the
10 only one up. He had told the chaplain at Self Memorial that
11 my client was in bed and he was the only one up, and he had
12 told Dee Deal, the caseworker that morning over in Greenwood,
13 that my client was in bed and that he was the only one up.

14 It was not until 10 or 11 hours after Mr. Lewis had
15 given all these statements to all these various people and 10
16 or 11 hours after he had taken the child and woke up Ashley,
17 Ms. Hepburn, that he recounted his different story and gave a
18 statement to law enforcement about hearing footsteps and the
19 sounds of a baby being shaken, and that was the only time he
20 had said that all during that day. It was almost half a day
21 later that he decided he was going to change his story.

22 It was Mr. Lewis' testimony that, of course, the
23 reason he did it was out of his love for my client. He didn't
24 want to get her in any trouble, but you will recall Mr. Lewis
25 under my cross-examination admitted he was a liar, and he did

1 that on several occasions.

2 And you recall the doctor from the V. A. Hospital
3 testified it would be a survivor instinct for Mr. Lewis to lie
4 to protect himself, and, of course, that's our position on
5 this case, is that with the evidence that was provided by the
6 State that there wouldn't have been a conviction.

7 And then you have the State relying upon the
8 testimony of this co-defendant who had given not only
9 contradictory statements, he had given the first statement
10 five times over the morning and then decided it was time that
11 he needed to try to protect himself and provided this second
12 story of hearing the footsteps and the baby being shaken and
13 his decision not to do anything to try to follow up on that or
14 discover what the problem was but that he just sat there and
15 ate dinner and watched television.

16 So it would be our position that given the suspect
17 and questionable testimony of Mr. Lewis that was what
18 convicted Ms. Hepburn, and as I said, it's suspect. His
19 testimony was highly suspect and highly questionable given his
20 cross-examination by me that he didn't tell the truth and had
21 told the story so many times that morning only 10 or 11 hours
22 later deciding that he would say something to protect himself.

23 Judge, of course, the purpose of any sentence under
24 any criminal statute is to punish. That's obvious. And under
25 this statute the possible sentence ranges from 20 years

1 imprisonment to life. The sentence that the Court provided
2 was within the dictates of the statute; however, in this case
3 with the objective being punishment I believe that the same
4 punishment could be obtained within a lesser sentence.

5 As we said, Judge, we respected the opinion of the
6 jury. We don't agree with it. This is something that Ashley
7 is going to have to live with the rest of her life, whether
8 she's in prison or not. She's lost a child and it's something
9 that she's going to have to look back on and reflect every day
10 for the rest of her life.

11 Your Honor noted in its sentence when you sentenced
12 her two weeks ago for all indications she was a good mother.
13 There was nothing, I don't believe, that came out to indicate
14 otherwise. And the Court went on to say that, of course, this
15 was -- I believe the Court stated at one time during the
16 sentence that the Court didn't believe she intended to kill
17 her daughter that night but that there are all indications she
18 was a good mother, and I think that's what the evidence
19 showed, and we believe that justice can be served by the Court
20 reducing the sentence. We would respectfully ask the Court to
21 reconsider its earlier sentence and we would ask the Court to
22 consider the minimum sentence allowed by the statute.

23 THE COURT: Correct me if I'm wrong but I think if
24 memory serves the minimum would be 20 years?

25 MR. ABLE: I believe the minimum is 20, yes, sir.

1 I'm pretty sure.

2 THE COURT: All right. Anything further that you
3 want to say?

4 MR. ABLE: Nothing further.

5 THE COURT: And anything that Ms. Hepburn wants to
6 say?

7 THE DEFENDANT: Your Honor, I understand the jury's
8 verdict but I strongly disagree with the verdict. I've always
9 been a loving mother to my kids. I've always given my all and
10 showed compassion and understanding and patience to my kids.
11 I don't have any criminal background whatsoever. I've never
12 been in any kind of trouble and I respectfully ask you to
13 lower my sentence.

