

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2012-CP-40-4268
Appellate Case No. 2014-000374

Andrea Person, #00338104,.....Petitioner,

v.

State of South Carolina.....Respondent.

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1 A She did.

2 Q Can you hear?

3 A Yes, sir.

4 Q And did you heard her say this?

5 A I did.

6 MR. MEADORS: Thank you. That's all.

7 THE COURT: You may step down. Thank you.

8 THE WITNESS: Thank you.

9 THE BAILIFF: Watch your step down.

10 THE WITNESS: Yes, sir.

11 THE COURT: Let's go ahead and at least try starting
12 another witness before we take a break.

13 MR. MEADORS: Yes, ma'am.

14 The State would call Sergeant Kevin Isenhoward.

15 KEVIN ISENHOWARD, after being duly
16 sworn, testified as follows:

17 THE CLERK: State your full name for the record.

18 THE WITNESS: My name is Kevin Scott Isenhoward.

19 THE COURT: And would you spell your last name,
20 please?

21 THE WITNESS: I-S-E-N-H-O-W-A-R-D..

22 THE COURT: Thank you.

23 THE WITNESS: Thank you.

24 DIRECT EXAMINATION:

25

1 BY MR. MEADORS

2 Q Good afternoon, Sergeant Isenhoward.

3 A Good afternoon, sir.

4 Q Please tell these ladies and gentlemen of this jury
5 about Kevin Isenhoward, where you're from, where you're
6 raised, schooling?

7 A Yes, sir.

8 Q Your training, and in particular, your training in
9 law enforcement, okay.

10 A Okay, born and raised in Richland County. I grew up
11 in Pontiac, the extreme northeast area of Richland County.
12 I went and graduated from Spring Valley High School. I
13 went to Spartanburg Methodist College in Spartanburg and
14 the University of South Carolina. I have a degree in
15 criminal justice.

16 After school, and while still attending school, I
17 started work at the age of 21 at the Richland County
18 Sheriff's Department. I started off as a Judicial Service
19 Officer, who are -- protects the courthouse, so I worked
20 in the courthouse here.

21 I soon became a -- what we'd call a uniformed deputy
22 on patrol. I drove a marked patrol car and wore a uniform
23 and answered calls for service. I was then was promoted
24 to investigations.

25 In my time in investigations, I worked as a petty

1 crimes investigator, a burglary investigator, a narcotics
2 investigator, and I'm currently assigned to the Major
3 Crimes Unit. I'm now the sergeant. I supervise the Major
4 Crimes Unit. I'm responsible for robberies and homicides.

5 Q And you received training at the Criminal Justice
6 Academy?

7 A Yes; yes, sir. In 1998, I attended the Criminal
8 Justice Academy, and then, again, in I believe oh, 2000 or
9 2001, different classes of an officer, and I began in --
10 working for the sheriff's department.

11 Q And did you go to other training or classes, courses?

12 A Sure. Throughout the years, I've attended training
13 in various forms of investigations, narcotics
14 investigations, property crimes and interview and
15 interrogation in major crimes, including homicide
16 investigation and child death investigations.

17 Q And is that a part of your job that you keep getting
18 training and going to schools, correct?

19 A Yes, sir, it is.

20 Q Tell me again right now what are you? What is your
21 position?

22 A I'm a sergeant in the Major Crimes Unit. We
23 investigate robberies and homicides.

24 Q And in April of 2007, what was your position?

25 A I was an investigator in the same unit also

1 investigating robbery and homicides.

2 MR. MEADORS: Doug.

3 (WHEREUPON, a bench conference was held in the
4 presence but not within the hearing of the jury).

5 BY MR. MEADORS

6 Q On April 2nd, 2007, did you have an occasion to
7 respond to Two Scottish Court?

8 A Yes, sir. On April 2nd, 2007, I went to the
9 defendant's home to investigate an incident involving a
10 child at the home day care and that -- and through that
11 investigation, I learned of the death of Zachary
12 Ulengchong in 1998.

13 Q And just very, very briefly on April 2nd, 2007, if
14 you'll listen to me closely, please --

15 A Yes, sir.

16 Q -- did you have an occasion to meet Ms. Person then?

17 A Yes, I did.

18 Q Okay. And as a result of that, did she tell you
19 anything on April 2nd, 2007, about the death of Zachary
20 Ulengchong?

21 A No, she did not.

22 Q And on April 10th, did you have an occasion just to
23 speak with Gina Ulengchong?

24 A Yes.

25 Q Would it be fair to say you had just inquired of her

1 the health of Zachary before he died?

2 A Yes. We talked about his condition around the time
3 of his death.

4 Q Now, on April 11th of 2007 --

5 A Yes, sir.

6 Q -- did you have an occasion to talk to Ms. Person
7 then?

8 A Yes, sir, I did.

9 Q And where was that?

10 A It was at the Richland County Sheriff's Department in
11 the office of Captain Stan Smith.

12 Q Captain Stan Smith?

13 A Yes, sir.

14 Q Who I believe is involved in another case in this
15 courtroom right now, correct?

16 A Yes, sir, he is.

17 Q Chief Investigating Officer?

18 A Yes, sir.

19 Q And on that occasion, for these purposes today,
20 did -- did you and/or captain Smith read the defendant her
21 rights?

22 A Yes, sir, we did.

23 Q And did she indicate to you she understood her
24 rights?

25 A Yes, sir.

1 Q On April 11th, did you ask her about Zachary
2 Ulengchong and why she hadn't told you that on April 2nd?

3 A Yes, we did.

4 Q And what was her response?

5 A She said that she didn't want to look bad.

6 Q And had she come down there voluntarily?

7 A Yes, she did.

8 Q And did she leave?

9 A Yes, sir, she did.

10 Q Did you have an occasion to see the defendant,
11 Ms. Person, again?

12 A Yes, sir, I did, on the 17th.

13 Q And did you contact her and ask her to come to the
14 sheriff's department?

15 A Yes. I called her and spoke with her. She agreed to
16 come up and talk to us a little bit more.

17 Q And do you remember when it was, what time of day it
18 was?

19 A I believe it was around one o'clock in the afternoon
20 when she got to the sheriff's office.

21 Q Take us there right now, Sergeant.

22 A Yes, sir.

23 Q Where did you first see the defendant, April 17th?

24 A Yes, sir.

25 Q Where did you first see her at the sheriff's

1 department?

2 A Access to the sheriff's office is controlled. If
3 visitors come, they come in through the front door. They,
4 you know, would tell the receptionist their business, who
5 they would like to speak to, and they call me. That's
6 what happened in this case. I went downstairs to the
7 front lobby and met with Mrs. Person.

8 She was given a visitor's pass, which is something
9 they just wear like an I.D. tag, and we walked upstairs to
10 the investigative division where we met with Lieutenant
11 White.

12 Q Who just testified?

13 A Yes, sir.

14 Q So you see her on the 2nd, the 11th, and now on the
15 17th?

16 A Yes, sir.

17 Q And with all due respect, can you describe her
18 demeanor and her dress? When you saw her on the 17th, was
19 it different from when you had seen her before?

20 A Yes, sir. I noticed that every time I met with her
21 or saw her, her dress was -- it got more and more sloppy,
22 I guess is the best I could put it. It also appeared that
23 her personal hygiene was being affected. I noticed that
24 her breath stunk -- smelled bad, I'm sorry. That wasn't
25 the case when I first met her, and it -- and in pictures,

1 which I saw in her house, didn't appear to be the way that
2 she would normally be.

3 Finally, on the 17th, when she came to the sheriff's
4 office, her hair was messy. She was wearing sweatpants
5 and a T-shirt I believe and it just seemed like she had
6 just gotten out of bed. It was one o'clock in the
7 afternoon. I talked to her about coming up there. She
8 knew. It wasn't a surprise, but I did notice that.

9 Q That's not something you learned in a technique
10 making those observations, is it?

11 A No, sir.

12 Q And if -- I know you're kind of soft spoken, too, but
13 if you'll speak up a little bit.

14 A Yes, sir.

15 Q I think your testimony is that Lieutenant White
16 talked with her.

17 A Yes, he did.

18 Q At some point after that, did you see her again, her
19 again?

20 A Yes.

21 Q I apologize, Judge, Ms. Person.

22 A Yes, sir. A little after she met with Lieutenant
23 White, he contacted me. I was working on another separate
24 investigation. He called me.

25 Q And specifically, take these ladies and gentlemen

1 now, while you're down there, where did you see Andrea
2 Person next, the next time you saw her? You saw her
3 first. White sees her. Then where do you see her next,
4 specifically, in the sheriff's department, if anywhere?

5 A I went into the interview room.

6 Q And as you're walking in the interview, what happens?

7 A Well, first and foremost, Lieutenant White met me
8 outside and explained that she had made some admissions of
9 guilt in regards to the death of Zachary Ulengchong
10 basically telling me -- she said that she suffocated him.

11 We then both went into the interview room, and I
12 knelt down beside her. There just -- there wasn't another
13 chair in there: Lieutenant White's chair, her chair, and
14 I -- I knelt down beside her because I didn't want to
15 stand over her. I didn't want to intimidate her in any
16 way.

17 I just wanted -- I asked her what happened, what was
18 wrong, and you know, she basically recited the same thing
19 that Lieutenant White had told me.

20 She said that on that day, back in 1998, that she had
21 put her hand over Zachary Ulengchong's nose and mouth,
22 held it there 15 or 20 seconds, I believe she said, until
23 he went limp, is what I recall. And then she placed --
24 put him down in a crib, left briefly, 15 minutes or so,
25 and then returned and finally found that he was lifeless,

1 I think is how she put it.

2 She said she panicked. She called 911 and asked for
3 help, and she said that I've been lying to everyone ever
4 since is how she put it. She said that she did this
5 because he was fussy, and he was irritable and he was
6 crying.

7 Q And that -- was Lieutenant White there, in your
8 presence, when she was now telling this to you when she
9 was telling you or Lieutenant White?

