

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
The Honorable D. Garrison Hill, Circuit Court Judge

Appellate Case No: 2012-212663

THE STATE

RESPONDENT,

v.

DONNA LYNN PHILLIPS

APPELLANT.

SUPPLEMENTAL RECORD ON APPEAL

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1 engrossed in taking the notes that you don't pay close
2 attention to the demeanor of the witnesses. Because, as
3 you know, the credibility and the believability of the
4 witnesses is something you must judge, as jurors.

5 I will be glad to allow you to take notes. And I
6 just wanted to give you those instructions.

7 All right. Yes, sir -- or, yes, ma'am. You may call
8 your first witness.

9 MS. BARWICK: Thank you, Your Honor.

10 The State would call Patience Johnson to the stand.

11 THE CLERK: Place your left hand on the Bible and
12 raise your right hand.

13 WHEREUPON,

14 PATIENCE JOHNSON,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Ma'am, if you would, have a seat.

17 And state your name for the record.

18 THE WITNESS: My name is Patience Johnson.

19 DIRECT EXAMINATION

20 BY MS. BARWICK:

21 Q Ms. Johnson, where do you work?

22 A The department of Social Services.

23 Q Back in 2008, where did you work?

24 A Pickens County Department of Social Services.

25 MR. DEJONG: Your Honor, I'm sorry. Before we get

1 MS. BARWICK: None, Your Honor.

2 Thank you.

3 THE COURT: Thank you, ma'am.

4 MS. BARWICK: May the witness be excused?

5 MR. DEJONG: On behalf of Mr. Morris, no objection.

6 MR. O'CONNELL: Your Honor, same from me -- us.

7 MR. HARBIN: No objection, Judge.

8 THE COURT: All witnesses will be automatically
9 excused, unless someone objects.

10 Thank you, ma'am.

11 You may call your next witness.

12 MS. BARWICK: The State would call Dr. John Yelton to
13 the stand.

14 THE CLERK: Place your left hand on the Bible and
15 raise your right.

16 WHEREUPON,

17 JOHN RICHARD YELTON, M.D.,

18 after first having been duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 Have a seat.

21 State your name for the record, please.

22 THE WITNESS: John Richard Yelton.

23 DIRECT EXAMINATION

24 BY MS. BARWICK:

25 Q Doctor Yelton --

1 A Yes, ma'am.

2 Q -- what kind of doctor are you?

3 A Pediatrician.

4 Q Where do you work?

5 A At Palmetto Pediatrics in Spartanburg, South
6 Carolina.

7 Q And how long have you been a pediatrician?

8 A 15 years.

9 Q What kind of training would you have had to become a
10 pediatrician?

11 A College, medical school, and three years residency.

12 Q Was ~~XXXXXXXXXX~~ a patient of yours back in 2008?

13 A Yes, ma'am.

14 Q When did he first become a patient of yours?

15 A I first saw him at the end of May of 2007.

16 Q From May of 2007 through March of 2008?

17 A Yes.

18 Q About how many visits do you think you had with
19 ~~XXXXXXXXXX~~?

20 A He came to our office about five times during that
21 time period.

22 Q Can you, please, tell the jury about ~~XXXXXXXXXX~~ general
23 health, and his growth, and whether that falls within
24 normal ranges or not?

25 A During that time period, again, five visits. One was

1 a 12-month well visit. And then he had --

2 MR. DEJONG: I apologize. Could we get Dr. Yelton
3 just a little bit closer to the microphone, please?

4 THE WITNESS: Five visits. One of those was a well
5 visit. Four of those were sick visits for minor
6 illnesses. During that time, he was noted to be a healthy
7 child, well within his growth parameters, developing
8 normally. And, again, he had four very minor routine
9 illnesses within that time frame.

10 BY MS. BARWICK:

11 Q Okay. And what do you mean by "minor illnesses"? If
12 you could, elaborate on that for the jury.

13 A Yes. You know, an average child in the first two
14 years of life will, typically, have between six and 10
15 minor illnesses, upper respiratory infections, cough,
16 congestion, runny nose, ear infections, minor viral
17 illnesses, rashes, things like that.