14 MR. ABLE: Judge, her father is here and her pastor.

15 THE COURT: Yes, sir?

16 MR. TOLLEY: I'm David Tolley. I'm her father.

17 THE COURT: Yes, sir, Mr. Tolley.

18 MR. TOLLEY: As you know, she is 23 years old, and I
19 won't bother to reiterate everything that Bryan has pointed
20 out but she does not have criminal activity. She's never been
21 a problem child. She has a four-year-old son. Forty-five
22 years is a death sentence for her.

23 At 68 years old she would come out and not be a
24 productive member of society and be a world which she couldn't
25 even relate to. A lesser sentence, Your Honor, would at least

1 allow her to serve the time which has been given to her but
2 also allow her to reconnect with her son, probably. He would
3 only be in his early 20's. This is a punishment for our whole
4 family. I'm sorry.

5 THE COURT: Take your time, sir.

6 MR. TOLLEY: A loss of a grandchild then I lose a
7 daughter. I mean, I even have my other grandchild in the
8 balance of having to work out negotiating to be able to see
9 him, and they have been kind. I don't want to mislead you in
10 any way. I have been able to see my grandson since this. But
11 again, I just want you to please consider -- I'd ask for mercy
12 and compassion to consider, again, a mother that's never been
13 in trouble with the law ever.

14 Again, her husband even stated on the stand when he
15 was asked if she had ever hurt the children or been violent he
16 said, No, never. A double emphatic no, never.

17 And this incident -- and again, I have to say that I
18 feel she didn't do but I do respect the jury and I'm not going
19 to rehash that, that I feel the longer sentence would in no
20 way be able to be corrective anymore than the shorter
21 sentence, Your Honor. And, again, she would have the
22 opportunity to come back and be a productive member of society
23 and reconnect with family and actually have a life after this.
24 I just ask you to please consider those items, Your Honor.

25 THE COURT: Thank you, Mr. Tolley.

1 MR. TOLLEY: Yes, sir.

2 THE COURT: Reverend, did you want to say anything?

3 PASTER BOLING: Yes, Your Honor. I just wanted to
4 reiterate what had been said already by a couple of the folks
5 that already spoke and just say, obviously we do respect the
6 Court and the Court's decision, and we definitely disagree
7 with it and just feel that it was just an injustice that was
8 done with that verdict. And I know we're not here to rehash
9 the verdict but I just want to state that in the beginning.

10 Secondly, I know that the Court is interested in not
11 only the punitive part of this but I would ask the Court to
12 seriously consider the part of the rehabilitation portion of
13 this and I wanted to give you something that may help you to
14 see that rehabilitative part a little bit stronger. One is
15 that the sentence, again, as was just stated, the minimum
16 sentence would certainly address the issue of the punitive
17 part, in addition to the number of other things that the
18 family has already suffered.

19 I've been meeting with them on a regular basis for
20 the past two years and I've tried to bring out a little bit
21 last time of a couple of the things that took place but I just
22 would ask you to take into consideration that she was the
23 target of a blistering campaign publically here from the time
24 that she was originally charged all the way up through the
25 court with folks having pictures of her on their automobile

1 driving throughout the community. That resulted in undue
2 hardship by not only the family but Ashley unable to get a job
3 and the family has suffered tremendously financially. Our own
4 church is trying to see what we can do to help out from a
5 financial standpoint and just being there.

6 But from a rehabilitation standpoint I have met with
7 the chaplain at the detention center to see what I could do at
8 the detention center already. She's been now transferred to
9 Columbia. I've contacted the chaplain there in Columbia to
10 see what could be worked out about having Ashley in regular
11 Bible studies during her time there and I've also started to
12 check into when she's transferred again to a penitentiary
13 about getting her involved with regular counseling and regular
14 Bible studies at those facilities as well.

15 And so I just offer that to the Court to say that we
16 will be working long term, and throughout this 20 years we've
17 committed to doing that, not only myself but as a congregation
18 to be writing and helping and helping this rehabilitation
19 process, and I just hope that the Court would take that into
20 consideration as well. Thank you.