10 A We were both in there; that's right.

11 Q That first statement to you, Sergeant, could you
12 understand the words she was saying?

13 A Yes, sir. She was -- you could understand everything
14 she was saying.

15 Q That she panicked?

16 A Yes.

17 Q That she covered the child's mouth and placed him in
18 the crib, and he went limp?

19 A Yes, sir.

20 Q I mean, do you -- you remember those words?

21 A Yes, sir.

22 Q And you made notes of those words?

23 A Yes, sir, those words specifically.

24 Q Were those your words or her words?

25 A They are her words.

1 Q What happens next?

2 A At this point, both Andrea and myself, we then
3 changed rooms. We go into Chief David Wilson's office,
4 which is a very large office at the sheriff's office.

5 The majority of the Criminal Investigative Division
6 is cubicles. They're small. That's where my office is,
7 so I wanted to find someplace bigger because, obviously,
8 we needed to talk about this in more detail. So I spoke
9 with Chief Wilson, and we all three went into his office
10 there in the Criminal Investigative Division.

11 Q And before going into -- let me get back to the
12 interview room.

13 A Yes, sir.

14 Q Was the defendant handcuffed?

15 A No.

16 Q And was -- before -- after leaving the interview room
17 to go to Chief Wilson's office, did she have an occasion
18 to get some water and/or use the bathroom?

19 A Yes, sir, she did.

20 Q And you indicate -- you made a note of that, correct?

21 A Yes, sir. I believe we offered her something to eat,
22 as well. She didn't want anything, but we offered it to
23 her.

24 Q You offered it to her, and she declined?

25 A Yes, sir. She said that she thought it would make

1 her sick. She was so emotional.

2 Q So y'all actually walked from the room to Chief
3 Wilson's office?

4 A Yes, sir.

5 Q All right. And -- and let's go there to Chief
6 Wilson's office. If you're Chief Wilson's desk, let's
7 just say --

8 A Okay.

9 Q -- how many chairs are on the other side of the desk?

10 A There are two chairs positioned in front of the desk,
11 basically, as I'm pointing out, one to the right, one to
12 the left centered along the desks. The door is to the
13 left. It's a large office. It's probably 15, 20 feet by
14 12, 13 feet, I guess.

15 Q Windows?

16 A There's windows in two of the sides, large windows
17 leading out to -- you can see out into the parking lot
18 along Two Notch Road.

19 There's a computer on the desk, and a printer, and a
20 fax machine, I believe and another -- it's large enough
21 that behind those two chairs, there's actually a small
22 conference table.

23 Q And you said there are two chairs --

24 A Yes, sir.

25 Q -- to Chief Wilson -- and there's a chair over here

1 near the door?

2 A Yes, sir.

3 Q Who is in that chair?

4 A Ms. Person.

5 Q All right. And who is in this chair?

6 A I am.

7 Q Tell the ladies and gentlemen of this jury, please,
8 Sergeant, did you -- did you tell Chief Wilson what she
9 had said, or what happened in his office?

10 A When we went to -- into his office, you know, I
11 had -- I told him that she admitted to having caused his
12 death, basically, before we all three started talking
13 about it, and then we basically just asked her to tell us
14 about it.

15 It -- it was basically that -- tell us about it again
16 and she -- she told us the story. It wasn't -- sometimes
17 in interviews, it's -- I'll ask a question, and I'll get a
18 very short answer, and then I'll have to ask another
19 question and then get them to explain their answer.

20 It's like pulling teeth is the way to put it. This
21 was not that kind of thing. She opened up and told us the
22 story as if she had been waiting for a long time to tell
23 it, and she told it to us.

24 Q And -- and what did she tell y'all?

25 A Well, she told us that -- that she had been taking

1. care of him that day. She explained that she was close
2. friends with the Uleingchong's; that he was fussy when he
3. got there. I think she said he just wouldn't take a
4. pacifier or something like that.

5. He was crying. She had other children there; that
6. those children, she was trying to put them all down to
7. sleep, and Zachary wouldn't cooperate, basically. He kept
8. crying. She was scared he was going to wake up the other
9. children.

10. She tried to comfort him in her arms, she said. He
11. continued to cry. Eventually, she put her hand over his
12. nose and mouth, held it there, like I said, for 15 to 20
13. seconds, and -- until he stopped crying, I believe is how
14. she put it.

15. The -- we asked her -- I think it was Chief Wilson
16. did at this point interject briefly. The question was
17. asked, "How much pressure did you use?" And she gave a
18. demonstration by squeezing his hand, Chief Wilson's hand,
19. not mine, which I did see this.

20. Then she continued on with how she took her hand off
21. of his mouth. There was some kind of gasp for air. She
22. took him and put him down. He wasn't crying anymore. She
23. went away for a while.

24. She came back 15 to 20 minutes later, I think, 15
25. minutes later, and he was lifeless. She said that --

1 that's when she called for assistance, 911. Basically,
2 that's when she started her story about what happened, the
3 false story. At that point, I believe E.M.S. personnel,
4 what have you --

5 Q Go ahead. This would be the third time, you, and
6 White, and Wilson that she told you?

7 A Yes, sir.

8 Q Okay.

9 A Then we continued to talk to her about it, and she --
10 she basically -- she said she was relieved. She was glad
11 that she could finally tell someone about this.

12 Q Could you see that in her?

13 A Yes. Yes, and, you know, looking back -- like I
14 said, her demeanor when she came in, she was opening up at
15 this point because I think she just wanted to tell this
16 story to us. Again, it was very little prompting on our
17 part at all.

18 She told us the story the way it happened, and then
19 we took a -- shortly thereafter, I took a written
20 statement of those, of what she told me.

21 Q And I'm going to get that in a minute, but from the
22 time y'all got in Chief Wilson's office and she told
23 you -- you and the Chief again this --

24 A Yes.

25 Q -- was that a confrontational setting?

1 A Not at all; not at all.

2 Q At any point during that time that she was telling
3 you and the Chief what happened, did you, Sergeant Kevin
4 Isenhoward, threaten her?

5 A No, sir.

6 Q Did you hold out any hope or promise of reward?

7 A No, sir.

8 Q At any time, did she say, "I don't mean to talk to
9 you?"

10 A No, she never said that.

11 Q If she had said that, what would you have done?

12 A I would have stopped talking to her.

13 Q Did she ask for a lawyer?

14 A No, sir; she didn't.

15 Q Did she appear -- when you and White were together
16 and now when you and Chief Wilson were together -- could
17 you understand when she was telling you, "I put my hand
18 over his nose and mouth for 15 to 20 seconds"? Could you
19 understand her words?

20 A Every word.

21 Q And did she appear to understand your words and your
22 questions based on her responses? Were they appropriate
23 responses?

24 A Yes, sir. They were.

25 Q You said she looked a little disheveled, but did she

1 appear to be under the influence of alcohol or drugs or
2 anything?

3 A No, she was not.

4 THE COURT: Mr. Meadors, is this a good time to take
5 a break?

6 MR. MEADORS: Perfect. Thank you.

7 THE COURT: Ladies and gentlemen, at this time, let's
8 take an afternoon break. I'm going to remind you the
9 instructions I've given to you; that is not to discuss
10 this matter among yourselves until you have heard all the
11 evidence. Let's take a break, and then we'll come back.

12 (WHEREUPON, the jury left open court at approximately
13 3:33 p.m.)

14 THE COURT: Investigator Isenhoward, I'm going to
15 remind you not to discuss your testimony during this
16 break. You have not finished it, so it would be
17 inappropriate for you to discuss it during the break.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Let's take a break, and we'll come back.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Are we ready to continue?

22 MR. MEADORS: Almost. Judge, respectfully, we are
23 trying to use the technology. Sometimes we blow these up.
24 We were going to try to just put these on here. So if it
25 doesn't work, we'll go to the old method.

1 (Pause).

2 I just want to double check that it is what it is.

3 THE COURT: Anything we need to take up before we
4 bring the jury in?

5 MR. MEADORS: The State is ready.

6 MR. STRICKLER: The defense is ready.

7 THE COURT: You may ask the jury to come in.

8 (WHEREUPON, the jury came into open court at
9 approximately 3:54 p.m.)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: Mr. Meadors, you may continue.

12 MR. MEADORS: May it please the Court.

13 THE COURT: Yes, sir.

14 BY MR. MEADORS

15 Q Just kind of loop back real quick where we ended in
16 Chief Wilson's office, and I think we're still there.

17 A Okay.

18 Q And the defendant, Ms. Person, has told you and Chief
19 Wilson basically what you told the jury right before we
20 broke, correct?

21 A That's right.

22 Q And after that, what did you do? What happened next?
23 She has now told, correct me if I'm wrong, Lieutenant
24 White; you, and Lieutenant white; you, and Chief Wilson?

25 A Yes, sir. We -- you know, obviously, she told me and

1 Chief Wilson there, and we talked a little bit about, you
2 know, the situation around the time of the death.

3 Q Did she talk about her emotional state and anything,
4 if she was going on --

5 A Yeah. She said that she felt like she was having
6 some problems at the time of the -- that Zachary died.
7 She said that she had recently had a hysterectomy. She
8 felt like maybe that was affecting her behavior.

9 Chief Wilson, I guess, had a wife who had had similar
10 circumstances to those. We were just talking about how he
11 knew that it could, you know, affect things, and an
12 emotional rollercoaster kind of thing. Something I wasn't
13 really familiar with, but they were talking about it.

14 It was a very, I guess, open conversation between all
15 of those involved, and then I basically said, "Okay.
16 Well, we need to -- we need to write your statement down."

17 Of course, I'm the low man on the totem pole in this
18 situation, so I have to take her to -- to my computer,
19 which is at my cubical, like I described, where my forms
20 are to actually reduce her statement into writing so that
21 she could sign it.

22 So I went to my cubical, along with Andrea; and she
23 sat down next to me, and we typed out her statement.

24 Q If you were taking a statement from somebody, in this
25 case Ms. Person, would you prefer to be at your computer

1 than somebody else's?

2 A Absolutely, it's easier.

3 Q And how far was your cubical to Chief Wilson's
4 office?

5 A Ten, 12 feet maybe. It's right outside of the
6 office.

7 Q And are there other people -- are there other
8 cubicles back in this unit or investigation unit, whatever
9 you call it?