18 Q Okay. And all of those things that -- came to
19 see you for were minor?

20 A Yes, ma'am.

21 Q And what about his motor skills? How would you
22 define those for the jury?

23 A He was noted to be developing well. He was sitting,
24 rolling, babbling, jabbering, all of the things that you
25 would -- crawling, cruising, all the things you would

1 expect of a child of 12 months of age.

2 Q And at 21 months of age -- well, actually, if you
3 would, tell the jury the last time you saw [REDACTED].

4 A It was the first week of March of 2008. And that was
5 for an ear infection.

6 Q Did he appear normal to you for a child his age?

7 A Yes. At that point in time, he was social,
8 interactive, and no indication of distress.

9 Q And with ear infections, is it normal procedure to
10 have them check back?

11 A Typically, for children under the age of two, we like
12 to recheck them within two to three weeks to ensure the
13 infection has resolved, since they're not speaking that
14 well and can't verbally explain what's going on. We like
15 to, actually, look and make sure that it has resolved,
16 yes, ma'am.

17 Q And that last visit, that date again?

18 A I believe it's the 8th of March, if I'm correct. I
19 apologize.

20 Q So in the beginning of March would be fair to say?

21 A That's correct, within the first 10 days of March.

22 MS. BARWICK: No further questions for the witness at
23 this time.

24 THE COURT: Mr. DeJong.

25 MR. DEJONG: Thank you, Your Honor.

1 A Typically, I don't think the yeast develops that
2 quickly. Again, the child sitting in a soiled diaper can
3 start to cause breakdown of the skin. And that serves as
4 an entry point for the yeast to secondarily infect it.

5 MR. O'CONNELL: That's all I have at this time.

6 Thank you very much.

7 MR. HARBIN: May it please the Court.

8 THE COURT: Mr. Harbin.

9 CROSS-EXAMINATION

10 BY MR. HARBIN:

11 Q Doctor, just a couple of quick questions. Is it fair
12 to say that an overdose, in this case, of hydrocodone, a
13 drug intended for adult use, if I'm correct, is it fair to
14 say there's very little reliable data as to how that would
15 effect a small child in this case?

16 A No. I think there's decent data. I mean, the data
17 would tell you to be cautious with its use. And that's
18 the main reason I do not prescribe it.

19 Q Is it an overstatement to say that it's potentially
20 dangerous to use it with a small child?

21 A Absolutely.

22 Q Okay. And -- well, it is or is not an overstatement
23 to say that, or it is dangerous?

24 A It is dangerous.

25 Q Got you. And, as a doctor -- and, certainly, not

1 necessarily an expert, just as a doctor, are you familiar
2 with Tussionex?

3 A Yes. I was in the Army for several years, so I had
4 to take care of older soldiers, so, yes.

5 Q And Tussionex has hydrocodone in it; is that correct?

6 A Correct.

7 Q Lortab has hydrocodone in it as well; is that
8 correct?

9 A That is correct.

10 Q Can you tell the Court the difference in the release
11 times for the hydrocodone found in Tussionex versus
12 Lortab, as you understand?

13 A I do not know.

14 MR. HARBIN: Thank you.

15 No further questions.

16 THE COURT: Redirect.

17 MS. BARWICK: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. BARWICK:

20 Q You said you don't prescribe Tussionex for children,
21 why is that?

22 A Because of its dangers.

23 MS. BARWICK: No further questions.

24 THE COURT: Recross?

25 MR. O'CONNELL: Nothing from us, Your Honor.

1 THE COURT: All right. Thank you, Doctor.

2 You may call your next witness.

3 MS. BARWICK: The State would call Rhonda Whitaker to
4 the stand.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand.

7 WHEREUPON,

8 RHONDA WHITAKER,

9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you, ma'am.

11 If you'll have a seat.

12 And state your name for the record, please.

13 THE WITNESS: Rhonda Whitaker.

14 DIRECT EXAMINATION

15 BY MS. BARWICK:

16 Q Ms. Whitaker, how are you today?

17 A I'm good.

18 Q Good. Where do you work?

19 A At the Pickens County Sheriff's Office.

20 Q And how long have you worked there?

21 A 26 years.

22 Q What do you do there?

23 A I'm a communications specialist supervisor.

24 Q What does that mean?

25 A I work in the 911 dispatch center, which is a

1 combined center of law enforcement and EMS.