21 THE COURT: Thank you, Reverend. And if you'll
22 forgive me. I forget your name, sir. I apologize, sir.

23 PASTOR BOLING: I'm sorry. It was Pastor Kevin
24 Boling. Just like the sport but no W.

25 THE COURT: Thank you, Pastor.

1 Anything further?

2 MR. ABLE: No, sir. I don't believe there's
3 anything further to be said.

4 THE COURT: Mr. Fleming, obviously you're here on
5 behalf of Ms. Mayes who I presume was not able to make it this
6 morning. I would assume that the State would ask the Court to
7 stand by the sentence. Is there any additional information
8 you want to impart at this point?

9 MR. FLEMING: Yes, sir, Your Honor. I am standing
10 in for Ms. Mayes. She's no long working with the prosecution
11 commission. Now she's working with Donnie Myers, the
12 Solicitor in Lexington, so she could not be here for this.

13 Your Honor, let me just point out the fact that the
14 family of the victim is here today in support of the denying
15 this motion. As a matter of fact, if I would venture to
16 guess, they would tell you if anything, if you change anything
17 they would want more of a sentence, a life sentence in this,
18 Your Honor.

19 Your Honor, we stood here and listened to Mr. Able
20 go on about the evidence and how they disagreed with the
21 jury's verdict, and that's not why we're here. We're here for
22 you to consider, reconsider changing the sentence.

23 The jury spoke on this matter, Your Honor. I think
24 they were very deliberate in their coming to the verdict that
25 they came to, and in that I think that they felt that they had

1 sufficient evidence or evidence beyond a reasonable doubt to
2 say that Ms. Hepburn is guilty of homicide by child abuse,
3 Your Honor. And I agree with Mr. Able that a term or sentence
4 in the penitentiary is for punishment but, Your Honor, there's
5 no punishment the State would put forth that is enough for
6 killing an 18-month-old child.

7 The State would argue that -- or ask that Your Honor
8 keep the same sentence that was imposed. The information that
9 you had was fresh on your mind that day. I think you
10 deliberated about the sentence that you would give Ms. Hepburn
11 and you gave a fair and just sentence and that goes to -- and
12 to prove that, there are two other cases in this State, Your
13 Honor, just recently for homicide by child abuse, one of which
14 the defendant got 41 years.

15 THE COURT: That was the case in Pickens, I believe,
16 that Judge Macaulay was trying and the verdict was returned
17 the same day that the verdict on this case was returned.

18 MR. FLEMING: And then another one more recently,
19 Your Honor, in Spartanburg where the defendant got life. So
20 we feel that Your Honor's sentence in this case was fair and
21 just.

22 THE COURT: Was that Judge Cole's case in
23 Spartanburg, or do you recall?

24 MR. FLEMING: I'm not sure, Your Honor. I don't
25 know which judge that was.

1 THE COURT: All right.

2 MR. FLEMING: But we feel that your sentence in this
3 case, Your Honor, was sufficient and in deliberating on your
4 sentence Your Honor set forth the fact that you took into
5 account that prior to this that she had been a good mother to
6 the children and then Your Honor also stated on the record
7 that you took into consideration the testimony from the doctor
8 who stated that the injuries inflicted upon the child was more
9 than dropping the baby from a 10-story building. And you also
10 took into the fact that this woman was the last line of
11 defense for this child and she broke that, Your Honor.

12 With those factors, Your Honor, that you obviously
13 weighed heavy in your decision it's the State's position that
14 the motion to reconsider should be denied, Your Honor, and the
15 sentence be kept or if you do reconsider that a sentence
16 increase should be given in this, Your Honor.

17 Normally you hopefully see defendants feel some
18 remorse about their actions and we don't see that here, Your
19 Honor. We still see that they are saying that they just don't
20 agree with the jury's verdict in this.

21 THE COURT: Thank you, Solicitor.

22 Anything in response?

23 MR. ABLE: Nothing further.

24 THE COURT: I'd be lying to you all if I said I
25 haven't thought about this case since the verdict was handed

1 down, and it's not that I'm second guessing myself but if you
2 are involved in a case as emotional as this one was and as
3 complicated and technically involved it's necessary that you
4 are going to have some lingering thoughts about the case.