10 A Oh, yeah. There are probably 40 or 50 of them packed
11 in there.

12 Q And you and Ms. Person go to your cubical. Is she
13 handcuffed from Chief Wilson's office to your cubical?

14 A No, sir. She is not handcuffed.

15 Q And did you ask her if she needed -- had you already
16 asked her, or did you ask her, if she needed anything to
17 drink or bathroom opportunities?

18 A Yes, sir. We continued to offer her that. It was --
19 we would actually say it never -- she seemed to understand
20 it was an open invitation. She just needed to say
21 something.

22 Q And again, going -- not again, but going from Chief
23 Wilson's office to your cubical, did Andrea Person say, "I
24 don't want to talk to you"?

25 A No, sir.

1 Q "Call a lawyer"?

2 A No, sir.

3 Q You get back to your cubical. Tell the jury, just
4 describe it, where you are, where the defendant is.

5 A Right.

6 Q Just kind of place yourself there.

7 A My cubical, like I said, is right outside of Chief
8 Wilson's office. The walls of the cubical are probably
9 four-and-a-half feet tall. It's probably, I don't know,
10 ten by six, maybe not that big, eight by six. It's a
11 cube, a cubical.

12 I have a desk, a bookcase, a chair, and a little
13 cabinet in my cube. She sat next to me close to the
14 entrance to the cube. I was on the other side against the
15 wall where I sat at the desk and took her statement on the
16 form that we use at the sheriff's office.

17 Q And is the -- you say cube, cubical. Is there an
18 open space that you walk in? I mean, is there a door to
19 the cubical?

20 A Yes, there's not an actual door. There's an opening.
21 It doesn't have a door on it, but there's an opening
22 there.

23 Q And you said -- I think you were starting to say you
24 used a form. I want you to look at what's State's 9 and
25 ask -- I ask you if you recognize that, and does it relate

1 to your testimony?

2 A Yes, sir, it does.

3 Q And is this the form you're referring to?

4 A Yes, sir.

5 Q And was this on your computer?

6 A Yes.

7 Q This -- I mean, is there a form that comes up for --
8 if you're going to take a statement from somebody?

9 A Yes, statement --

10 Q Format or whatever, an outline?

11 A It's an approved document by the sheriff's
12 department.

13 Q And if you could look at this, and the -- can I
14 approach, Judge?

15 THE COURT: Yes, sir.

16 BY MR. MEADORS

17 Q Just what does that say at the top?

18 A It says, "Statement of Andre Marnette Person." It
19 has her home address, the date and time this statement is
20 being made.

21 Q Okay. And this is on April 17th at 15:56, which
22 would be what, 3:56?

23 A Yes, sir.

24 Q Now, are you familiar with what is known as the
25 Miranda rights?

1 A Yes, sir.

2 Q And you're now back at your cubical?

3 A Yes, sir.

4 Q And were you aware that she had previously been read
5 her rights by Lieutenant White?

6 A Yes, sir.

7 Q Did you know her educational background at this
8 point?

9 A I believe so; I believe so.

10 Q And did you have occasion at your cubical to read
11 what's known as the Miranda rights to Andrea Persons?

12 A Yes, sir, I did.

13 Q Can you tell them how you did it, Sergeant?

14 A Yes, sir. When we take the form, we're going to
15 write the form. I go back over it word for word. It
16 says, "I, Andrea Person, understand I have the right to
17 remain silent. Anything I say can be used against me in
18 court.

19 "I have the right to talk to a lawyer for advice
20 before you ask me any questions and to have a lawyer
21 present with you during any questioning.

22 "If I cannot afford a lawyer, one will be appointed
23 for me before any questioning, if I wish. If I decide to
24 answer questions now without a lawyer present, I still
25 have the right to stop answering at any time. I also have

1 the right to stop answering at any time until I talk to a
2 lawyer."

3 Q Now, did you, Sergeant Kevin Isenhoward, read those
4 rights on April 17th in your cubical, to the defendant,
5 Andrea Person?

6 A Yes, sir.

7 Q And did she appear to you to understand those rights?

8 A Yes, sir.

9 Q Did she indicate to you that she did?

10 A Yes, sir.

11 Q How?

12 A She said, "I understand those rights."

13 Q And could you understand her when she was saying
14 that?

15 A Yes.

16 Q And at this point, did she appear to be under the
17 influence of alcohol, drugs, or any other intoxicants?

18 A No, sir.

19 Q After y'all had gone over these rights again, it has
20 got a "Q" and "R" form. A -- strike that. I apologize.
21 It has "Q" and then "R"?

22 A Yes, sir.

23 Q What is that?

24 A It's question and then response.

25 Q Now, at the bottom of each page, if I can approach

1 again, please, is -- what signatures are on there?

2 A At the bottom of the page, there's two signature
3 lines, or two lines signed by Ms. Person: One as a
4 witness for Deputy Chief Wilson, and then it is notarized
5 by me.

6 Mrs. Persons signs twice: One saying that she has
7 made this statement. "I made the foregoing statement
8 freely and voluntarily without fear of threat, promise, or
9 reward or hope of reward of any kind," and the second
10 signature indicates that, "This is to certify that I have
11 read and have had read to me the foregoing statement
12 consisting of three pages, and a true copy has been given
13 to me this 17th day of April, 2007."

14 Q And does this consist of three pages, as you just
15 said?

16 A Yes, sir.

17 Q At any time during the taking of this statement, did
18 she say, "Stop, don't talk to me"?

19 A No, sir.

20 Q Did you threaten her or coerce her?

21 A No.

22 Q Did you threaten or coerce her, Sergeant?

23 A No.

24 Q Did you hold out any hope of reward or promise?

25 A No, sir.

1 Q "Do this for me"? Did you do anything like that?

2 A No, not at all.

3 MR. MEADORS: Your Honor, we'd offer State's 9.

4 THE COURT: Any objection?

5 MR. STRICKLER: Your Honor, I have no objection to
6 the publication of the document, but I do have a -- an
7 objection as to disposition of the physical document
8 itself that we need to address at some point.

9 THE COURT: Yes, sir. And that's noted, and we'll
10 take it up at some point; but I'll admit the document at
11 some point subject to the objection.

12 MR. STRICKLER: Thank you, Your Honor.

13 MR. MEADORS: With the Court's permission, Sergeant,
14 I'm going to ask you to come down.

15 THE COURT: You may step down as long as you keep
16 your voice up, and if you'll face the court reporter,
17 please.

18 BY MR. MEADORS

19 Q If you want to take a copy of this statement with you
20 also, just in case?

21 A Yes, sir.

22 MR. MEADORS: Can you see him?

23 THE COURT REPORTER: As long as he faces me.

24 BY MR. MEADORS

25 Q Sergeant, I'm going to ask you to hold this, please,

1 sir.

2 State's 9 has already been admitted. Is that this
3 statement, as far as you know?

4 A Yes, sir.

5 Q You just testified to some rights that you read
6 Ms. Person. Is that reflected on State's 9, which is now
7 being illuminated on the screen?

8 A Yes, sir, it does.

9 Q And tell these folks, Sergeant, as you're taking a
10 statement -- you've already talked to her a couple of
11 times. She told you what happened. You go back. How
12 does this thing get produced?

13 A Like I -- obviously, I've already talked to her,
14 talked to her several different times at this point. We
15 sat down, and I explained to her, first and foremost, her
16 rights. Then I tell her we're going to reduce this
17 statement to writing.

18 How we do it here at the sheriff's department is we
19 do it in a question and answer form. I'll ask the
20 question. I'll type the question out as I write it, and
21 then I will type your response.

22 Once we're done, I tell her, "I'll give you the
23 opportunity to read it, make any corrections. If we need
24 to change it in anyway, we'll change it. When you're
25 comfortable with it, and it's true, and it is your

1 statement, we'll sign it and notarize it; and I'll provide
2 you with a copy of it."

3 So that's -- going in, that's how I explain it.
4 Routinely -- and that's how I explained it to Ms. Person,
5 and then I asked the first question, which I type out, and
6 then type her response.

7 Q So question, that's you, and responder is Ms. Person.
8 Then publish the next question, please, sir.

9 A Okay. Question: "During our conversation today, you
10 revealed something about the death of Zachary Ulengchong
11 on December 2nd, 1998. What was that?"

12 The response: "On that day, Zachary's mother, Gina,
13 dropped him off at my house at 108 Durham Creek Court. He
14 arrived there around eight a.m.

15 "He was sick with a cold and was very fussy. I fed
16 him when he arrived that morning and laid him down for a
17 nap. I got him up around nine or 9:30 a.m. and changed
18 his diaper.

19 "I fed him a second bottle around ten a.m. He was
20 still fussy, and I couldn't pacify him. He was sick and
21 full of cold.

22 "I went on about dealing with all the other children,
23 and he was crying the whole time. It was naptime, and I
24 still couldn't pacify him.

25 I picked him up and held him in my arms. I tried to

1 pacify him to rock him to sleep. He was not responding to
2 it. He was still crying very loudly. He was wining, and
3 I didn't want the other children to wake up.

4 "I put my hand over his nose and mouth and held it
5 there for 15 or 20 seconds. Zachary got quiet. When I
6 took my hand off, he took a deep breath and appeared --
7 and appeared -- and it appeared to me that he fell asleep.

8 "He wasn't moving, and I carried him into the day
9 care room. I put him in his crib. I went and cleaned up
10 the house and straightened up the kitchen and living
11 room."

12 Q Slow down.

13 A Sorry. "That took about 15 to 20 minutes. I got
14 worried because he had been crying all day, and now he
15 wasn't crying anymore.

16 "I went into the day care room and checked on
17 Zachary. I picked him up, and he wasn't breathing. I
18 immediately tried to give him mouth-to-mouth recitation.
19 He wasn't responding to it. I called 911. A short while
20 after that, an ambulance arrived and took him to the
21 hospital."

22 Q Let me stop you. This -- you don't have to go back
23 to sit down, but from page one on to page two, her
24 response, whose words were those?