2 Q So law enforcement and EMS?

3 A Uh-huh.

4 Q And rescue?

5 A Uh-huh, and fire.

6 Q And fire. What are your duties there? What do you,
7 actually, do?

8 A Well, we take all the 911 calls within the county.
9 And we dispatch officers, EMS personnel, fire personnel,
10 rescue, whatever is needed.

11 Q Okay. Did you -- did 911 get a call on March 17th
12 from -- of 2008, from Latasha Honeycutt's house?

13 A Yes, ma'am.

14 Q Do you recognize these documents?

15 A I do.

16 Q And what are those?

17 A These are CAD sheets. And these are created when we
18 receive any type of call, whether it be emergent or
19 nonemergent. And it's the documentation.

20 Q Is that kept in the normal course of 911 business?
21 Is it a business record?

22 A Yes, it is.

23 Q And you said it's a CAD sheet. What does CAD stand
24 for?

25 A Computer-aided dispatch.

1 Q And those sheets I showed to you, were those the CAD
2 sheets from the call involving [REDACTED] on the 17th
3 of March?

4 A Yes.

5 Q And there are two of them. What's the first one?

6 A The first one was the EMS CAD sheet, which is --
7 which was initiated as soon as the call was received.

8 Q Yes, ma'am.

9 A And the second was for law enforcement to respond.

10 MS. BARWICK: Your Honor, at this time, the State
11 would like to introduce State's Exhibit Nos. 16 and 17
12 into evidence.

13 MR. HARBIN: No objection, Judge.

14 MR. O'CONNELL: No objection from us.

15 MR. DEJONG: No objection.

16 THE COURT: All right. They're in evidence.

17 (WHEREUPON, State's Exhibit Nos. 16 and 17 were
18 admitted into evidence.)

19 BY MS. BARWICK:

20 Q All right. Now, Ms. Whitaker, I'm going to need you
21 to teach both myself and the jury what these sheets,
22 actually, mean.

23 A Okay.

24 Q Things are, actually, done in code down there?

25 A Correct.

1 Q Let's see if I can't make this bigger for you. What
2 time was 911 called?

3 A The call came in at 11:15.

4 Q And I don't --

5 A It says, Incoming call. That's the time we received
6 the call.

7 Q Right there?

8 A Correct.

9 Q So 11:15:44?

10 A Yes.

11 Q And does this form show who created the call?

12 A Yes, Officer Jaynes -- I'm sorry, Operator Jaynes.

13 Q All right.

14 A He was signed on to take the call.

15 Q And is this the EMS CAD sheet you were talking about,
16 or is this the law enforcement CAD sheet?

17 A That's the EMS CAD sheet.

18 Q I'm afraid in trying to make it bigger, it makes it
19 where you can't see everything. So if I need to adjust
20 this, just let me know.

21 A Okay.

22 Q What time did the first EMS worker arrive?

23 A Can you enlarge it just a little bit?

24 Q Yes, ma'am.

25 A It would be medic one. And it -- in the third column

1 WHEREUPON,

2 JULIE SAILORS,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 If you would, have a seat.

6 And state your name for the record.

7 THE WITNESS: Julie Sailors.

8 DIRECT EXAMINATION

9 BY MS. BARWICK:

10 Q Ms. Sailors, where do you work?

11 A Pickens County EMS emergency room service.

12 Q How long have you been doing that?

13 A 15 years now.

14 Q Are you a paramedic?

15 A Yes, paramedic and EMS manager now.

16 Q Back in 2008, were you the same, or different?

17 A I was a paramedic, yes.

18 Q What were your duties as a paramedic?

19 A Well, of course, our first duty is to respond to
20 calls of the citizens of Pickens County, and to help save
21 lives.