5 Understand that while this case was going on, and
6 especially afterwards, the one thought that has been going
7 through my mind is that it is the first obligation of the law
8 to protect people who can't protect themselves, be that
9 children or infants, or what have you.

10 And I am quite confident that this is probably the
11 hardest case that I will ever be involved in, and I have been
12 involved in death penalties before where I've represented the
13 accused, I've been in death penalties before where I've
14 represented the state, and in all honesty from a purely
15 emotional standpoint and dealing with the facts of this case I
16 think that this case was more taxing than any of those.

17 Now, as I understand it, there are three basic
18 reasons that we have this criminal justice system. It's
19 rehabilitation, or to keep society safe, or downright
20 punishment.

21 Now, Mr. Able, I think you're correct that the only
22 purpose a prison sentence would serve in this case is simple
23 retribution, and the reason as you well know that we have
24 that, Mr. Able, is we simply can't have people resorting to
25 self help. We've made punishment, we've made retribution a

1 function of the State, a function of the police power of this
2 State and it's necessary to maintain order. I know that you
3 don't take issue with that. I know that you understand based
4 upon the position that your client finds herself in that some
5 kind of prison sentence is appropriate.

6 And, Mr. Tolley, I don't know what to say to you,
7 sir. In all honesty, I do not know what to say to you. It
8 scares me to think that at some point in my life I might be
9 having to go through what you're going through.

10 And, Reverend Boling, I try to be a devout person
11 myself. There are times when what I have to do here conflicts
12 with what I might feel on a personal level, and I appreciate
13 your feelings that this was an injustice, and I appreciate
14 your frankness with the Court. In all honesty, I do. I
15 understand your position, and I understand Ms. Hepburn's
16 position, and Mr. Tolley's.

17 In considering the sentence that I imposed I had
18 considered a life sentence, in all candor, Mr. Able, and
19 discarded it because I did not feel it was appropriate under
20 any circumstances for her and for her limited involvement.

21 I really can't speak to the circumstances of the
22 case in Spartanburg where the gentleman or individual received
23 life or the case in Pickens where Judge Macaulay heard that
24 case and gave 41 years. I don't know anything about those
25 individuals' backgrounds. I don't know anything about whether

1 they were involved with child abuse or had been accused of it
2 in the past.

3 What I will do, Mr. Able, I will give this some
4 additional thought. I'm hesitant to change the sentence. I
5 will tell you that upfront and I will tell you that in the
6 presence of your client and her family. I'm hesitant to
7 change the sentence because it felt right at the time. It
8 felt like an appropriate sentence for what happened here.

9 I assure you I am not without sympathy for an
10 individual who has no prior criminal history, no prior
11 involvement with D. S. S., and I think I put it on the record.
12 Mr. Fleming indicates I did put it on the record at the
13 previous hearing that there were no instances of prior child
14 abuse, no allegations, as you said, that she was a bad mother.
15 Quite the contrary it appears that aside from this one episode
16 she was an exceptional mother, but I keep going back to the
17 first obligation that the law has and the first obligation I
18 have, and that's to protect people who can't protect
19 themselves.

20 I will take it under advisement. I will give it
21 some additional thought. I can't promise you that I'm going
22 to help you. I'm not going to increase her sentence over 45
23 years. I assure you of that, but I will give it some
24 additional thought and I will get an order to you shortly.

25 (WHEREUPON, the hearing was concluded.)

C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 8th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the hearing of the captioned case
in Circuit Court on the 16th day of February 2011, and the
18th day of March 2011

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

May 21, 2011



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

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

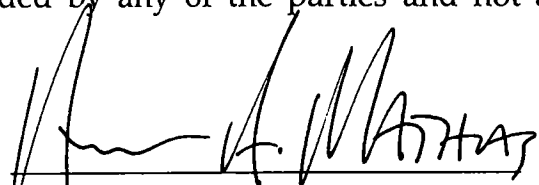
Case No.: 2010-GS-30-1773 and 1774

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

Ashley N. Hepburn.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains
all material proposed to be included by any of the parties and not any
other material.



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