25 A Hers..

1 Q Did you tell her what to put in there?

2 A No, sir.

3 Q Did you write down what she had told you about what
4 she said happened?

5 A Yes, sir.

6 Q Going back, Ms. Outen, if you will, and I apologize,
7 at the bottom of that page -- if you'll go back to the
8 bottom of one.

9 You said earlier, described it, but, "I have made the
10 following statement freely and voluntarily without fear of
11 threat, promise or reward or hope of reward of any kind"?

12 A Yes, sir.

13 Q And did she sign that?

14 A Yes, sir. That's her signature.

15 Q And did Chief Wilson come and witness her signature
16 to the statement?

17 A Yes, sir.

18 Q And at the bottom, I think you said, "This is to
19 certify that I have read or had read to me the foregoing
20 statement, consisting of three pages, and a true copy has
21 been given to me the 17th day of April, 2007."

22 Did you go over with that -- and did Ms. Andrea
23 Person -- Person, the defendant, read that?

24 A Yes, sir.

25 Q And did she sign it?

- 1 A Yes, sir.
- 2 Q And who is this down here?
- 3 A That's my signature. That's actually a notary.
- 4 Q I'm sorry.
- 5 A For the State of South Carolina.
- 6 Q Did you make her sign that first page?
- 7 A No, sir.
- 8 Q She signed it herself with her own handwriting?
- 9 A Yes, sir.
- 10 Q All right. Go to the next page, please.
- 11 (Pause).
- 12 Okay. Question: "Did you believe that Zachary had
- 13 passed away when you put him in the crib?" What was her
- 14 response?
- 15 A "I didn't think so, because I would have called 911.
- 16 I thought he tired himself out crying."
- 17 Q Question: "How long had you been keeping children at
- 18 that point in your life?"
- 19 A "It was about five years at that time."
- 20 Q "In your experience, is it normal for a child to just
- 21 stop crying and moving after having been ill and upset for
- 22 that amount of time?"
- 23 A Her response was: "No, but I thought he had just
- 24 become exhausted."
- 25 Q Was this a "Q" and "A"? I mean, she -- you're

1 talking to her. She is giving you responses?

2 A Yes, sir. Obviously, it takes me a little while to
3 type the question. Sometimes I change the wording, but
4 when I get the question -- like I mean, I ask her the
5 question and then type her response, and we go through it.
6 Then it's printed and it's -- a copy is provided to her.
7 It's on my computer screen. We go back over it together.
8 We read it together and make any alterations, if we need
9 to.

10 Q I'm going to get to that. "Did you use force or
11 pressure when you held your hand over Zachary's nose and
12 mouth?"

13 Were you asking her that question based on what she
14 had told you happened?

15 A Yes.

16 Q I mean, it's a follow up to her based on what she
17 told you?

18 A Yes, sir, exactly.

19 Q And what did she say to that?

20 A "I guess that I put a little pressure behind it."

21 Q "I guess that I put a little pressure behind it"?

22 A Yes, sir.

23 Q Question: "Just to clarify what -- to clarify, was
24 it your bare hand that you used to cover his nose and
25 mouth?"

1 A "Yes", her response.

2 Q I think you said y'all talked about this earlier, but
3 you said, "Was there anything unusual or different in your
4 life the day that Zachary died?"

5 A Yes, sir. Let me just say, I asked her this question
6 specifically because we talked about it, and I felt that
7 it had some bearing on the situation. That's why I
8 included it in there.

9 Q So again, was it something y'all had talked about
10 previous?

11 A Yes, sir.

12 Q That you're now asking her about it again?

13 A Yes, sir.

14 Q Did you know she had a hysterectomy?

15 A Not until she told me. I felt it was fair and
16 appropriate to document everything that we had talked
17 about, and that was part of what we talked about. So it
18 was put in the written statement.

19 Q "Do you feel as in your actions on 12/2/98 led to
20 Zachary's death?" Is that an appropriate question for an
21 investigator to ask somebody?

22 A Yes, sir.

23 Q And did you ask her?

24 A Yes, sir.

25 Q And what was her response?

1 A Her response was, "Yes. I should have chosen a
2 different way to handle him. I should not have put my
3 hand and over his face. It was not my intent to kill him.
4 I just wanted him to go to sleep. I am so sorry."

5 Q "How long had you kept Zachary at that point?"

6 And again, before we get to that -- again, was the
7 same -- well, I'll come back to that. Go ahead.

8 A Her response was, "I kept Zachary since he was about
9 two months old."

10 Q Question: "Were there any other adults present in
11 the home when Zachary died?"

12 A Her response was, "No, sir."

13 Q "Have you ever told anyone else about this before
14 today? Have you ever told anyone else about this before
15 today?" What was her response?

16 A Her response was, "No, sir. Not to this extent. I
17 told some of my other clients about the death but not my
18 involvement."

19 Q "But not my involvement"?

20 A Yes, sir.

21 Q Was that your words or her words?

22 A Those were her words.

23 Q "How many children were you keeping at your home when
24 Zachary died?"

25 A She said, "I had six children that day. They were

1 all around Zachary's age. I think that I felt a little
2 overwhelmed by all the children and their care."

3 Q I mean, did you put in there that "I felt a little
4 overwhelmed"?

5 A No, sir.

6 Q "Do you have anything else to add to this statement?"
7 Question.

8 A Her response, "I cannot convey how sorry I am. I
9 should have taken a step back. If I could change things,
10 I would. I'm tired of holding on to this. It feels good
11 to say it to someone.

12 "I know this is going to change things in my life
13 with my friends, but it is the right thing to do. I was
14 wrong for what I did. I want to ask for forgiveness and
15 move on in my life."

16 Q "I want to ask for forgiveness and move on in my
17 life?"

18 A Yes, sir.

19 Q Now, without going back -- Ms. Outen, would go to
20 this bottom?

21 We didn't go over on the second page, but just on the
22 third page also, tell these folks, after you had completed
23 this statement, Sergeant, did you go back over it and let
24 her look over it and read it?

25 A Yes, sir. Once the statement -- I believe the

1 statement is complete, it's printed out at a printer. I
2 handed her a copy. I'm sitting -- I'm sitting in front of
3 a computer screen, so I'm reading back over it.

4 We read through it from top to bottom, read through
5 the statement. If she wants to make any changes --
6 sometimes people will say, "Well, I don't like the way
7 that sounds. That's what I said, but I don't like the way
8 that sounds when you read it." Well, we'll change it.
9 It's going to be the way they want it to be because
10 they're the ones that are signing that statement. That's
11 what we did in this case.

12 Q Did you go over page one with her?

13 A Yes, sir.

14 Q She -- she read it with you?

15 A Yes, sir.

16 Q Did she make any changes?

17 A I don't -- I don't recall her making any changes.

18 Q And did she sign page one? We've already been over
19 that.

20 A Yes, sir.

21 Q And Chief Wilson witnessed that?

22 A Yes, sir.

23 Q And did Chief Wilson witness her signing after you
24 had this statement?

25 A Yes.

1 Q As you were going back up?

2 A Yes, sir.

3 Q Page two, we didn't go over it specifically, but is
4 it the same thing as the bottom of page two?

5 A Yes, sir.

6 Q Did you read over page two with the defendant, Andrea
7 Person?

8 A Yes, sir.

9 Q And did she agree on -- thank you.

10 "I made the foregoing statement freely and
11 voluntarily without fear of threat, promise, reward or
12 hope of reward of any kind?" Did Ms. Person sign that?

13 A Yes, sir, she did.

14 Q Did you make her sign it, coerce her to sign it,
15 trick her into signing it?

16 A No, sir.

17 Q And does she also sign that, "I have read to -- I
18 have had it read to me, and this is my statement"? Did
19 she sign it?

20 A Yes, sir.

21 Q And on page three, Ms. Outen, the bottom of page
22 three, are the same two pages on there?

23 A Yes, sir.

24 Q Freely, voluntarily, no fear, no threat, no promise;
25 is that on there?

1 A Yes, sir.

2 Q No hope of reward?

3 A Yes, sir, it is.

4 Q Did she sign it?

5 A Yes, sir.

6 Q Did you make her sign it?

7 A No.

8 Q "I certify I have read, or had read to me, the
9 foregoing statement, and this is my statement"?

10 A Yes, sir.

11 Q Does she sign it?

12 A Yes, sir, she does.

13 Q Did you see her actually sign it?

14 A Yes, I did.

15 Q Anytime during this statement, did she say "stop"?

16 A No.

17 Q Did you trick her?

18 A No, I did not.

19 Q We're right there right now, Sergeant, all of us.
20 You just have taken the statement from her. You have just
21 taken the statement from her. What happens next?

22 A She -- we continued talking. She signed her
23 statement, and it was -- it was still a conversation. She
24 told me she just felt bad about what she had done, and she
25 wanted to convey that in some way to the Ulengchong's.

1 She wanted to meet with them. She wanted to see
2 them, call them. I told her that I didn't feel that that
3 would be appropriate, but I offered, if she wanted to,
4 give her a pen and a piece of paper, a blank paper and let
5 her write a letter.

6 Q Was it her idea because she wanted to convey
7 something to the Ulengchong's?

8 A Yes, sir.

9 Q Her idea to do that?

10 A Yes, sir.

11 Q Not the Sergeant's?

12 A No.

13 Q And you said it wouldn't be a good idea maybe in
14 person, but if she wanted to write something?

15 A Yes, sir.

16 Q And tell these folks that. What did you do? Did you
17 get her a piece of paper?

18 A Yes, sir. A pen and a piece of -- I actually handed
19 her a blank -- brand new, blank notepad from my file and a
20 pen.

21 Q And where was she at this point?

22 A She was sitting in my cubical.

23 Q And I'm going to ask you to -- if you'll at what was
24 marked State's 8, and is this exactly what relates to your
25 testimony you're saying right now?

1 A Yes, sir, it is.

2 MR. MEADORS: Your Honor, State's 8.

3 THE COURT: Any objection?

4 MR. STRICKLER: No, Your Honor.

5 THE COURT: It's admitted.

6 (WHEREUPON, State's Exhibit No. 8 was admitted into
7 evidence.)

8 BY MR. MEADORS

9 Q Ms. Outen, would you please bring up State's 8?
10 Beg the Court's indulgence.

11 (Pause).