22 Q Back on March 17th of 2008, did you respond to a
23 phone call in regards to [redacted] ?

24 A Yes, I did.

25 Q How well do you remember that?

1 A Parts of it sketchy, other parts, I'll never forget.

2 Q Well, let's talk about the parts you'll never forget.

3 When you got to the scene, what did you see?

4 A We arrived on scene at the mobile home, the last
5 mobile home on the left. The mother was on the front
6 porch talking on the phone waving us down.

7 Q Was she doing anything else on the porch?

8 A Not that I recall.

9 Q It sounded like -- were you in here when the 911 tape
10 got played just now?

11 A Yes.

12 Q It sounded like there was some confusion as to where
13 the address was. Can you tell the jury about that?

14 A We were dispatched to, I believe, 10
15 Road in Pickens.

16 Q Yes, ma'am.

17 A And the location of the call was, actually, a mobile
18 home community, left off of Brayden Drive, off of that
19 road.

20 Q Latasha Honeycutt's residence, is that in Pickens
21 County?

22 A Yes.

23 Q When you got there, and you said Ms. Honeycutt was on
24 the porch, what else did you see?

25 A As far as outside?

1 Q Yes. Did you see anything else worth noting on the
2 outside?

3 A Not that I could say at this time, no.

4 Q When -- tell me, and tell the jury what happened
5 after that point when you arrived.

6 A We're in gear mode. We're pumped, and pumped. We're
7 dispatched to a call of a child not breathing. Those are
8 the calls -- the nightmare calls that we absolutely do not
9 like to run up.

10 So we're ready, and we go in there. We walk in the
11 door, my partner and I, and immediately stopped in the
12 doorway, just right inside the doorway. And there's an
13 infant in a swing, jumpy thing, some little play thing.
14 And just eyes open, very alert. And I thought, whew, we
15 had an overreactive parent, everything is fine. This is
16 not a child not breathing. And a voice from behind us
17 said, No, he's in there. And she pointed around.

18 Q Whose voice was that?

19 A The mother's.

20 Q Okay.

21 A And we turned and looked to the right. We started
22 easing down that hallway. And we immediately saw him.

23 Q Okay. And where was the child?

24 A He was laying on the floor just inside the door, all
25 alone, cold, not breathing, no pulse, just laying there.

1 MR. HARBIN: Thank you, Judge, may
2 it please the Court, we call Sherry Price to
3 the stand.

4 (WITNESS TAKES STAND)

5 SHERRY PRICE, being duly sworn to
6 tell the truth, the whole truth and nothing
7 but the truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY MR. HARBIN:

10 Q. Speak up a little bit. You might have to
11 lean into the microphone.

12 A. Sherry Price.

13 Q. Thank you, Ms. Price. Can you tell the
14 jury how you know my client, Latasha
15 Honeycutt?

16 A. She's my niece.

17 Q. She is your niece?

18 A. (Affirmative nod).

19 Q. Does that mean that you've known her since
20 she was born?

21 A. Yes, sir, I'm like her mother.

22 Q. I am going to cut right to it. Did you
23 have an opportunity to visit Latasha in the
24 hospital with ~~her~~?

25 A. Yes, I did.

1 Q. Have you had an opportunity to hear some
2 of the testimony that's been presented, that
3 Latasha had an unemotional response or a flat
4 affect?

5 A. Yes, I did. That's not true.

6 Q. Can you comment specifically on what you
7 saw in the hospital and how it relates to that
8 prior testimony?

9 A. When I got to the hospital, she was in the
10 room. She was shaking, she wasn't crying. I
11 went over to her and she held me and started
12 crying. I was consoling her, and Brandon was
13 too.

14 Q. You heard that she had this appearance of
15 being unemotional. Do you have any
16 experience, personal experience, with Latasha
17 that would address that perception?


18 A. She appears to be unemotional in front of
19 people, but in front of family she's very
20 emotional.

21 MR. HARBIN: Thank you, Ms. Price.
22 I appreciate you coming. I have no further
23 questions. Please answer any questions that
24 Mr. Richardson may have.

25 SOLICITOR RICHARDSON: Your Honor, I

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY: 

J. Benjamin Aplin
S.C. Bar No: 8729

January 17, 2014