12 Now, first of all, Sergeant, is this the letter that
13 Andrea Person wrote?

14 A Yes, sir, it is.

15 Q It's addressed to Gina and Pete?

16 A Yes, sir.

17 Q And is that the Uleungchong's?

18 A Yes, sir, it is.

19 Q Can you publish this letter to the jury?

20 A Yes, sir.

21 It says, "Gina and Pete, I can't believe this is my
22 life, where we are right now. My heart is sick, and I
23 hate myself for all I have put you through.

24 I love you like my brother and sister, and I
25 understand that I've lost you as friends and family.

1 Please forgive me and know it was not my intention to
2 cause you such loss. I didn't want to hurt him, but I
3 did."

4 Q Stop. I didn't want to hurt him but what?

5 A "But I did".

6 Q Stop. Did you tell her to put "but I did"?

7 A No, sir.

8 Q Were you dictating to her?

9 A No, sir.

10 Q Whose hand was writing this?

11 A It was hers.

12 Q Go ahead. Go ahead, please.

13 A "I should have stopped and walked away."

14 Q Stop. "I should have stopped and walked away"?

15 A Yes, sir.

16 Q Did you tell her to say that?

17 A No, sir.

18 Q Go ahead.

19 A "What I did was wrong, and I'm so sorry."

20 Q "What I did was wrong, and I'm so sorry." Those were
21 those your words or her words?

22 A Her words.

23 Q Was it your hand or hers?

24 A It was hers.

25 Q Go ahead.

1 A "I thought he fell asleep in my arms. God help me.
2 I'm sorry. Please forgive me. Please find some comfort
3 in knowing that I loved him like he was my own. I'm
4 sorry. I'm so sorry. Please forgive me, love you
5 forever, Andrea."

6 Q Beg the Court's indulgence.

7 (Pause).

8 Is the individual that told you in this written
9 statement everything you have testified to but also, "I
10 should have taken a step back. If I could change things,
11 I would. I'm tired of holding onto this." Is the person
12 who gave you this statement in the courtroom?

13 A Yes, sir. She is.

14 Q Would you please point her out to the jury?

15 A Ms. Andrea Person sitting back here with the black
16 jacket on, green -- green blouse.

17 Q Is that the same individual that on April 11th, told
18 you the reason that she didn't tell you about Zachary
19 Ulengchong when she first met you is because she was
20 afraid she would get in trouble?

21 A Yes, sir.

22 Q Is that the same person?

23 A Yes, sir.

24 Q Is that the same -- is the person in this courtroom,
25 "I didn't want to hurt him, but I did. I should have

1 stopped and walked away. I should have stopped and walked
2 away," is that person in this courtroom?

3 A Yes, she did.

4 Q Please point them out for the jury.

5 A (Indicating).

6 Q Let the record to reflect that Sergeant Isenhoward
7 has indicated Ms. Andrea Person, the defendant. I'd like
8 the record to reflect.

9 Sergeant, you had got this letter, State's 9, from --
10 and how did she sign it, just and Andrea?

11 A Yes, just Andrea, love -- love you forever.

12 Q What -- did you take the letter to the Ulenchong's?

13 A I made a copy of the letter, and I went and met with
14 the Ulenchong's, and I offered to let them read it. I
15 remember specifically Mr. Ulenchong telling me he didn't
16 want to hear it.

17 Q After taking this, these statements, and her
18 receiving the statement from her that she wrote, did you
19 have an occasion to see some of her family after that?

20 A Yes, sir. I got a call from our desk, our front
21 desk, saying that her family was here. So I went down to
22 try and explain things to her -- to them as much as I
23 could.

24 I went down and told them that she was going to be
25 under arrest; that she was there. She was okay, and that

1 we were going to take care of her.

2 I remember her husband asking me about whether or not
3 she had eaten anything. I explained to him that she had
4 been offered -- she had some water. She chose not to, and
5 he gave me some fruit cups. He asked me to give them to
6 her so that she could eat them if she wanted to, and I did
7 so.

8 Q And all during this last process, you said you had
9 offered it to her, but did she ask for anything to eat --

10 A No, sir.

11 Q -- while you were taking the statement?

12 A No, sir.

13 Q If she had, would you have given her something?

14 A Absolutely.

15 MR. MEADORS: Beg Your Honor's indulgence just for
16 one second.

17 (Pause).

18 Thank you, Sergeant. That's all I have.

19 THE COURT: Any cross?

20 MR. STRICKLER: Yes, sir.

21 CROSS-EXAMINATION:

22 BY MR. STRICKLER

23 Q May it please the Court.

24 Good afternoon, sir.

25 A Good afternoon.

1 Q Okay. And it's Sergeant Isenhoward now, correct?

2 A Yes, sir.

3 Q Pardon me if I slip up and say something else.

4 A That's okay.

5 Q You have been employed in law enforcement since
6 October 1st, 1999?

7 A No, sir. I -- that's actually -- I tried to explain
8 earlier, that's my status of a Class I Officer.

9 Q Okay.

10 A Prior to that, I was a Class III Officer, which is a
11 Judicial Service Officer. I believe that started in
12 January of 1998.

13 Q Okay. All right. So January of '98.

14 A Yes.

15 Q And that's the period when you testified you worked
16 here in the courthouse --

17 A Yes, sir.

18 Q -- correct? Okay. And at what point in time did you
19 move from the area of being a line officer to being an
20 investigator?

21 A It was in September of 2001. I remember because I
22 think my second day was 9/11.

23 Q Okay. So you have been an investigator now for in
24 excess of eight years?

25 A Yes, sir.

1 Q I guess you're a Sergeant now. That just means
2 you're an investigator. You also supervise other
3 investigators.

4 A Yes, sir.

5 Q I don't mean to say "just" but that's a correct
6 description of your position, correct?

7 A Yeah, added duties, basically.

8 Q Right, right, I understand. You get more duties.

9 A Yeah.

10 Q And during the period of time that you been employed
11 in law enforcement, all of which has been right here in
12 Richland County --

13 A Yes, sir.

14 Q -- as I understand your testimony. During that
15 period of time, you have gone through and continued to go
16 through training in various aspects of law enforcement,
17 correct?

18 A Yes, sir.

19 Q Okay. Some of that is conducted out at S.L.E.D.,
20 correct?

21 A At S.L.E.D.?

22 Q Well, the Criminal Justice Academy, excuse me.

23 A Well, I'm going to be quite honest with you, very
24 little is. We have continuing education which is basic
25 legal updates, which is required by state law.

1 Q Right.

2 A That is done through the Criminal Justice Academy.

3 Q Right.

4 A And that's about all they do. Any additional
5 training is arranged through the sheriff's department.

6 Q So it was done in house?

7 A Yes, sir.

8 Q Okay. All right. So I guess it would be fair to say
9 that some of it is conducted by the criminal justice
10 academy and some of it, if not the majority of it, is
11 conducted in house?

12 A Yes, sir.

13 Q Right? And would it surprise you that the Criminal
14 Justice Academy has you receiving in excess of 800 hours
15 worth of training over the course of time with them?

16 A It -- it wouldn't surprise me. We do have mandated
17 amounts of time for every year.

18 Q And as -- a substantial of portion of what you do as
19 an investigator is talk with people, isn't it?

20 A Yes, communication.

21 Q Be it witnesses to an incident or a crime or suspects
22 in an incident or -- okay. You do a lot of talking with
23 people, right?

24 A Yes, sir.

25 Q All right. And you do a lot of the taking of

1 statements, correct?

2 A Yes, sir.

3 Q I believe you said you far prefer to take a statement
4 in your own cubical than someplace else, correct?

5 A Yes. It provides, I guess, the best set of
6 circumstances typewritten, and it's easier to make
7 alterations or changes if the person would like.

8 Q Okay. And your cubical is not set up to audiotape
9 the person that you're questioning, correct?

10 A That's correct.

11 Q Your cubical is not set up to videotape the person
12 that you're interrogating, correct?

13 A That's correct.

14 Q Okay. In fact -- well, you said there are about 40
15 cubicles?

16 A Roughly, roughly, yes.

17 Q That's the investigations area of the sheriff's
18 department?

19 A Yes, sir.

20 Q Huge room full of cubicles?

21 A That's right.

22 Q Fair to say that none of them are set up to audiotape
23 or videotape people giving statements, correct?

24 A That's correct.

25 Q In fact, the sheriff's department, as a matter of

1 policy, for investigators, people like you --

2 A Yes, sir.

3 Q -- does not, as a matter of policy, audiotape or
4 videotape statements given by people, correct?

5 A That is correct.

6 Q All right. And you would certainly agree with me --
7 well, let me ask you: Would you agree with me that tape
8 decks, tape recorders are a fairly commonplace piece of
9 equipment?

10 A Yes, sir.

11 Q I haven't been out to price them recently. Would you
12 agree that they're, in general -- well, you certainly have
13 ones that are not particularly expensive.

14 A I don't -- I guess it depends on perspective, but
15 yes, they're not that expensive.

16 Q And it's -- it's not the case that the sheriff's
17 department is living in the 19th century and was not
18 acquainted with audiotape or videotaping.

19 The sheriff's department, as a matter of fact, in
20 some of his operations makes use of both audio and
21 videotaping capabilities, correct?

22 A In certain applications we do.

23 Q Okay. And I went through with Lieutenant White an
24 example of a narcotics operations, those are very often
25 both audiotaped and/or videotaped, correct?

1 A I would say that that is probably one of the more
2 common operations.

3 Q Okay. So not only are y'all acquainted with audio
4 and video equipment, y'all possess audio and video
5 equipment, correct?

6 A Very limited numbers. It would not be sufficient to
7 support the Criminal Investigative Division and the amount
8 of statements and interviews that are conducted on a
9 day-to-day basis. I would venture to say we probably only
10 have a handful of devices now.

11 Q You -- in your testimony, as you describe what you've
12 done, your actions in this particular investigation, I
13 believe you indicated that you spoke with Ms. Ulengchong
14 at one point in time?

15 A Yes, sir, I did.

16 Q And this is prior to the end of the case when we talk
17 about getting a letter to you. We talk to her shortly
18 after April 2nd, correct?

19 A Yes.

20 Q Okay. And that was out at her place, correct?

21 A Yes, sir. I went to their home.

22 Q Okay. And at that point in time, would it be fair to
23 characterize her relation, her feelings regarding Andrea,
24 as very positive and very close?

25 A Yes.

1 Q You have some handwritten notes that reflect your
2 conversations with them?

3 A I don't know that I have handwritten notes. I don't
4 know exactly what, off the top of my head they reflect,
5 but that is the impression that I got from that meeting.

6 Q Let me show you this and ask if this is a copy of the
7 handwritten notes on your part, the bottom half of that?

8 A Yes, sir.

9 Q Do you recognize those?

10 A Yes, sir. Those are my handwriting.

11 Q Would it be correct in assessing that as notes of the
12 conversation that you had with Ms. Ulengchong?

13 A Yes, sir.

14 Q Did she trust Andrea with her life?

15 A That's what she told me in the initial meeting.

16 Q That she had a manageable amount of children in the
17 household?

18 A Yes, sir.

19 Q That Zack had had a cold Halloween, two months before
20 this?

21 A Yes, sir.

22 Q There's a notation that the left lung was collapsed,
23 the second one from the bottom?

24 A I'm not -- I'm not -- I don't recall exactly what
25 that refers to. It's possible that it's something she

1 told me but that --

2 Q That is what it says?

3 A That is what it says.

4 Q You're just not sure what it's referring to. That's
5 fine.

6 But at that point in time, you got nothing but good
7 things said about Andrea from Ms. Ulengchong, the tenor of
8 the conversation about their relationship?

9 A Well, that was basically the line of questioning,
10 what is their relationship.

11 Q Okay. Now --

12 (A cell phone rings).

13 (Pause).

14 MR. STRICKLER: Excuse me.

15 THE COURT: Please step outside.

16 (Observer leaves the courtroom).

17 MR. STRICKLER: Beg the Court's indulgence, Your
18 Honor.

19 (Pause).

20 BY MR. STRICKLER

21 Q All right. I have spoke with you just a little bit
22 about your training and the amount of time you have had
23 training. Included in your training, and of assistance to
24 you in your job, is training in various techniques
25 involved in interrogation, correct?

1 A I have had some training, yes.

2 Q Okay. If you have not been trained in the -- in the
3 actual techniques by name, the Reid Technique or whatever,
4 you're acquainted with their existence?

5 A Yes, sir, but I do not use them.

6 Q You don't use the Reid Technique?

7 A No, sir.

8 Q You don't use any of -- any techniques of
9 interrogation. You just do what you do?

10 A That -- basically.

11 Q You don't isolate anyone?

12 A Only if there's a codefendant, I guess. If I'm
13 getting the meaning, your meaning by isolation, obviously,
14 I wouldn't want a suspect to speak with any codefendants
15 or anything like that.

16 Q Or other family?

17 A No, sir. In they asked to speak with family, they
18 would be allowed to.

19 Q You don't take an opportunity to educate someone
20 about the facts of a particular case?

21 A Educate who?

22 Q The person you're interrogating.

23 A Yeah, we'll talk about the matter under
24 investigation.

25 Q You don't take, in the course of your interrogations,

1 the opportunity to suggest possible explanations for a set
2 of facts to a defendant?

3 A No, sir.

4 Q No, you don't do that. Okay. You don't suggest or
5 encourage people that you're interrogating that -- that it
6 would be helpful in some fashion for them to confess,
7 either helpful in getting it off their chest or helpful in
8 some other fashion?

9 A Generally, I appeal to their sense of right and
10 wrong, but in this situation, this is the right thing to
11 do.

12 I won't deny that I -- that I may say, you know, this
13 is the right thing to do. This is what you should do or
14 that sort of thing, but quite honestly, it's not
15 applicable in this case. It didn't happen that way.

16 Q Yes, sir. Now, at -- as I understand it, you were
17 the initial person to meet Andrea when she came to the
18 sheriff's department on the 17th, correct?

19 A Yes.

20 Q You came down to the lobby of the sheriff's
21 department and escorted her into the department itself,
22 correct?

23 A Yes.

24 Q Walked her through the metal detectors there at the
25 entrance and -- go ahead, I'm sorry.

1 A I don't think we had metal detectors there then, but
2 yes.

3 Q Okay. At that point in time, you didn't have metal
4 detectors, very good.

5 You walk her into the sheriff's department, took her
6 to the elevator, took her up to what, the second floor
7 where investigations is?

8 A Yes, sir.

9 Q Out of the elevator, and then I believe escorted her
10 to -- escorted her to Lieutenant White. Is that --

11 A Yes, sir.

12 Q -- A fair characterization?

13 A Yes, sir.

14 Q Okay. I believe you indicated that you were then
15 involved in some other investigation independent of this,
16 and your next encounter with her was when you were
17 contacted by Lieutenant White himself; is that correct?

18 A Yes, sir.

19 Q Okay. Now, at that point in time, and as I
20 understand Lieutenant White's testimony and your
21 testimony, Andrea had already confessed to him to have
22 putting her hand over Zachary Ulenchong's nose and mouth
23 for 15 seconds or so because she couldn't get him to quit
24 crying; confessed to him at that point in time Zachary
25 became motionless and quiet; said she put him in the crib;

1 that she is in a panic; came back in 15 minutes, and
2 Zachary was lifeless. That was the information that
3 Lieutenant White let you know about, right?

4 A Yes.

5 Q According to Lieutenant White, that's what she told
6 him?

7 A Yes.

8 Q All right. As I understand it, you then went in
9 there and didn't stand over her because you didn't want to
10 be threatening. I mean, got down next to her, I guess.
11 She is seated --

12 A Yes, sir.

13 Q -- and spoke with her and went over the same thing
14 again?

15 A Yes, sir.

16 Q Correct?

17 A She went over it, yeah.

18 Q Okay. You didn't take, as I understand your
19 testimony that opportunity to suggest anything additional
20 to her, correct?

21 A No, sir.

22 Q Okay. You didn't take that opportunity to suggest
23 that she kept her hand over Zachary Ulenchong's mouth
24 longer than 15 or 20 seconds, correct?

25 A No, sir.

1 Q No, didn't do that. You didn't tell her during that
2 period of time -- well, no, let me back up. Sorry.

3 Strike that.

4 You're telling us that she did not, at that time,
5 deny to you that she suffocated Zachary Ulengchong. You
6 say she never denied that to you?

7 A Well, I mean she is --

8 Q You're there talking with her.

9 A She is saying -- maybe not in those words
10 specifically at that point in time. She is saying that
11 she held her hand over his nose and mouth, and that he
12 fell limp. She put him in the bed. She returned to find
13 him deceased or lifeless. There's some inference there,
14 but that's -- that is what she said.

15 Q And you're telling us that you didn't take the
16 opportunity while you were speaking with her then to tell
17 her that what she was saying didn't make sense; that she
18 needed to come up with a better explanation than that?

19 A No, sir.

20 Q No. You didn't do that.

21 Now, after some period of time, however long it was
22 speaking with her then, you and she left Lieutenant
23 White's office and went to Deputy Chief Wilson's office,
24 correct?

25 A Yes, sir, probably 20 feet away or so.

1 Q Right. Lieutenant White, Deputy Chief Wilson, and
2 your offices are all fairly close together --

3 A Yes.

4 Q -- in the sheriff's department, right?

5 A Yes, sir.

6 Q And as I understand it, it was you and Lieutenant
7 Wilson that at that point in time -- excuse me, Deputy
8 Chief Wilson. At that point in time, Lieutenant White was
9 gone, right?

10 A Yes.

11 Q Okay. So you're in Deputy Chief Wilson's office
12 then. Now, and at that point in time, she had, according
13 to your testimony, Lieutenant White's testimony, confessed
14 to you, confessed to Lieutenant White to begin with, just
15 what I went through with you.

16 A Yes, sir.

17 Q Reaffirmed that confession with you, and then you go
18 to Deputy Chief Wilson's office, and she reaffirms the
19 confession again, correct?

20 A Yes, sir, a few more details, a little bit more
21 in-depth, I guess you could say.

22 Q Okay. Then I take it that at that point in time,
23 someone in the room was asking her questions?

24 A Very few. Like I said, she was telling us the story.
25 We may ask, "Well, what happened then?" And like I said,

1 Chief Wilson asked her about what was going on in her life
2 at that time. So I mean, there were a few questions, but
3 the -- the nuts and bolts of the statement she provided on
4 her own without prompting from us.

5 Q Okay. You did note, and you indicated, there was an
6 exchange between her and Mr. Wilson recording Mr. Wilson's
7 wife having had a hysterectomy, I believe, and then having
8 some impact on -- on her personality, I guess; is that
9 correct?

10 A Yes, sir. Again, like I said, something I wasn't
11 familiar with.

12 Q Right.

13 A Obviously, it was something he knew about.

14 Q Right.

15 A They -- they were talking about it in a conversation,
16 to be honest with you.

17 Q That conversation actually took place while she was
18 back in your office, and Mr. Wilson came over one of those
19 times and listened in on the conversation there?

20 A No, sir. It happened at a different time.

21 Q Okay. So they had a conversation. Her raising the
22 issue of hysterectomy was not in response to either you or
23 Mr. Wilson suggesting that this just happening doesn't
24 make any sense. You know, you need to tell us something
25 that makes sense. That's not how it came about, I take

1 it, right?

2 A Right.

3 Q You just pull that out of the blue, and I take it
4 that you would -- that -- I take it, additionally, that
5 neither you -- when you were talking with her in
6 Lieutenant White's office, nor you and Mr. Wilson while
7 you were discussing the situation in Mr. Wilson's office,
8 nor you while you were discussing the situation again in
9 your office or cubical that at no point in time, to your
10 knowledge, any of you indicated that, you know, "We're
11 almost done, finish up. Tell us all, and then you can go
12 home." None of y'all said that?

13 A No, of course not.

14 Q Okay. Yes, sir, I understand. Now, at no time, I
15 take it, would you agree that Mr. Wilson stepped out of
16 his office or behind Ms. Person and indicated he was
17 taking a call from his friend, the coroner. That never
18 happened?

19 A I've never heard that before.

20 Q Okay. And Your Honor, beg the court's indulgence one
21 moment, please.

22 (Pause).

23 Okay. So as I understand it, the -- the essence
24 of -- of Andrea's statement, just as we talked about when
25 we first started talking, was present when Lieutenant

1 White contacted you --

2 A Yes, sir.

3 Q -- another one, what happened?

4 A Yes.

5 Q And you just didn't sit down and take a statement at
6 that point, correct?

7 A Well, I mean, we're only talking a few minutes here
8 afterwards. So I mean, we did take the statement, added
9 -- she added some details about her feelings about the
10 situation and what have you in Chief Wilson's office. You
11 know, that statement was taken shortly thereafter.

12 Q Right. A rough guesstimate of how long the three of
13 y'all had -- were in Deputy Chief Wilson's office?

14 A Twenty --

15 Q I don't know if there's --

16 A Twenty --

17 Q -- a record out there of --

18 A Twenty minutes or so.

19 Q Twenty minutes or so?

20 A Thirty, maybe.

21 Q Twenty to 30?

22 A Uh-huh.

23 Q And then your testimony is y'all left, went back to
24 your cubical, and you took this statement that's marked
25 State's 9. And that began at -- as reflected on the front

1 page at 15:56 --

2 A Yes, sir.

3 Q -- 3:56 in the afternoon --

4 A Yes, sir.

5 Q -- and then was completed at 16:48 in the afternoon?

6 A Yes, sir.

7 Q The 4:48?

8 A Yes, sir.

9 Q Okay. So 4:48, 15:56, you say 20 or 30 minutes.

10 You're with her from 15, 30, that's roughly 26 minutes,

11 15:30 to 16:48, so an hour and 40 minutes?

12 A Overall.

13 Q Overall --

14 A Yeah.

15 Q -- covering the time you were with her --

16 A Back in my office.

17 Q -- in Deputy Chief Wilson's office --

18 A Yes.

19 Q -- and then back in your office --

20 A Yes, sir.

21 Q -- is that right?

22 A Yes, sir.

23 Q And then, I guess, you were with her for some period

24 of time, in addition to that, over in Lieutenant White's

25 office, correct?

1 A Yes, sir, just a few minutes.

2 Q A few minutes, not 20 or 30 but fewer minutes than
3 that, right?

4 A Yes.

5 MR. STRICKLER: All right. Thank you very much.
6 Nothing further, Your Honor.

7 THE COURT: Any redirect?

8 MR. MEADORS: Very briefly.

9 REDIRECT EXAMINATION:

10 BY MR. MEADORS

11 Q All in direct response to some of his questions. Did
12 you use any techniques here?

13 A No, sir.

14 Q He asked you about educating a person about the case.
15 In April 2007, did you educate Andrea Person about what
16 happened on December 2nd, 1998, and could you have
17 educated her? Did you educate her?

18 A No, sir. I wasn't there when it happened.

19 Q He asked you about suggesting possible explanations.
20 Did you do that?

21 A No, sir.

22 Q And he asked you one final thing here about the
23 essence -- I think he used the word "essence". I'm not
24 sure --

25 A All right.

1 Q -- of what was told was to Lieutenant White. Do you
2 remember when he asked you that?

3 A Yes, sir.

4 Q Where was it, before or after Lieutenant White, when
5 she showed Deputy Chief Wilson how hard she put her hand
6 over Zachary Ulengchong's mouth?

7 A That was afterwards.

8 Q So that was in addition to what she told Lieutenant
9 White?

10 A Yes.

11 Q And it was based on a follow up from what she had
12 told Lieutenant White; is that correct?

13 A Yes.

14 Q And -- and State's 9, State's 8, this personal
15 letter?

16 A Yes, sir.

17 Q Did she write that in Lieutenant White's office?

18 A No, sir.

19 Q She wrote that in front of you?

20 A Yes, sir.

21 Q Did she seem relieved when she told you?

22 A Absolutely. She even put those -- that into words.

23 Q She even put that into words?

24 A Yes, sir.

25 Q Did you educate her on that?

1 A No.

2 MR. MEADORS: Thank you. That's all.

3 MR. STRICKLER: Your Honor, may I?

4 THE COURT: Yes, sir.

5 RECROSS-EXAMINATION:

6 BY MR. STRICKLER

7 Q One briefly. That will be the last thing that the
8 Deputy Solicitor asked you about, this letter, State's 8.

9 A Yes, sir.

10 Q Okay. You never intended to let Gina and Pete
11 Ulengchong have this letter, did you?

12 A Only a copy, show them a copy.

13 Q This letter was agreed to so it would be an
14 additional piece of evidence against Andrea Person,
15 correct?

16 A No, sir. I wouldn't -- that is not the only reason
17 why I would agree to something like that. I felt like she
18 had a message she wanted to convey to them honestly, and I
19 was going to give her that opportunity.

20 Q Generating an apology letter is not a technique
21 taught in interrogation to wrap everything up in a nice
22 little ball at the end of the day.

23 A I have never been taught that technique.

24 Q Never been taught that technique?

25 A No, sir.

1 MR. STRICKLER: Thank you, sir.

2 THE COURT: You may step down.

3 THE BAILIFF: All right. Watch your step.

4 (WHEREUPON, a bench conference was held in the
5 presence but not within the hearing of the jury).

6 THE COURT: Ladies and gentlemen, we're working on a
7 scheduling issue. If you can just be patient. That way
8 I'll know what time to tell you to report tomorrow.

9 (Pause).

10 Ladies and gentlemen, we're going to take a break for
11 the evening. We do have some scheduling issues that we're
12 trying to work with for tomorrow for witnesses.

13 After consultation with the attorneys, they tell me
14 that the time that we should realistically begin to start
15 will not be until one o'clock tomorrow afternoon.

16 JUROR: Whoa.

17 THE COURT: Which means that you've got all morning,
18 but when you come at one o'clock, that means you need to
19 have had your lunch and be ready to go from one o'clock
20 until the end of the day, and based upon that, it's my
21 understanding that their witnesses will -- will be
22 available at that time and will be able to go straight
23 throughout through the testimony.

24 Instead of coming in, in the morning, trying to pick
25 up one witness and taking a break until the afternoon,

1 just to give you a break all morning so that you can take
2 care of whatever else you need to take care of without
3 having to come in here and having a two to three-hour
4 lunch break.

5 We can just start in the afternoon, realistically,
6 and be able to continue on until the end of the day. I
7 hope that that does not cause any problems for you.

8 We are working to make sure that we are able to
9 present things to you in a clear, cohesive manner, and
10 we're trying to be aware of all of the scheduling issues
11 with all of the witnesses who have to appear and have to
12 testify.

13 Having said that, again, I'm going to remind you,
14 ladies and gentlemen, with all the instructions that I've
15 given to you over and over again -- and by the end of the
16 week, I'm going to sound like a broken record.

17 Please do not begin to discuss this matter among
18 yourselves. You still have not heard all of the evidence
19 and testimony that has to be presented in this case.

20 So it is premature for you to begin -- have any
21 discussions in trying to determine the facts in this
22 matter.

23 Most importantly, I ask that you please not allow
24 anyone to approach you to discuss this case with you.
25 Again, if someone attempts to do that, please tell them

1 that you are a juror. You cannot discuss it, and we ask
2 that you report it as soon as possible.

3 Again, remember as you come and go from the
4 courthouse, not to listen to conversations that you may
5 hear in the hallways, again for the reasons that I have
6 stated; that you have to make the decisions based upon the
7 evidence presented here and not based upon conversations
8 that are to take place outside of the courtroom.

9 Please also remember, ladies and gentlemen, again,
10 tell your family members and friends not -- that you
11 cannot discuss the case with them. Please ask them that
12 the judge has not -- has asked you not to discuss it with
13 them, and I ask that you please tell them that -- whatever
14 they may have heard or seen on the media or otherwise not
15 to discuss with you.

16 I caution you again, ladies and gentlemen, not to
17 listen to, watch, or read any media reports. That
18 includes internet media outlets. It includes television,
19 cable, newspaper.

20 I ask that you also not engage in any independent
21 investigation or research, and then all for the reasons
22 that those news reports are someone else's recitation of
23 what they heard, what they saw. You have to be guided by
24 what you heard, and what you saw, and the evidence that's
25 going to be presented here.

1 Additionally, ladies and gentlemen, if you engage in
2 any independent research or investigation, you are
3 introducing into this trial matters that are not evidence
4 in this case.

5 I don't want you to be influenced by any of that
6 information. It's not evidence. It's not appropriate for
7 you to consider that information. So I ask that you
8 please not listen to or watch any media reports or engage
9 in any independent research or investigation.

10 Your friends may want to tell you what they have read
11 or what they have seen. Please ask them to not discuss
12 the matter with you. It's critical that you only be
13 guided by the information that you hear here in this
14 courtroom.

15 With that said, ladies and gentlemen, I'm going to
16 ask that you report tomorrow morning to the same jury room
17 that you reported throughout at one o'clock.

18 Please make sure that you eat lunch before you come
19 because we will not take a separate lunch break. So when
20 you have reported at one o'clock, we should be ready to
21 continue on with the trial of this case, and we'll see you
22 tomorrow at one o'clock.

23 Thank you. Have a good evening.

24 (WHEREUPON, the jury left open court at approximately
25 5:10 p.m.)

1 THE COURT: Mr. Dye, would you make sure they leave
2 their note pads here, too?

3 Is there anything that we need to take up before we
4 adjourn for the day?

5 MR. MEADORS: Thank you for that scheduling tomorrow.

6 MR. STRICKLER: Your Honor, only to raise, again, the
7 question of Your Honor's ruling as far as...

8 THE COURT: Exhibit No. 9?

9 MR. STRICKLER: Yes, ma'am, and physically providing
10 that document.

11 THE COURT: I -- I think I know what I'm going to do,
12 but I'm going to wait a little longer.

13 MR. STRICKLER: That's fine.

14 THE COURT: And I'll hear some additional arguments
15 on that issue, but we'll make that decision, certainly
16 before it goes to the jury.

17 MR. STRICKLER: That's fine. Thank you very much.

18 THE COURT: And I just ask that you make sure that --
19 and, of course, we'll have that opportunity before the
20 exhibits go to the jury to double check and make sure that
21 they're in the appropriate format before, and that the
22 information that needs to be redacted is redacted before.

23 MR. MEADORS: I think we've done that. We'll
24 certainly double check.

25 MR. STRICKLER: Thank you, Your Honor. That's all.

1 THE COURT: All right. And with that, we'll see you
2 all tomorrow at one o'clock.

3 MR. MEADORS: Thank you, Judge.

4 (There was an overnight recess).

5 THE COURT: Is there anything we need to take up
6 before we begin?

7 MR. GIESE: No, Your Honor.

8 MR. STRICKLER: No, Your Honor.

9 THE COURT: You may ask the jury to come in, please.

10 THE BAILIFF: Bring the jury.

11 (WHEREUPON, the jury came into open court at
12 approximately 12:10 p.m.

13 THE COURT: Please remember to turn off all cell
14 phones and beepers.

15 THE BAILIFF: The jurors are all present, Your Honor.

16 THE COURT: Thank you. Good afternoon, ladies and
17 gentlemen. Is there any member of the jury panel -- I
18 noticed that again there have been media reports, and a
19 newspaper article today.

20 Is there any member of the jury panel who has had a
21 -- had the opportunity or has read any of the reports or
22 seen or watched any reports or had any discussions with
23 anyone in reference to any of the proceedings during this
24 trial? If so, please raise your hand.

25 (There was no response.)

1 Thank you, ladies and gentlemen.

2 At this time, we're ready to continue on. You may
3 call your next witness.

4 MR. GIESE: May it please the Court, Your Honor. The
5 State calls David Wilson.

6 DAVID WILSON, after being duly sworn,
7 testified as follows:

8 THE CLERK: Please have a seat. State your full name
9 for the record.

10 THE WITNESS: David Wilson.

11 DIRECT EXAMINATION:

12 BY MR. GIESE

13 Q Chief Wilson, where are you employed?

14 A At the Richland County Sheriff's Department.

15 Q And what's your position there?

16 A I'm Deputy Chief over investigations in the forensics
17 lab.

18 Q And how long have you been with the sheriff's
19 department?

20 A Almost 30 years.

21 Q And tell the jury a little bit about your background
22 and training in that field with the sheriff's department.
23 When did you start? What were you doing?

24 A I started back on January 5th, 1980, as a patrolman.
25 I just finished my college degree at the University of

1 South Carolina, my bachelor's degree in science, to the
2 criminal justice academy; served as an undercover agent
3 buying drugs for a period of time; after that, I went back
4 to uniformed patrol for a short period of time and then
5 went to investigations in 1983.

6 Q And you've been, basically, in investigations since
7 1983?

8 A That is correct.

9 Q Now, you said that you are the Deputy Chief?

10 A That's correct.

11 Q And explain what your duties are.

12 A I supervise all the investigators, all of the
13 narcotics agents. I also have the title of lab director.
14 I supervise the forensics lab. We have our own D.N.A.
15 firearms, chemists, that conduct tests on all our
16 evidence; also supervise crime scene people, as well as
17 the evidence room.

18 Q How many people work, I guess, with you or underneath
19 you?

20 A Probably umbrella, including part-time people,
21 probably about 120.

22 Q You supervise them?

23 A Yes, sir.

24 Q Now, you said that you supervise investigations. I
25 want to draw your attention back to April the 17th of

1 2007. Were you, at that time, also Deputy Chief?

2 A I was.

3 Q And you're overseeing the investigations at that
4 time?

5 A That's correct.

6 Q Now, on a day-to-day basis when you say you're
7 overseeing investigations, how involved do you normally
8 get in an -- in an investigation?

9 A Normally not very. I'm pretty much the
10 administrative head. I handle the paperwork, push
11 paperwork from one side of the desk to the other.

12 I administer the personnel problems, stuff like that.
13 Occasionally, if one of my subordinate supervisors, major,
14 captain, are out, then I'll step in and fill their shoes.

15 Q And specifically on the 17th of April of 2007, did
16 you have and opportunity to come in contact with the
17 defendant, Ms. Person?

18 A I did.

19 Q And explain to the jury where that took place.

20 A It took place at the sheriff's department.

21 Q All right. And where?

22 A In investigations, and eventually in my office.

23 Q All right. Now, what was your first contact with the
24 case?

25 A I've been briefed on the case as it progressed, and I

1 knew that the defendant was being interviewed that day. I
2 had come in from an appointment outside of the office and
3 was met by Investigator Isenhoward, who informed me that
4 there had been some developments, and he brought the
5 defendant into my office.

6 Q Let me stop you there. You said you were contacted
7 by Investigator or Sergeant Isenhoward. He investigated
8 at the time, I believe.

9 A Right.

10 Q Is that Sergeant Isenhoward in the courtroom now?

11 A That's correct.

12 Q And he works with you in the investigative division?

13 A That is correct.

14 Q So he approached you?

15 A Yes.

16 Q And what, if anything, happened after he approached
17 you?

18 A He approached me, told me there had been some
19 developments in the case, briefed me on what those
20 developments were, and we agreed that we would interview
21 the defendant.

22 Q And where did that interview take place?

23 A It took place in my office.

24 Q Now, were you inside the office and he brought her
25 in, or explain how that happened.

1 A To the best of my memory, I was sitting behind my
2 desk when he brought her in, interviewed her. There were
3 two chairs in front of my desk, and she took one nearest
4 the door, and he took one farthest from the door.

5 Q And tell the jury what transpired after she took a
6 seat.

7 A After she took a seat, Sergeant Isenhoward turned to
8 her and said, "Can you tell us what happened?" And she
9 proceeded, at that point, just to tell us what had
10 happened.

11 Q And what did she tell you?

12 A She told us that she was keeping the child, and I'll
13 refer to my notes here.

14 Q Please do.

15 A She stated that while keeping the child, the child
16 was fussy, had been sick, and she couldn't get it to stop
17 crying. She put her hand over its nose and mouth for a
18 period of 15 to 20 seconds.

19 Q Let me stop you there. When she said this, had she
20 been -- other than -- other than Sergeant Isenhoward
21 saying, "Please tell us what happened," were there any
22 other promptings at all?

23 A No.

24 Q Did you promise her anything to make that statement
25 up to that point?

- 1 A No.
- 2 Q Did you coerce her at all?
- 3 A No.
- 4 Q And, in fact, did you have any conversation with her
5 prior her saying that to you?
- 6 A Just her introducing ourselves, that's it.
- 7 Q Now, when she says this to you, how close are you to
8 her?
- 9 A She is sitting across the dress from me.
- 10 Q And you watched her say that she put her hand over
11 Zachary Ulengchong's mouth and nose for 15 to 20 seconds?
- 12 A That's correct.
- 13 Q Did she show any emotion at that time?
- 14 A Not that I recall.
- 15 Q Now, she said she put it over his mouth and nose for
16 15 to 20 seconds. What was the reason she gave?
- 17 A Try to shut him up.
- 18 Q Excuse me?
- 19 A Try to quiet the baby, stop him from crying.
- 20 Q Stop him from crying?
- 21 A Uh-huh.
- 22 Q Now, once she said that to you, did you follow up
23 with any questions to her?
- 24 A I did.
- 25 Q What was that?

- 1 A I asked her how much pressure she used, and I asked
2 her to demonstrate it by gripping my hand.
- 3 Q Did she grip it?
- 4 A She did.
- 5 Q All right. And how hard did she grip it?
- 6 A To the level of a firm handshake, not real hard, not
7 bone crushing but a firm handshake.
- 8 Q Show us how she did it, just on yourself, if you
9 would.
- 10 A Just like this (indicating).
- 11 Q And she was grasping your hand?
- 12 A She was actually grasping the palm of my hand.
- 13 Q Firm handshake?
- 14 A Yes, sir.
- 15 Q And when she did that firm handshake, that was in
16 response to your question as to how much pressure she used
17 with her hand over Zachary's mouth?
- 18 A Nose and mouth, yes, sir.
- 19 Q Did she say what happened, or what Zachary did after
20 she put that firm grasp over his hand and mouth?
- 21 A She said that when she removed her hand, that he took
22 a deep breath and was still.
- 23 Q And was what?
- 24 A And was still. She thought he was asleep at that
25 point.

1 Q Did she say what she thought had happened at that
2 time, or what she did after that?

3 A She said that she thought he was asleep, laid him
4 down, left him for a period of about 15 to 20 minutes.
5 Then when she checked on him, she realized he was not
6 breathing, tried to resuscitate him, and she called 911.

7 Q After she finished telling you about calling 911 and
8 discovering that Zachary wasn't -- wasn't breathing, did
9 you have any other conversation with her about her
10 emotional state at that time back in 1998?

11 A Yes, we did.

12 Q And what is that?

13 A She had mentioned that she had an operation. I
14 believe it was a hysterectomy, at the time, and she had
15 been in pain for a period of time. After she was
16 recovering from the hysterectomy, during this time period,
17 she was emotionally depressed.

18 Q And she told that to you?

19 A Yes.

20 Q Now, once she had made this statement, this oral
21 statement to yourself and Sergeant Isenhoward, what, if
22 anything, did you have Sergeant Isenhoward do?

23 A I don't know if I did it or he did it, but we
24 informed her that we needed to reduce it to a written
25 statement form.

1 Sergeant Isenhoward wanted to use his own computer,
2 so sergeant Isenhoward took her out to his cubical where
3 his computer is immediately outside of my office.

4 Q Now, is that standard, standard procedure or standard
5 practice in the sheriff's department to -- once you have
6 an oral statement, to put it in writing?

7 A Yes, sir.

8 Q If the person is willing to do it?

9 A That's correct.

10 Q In this case, did she say at that time she was
11 willing to do that?

12 A She was.

13 Q So what, if anything, happened after Sergeant
14 Isenhoward said -- or someone said, "Let's get a written
15 statement"? Where did they go?

16 A They went to Sergeant Isenhoward's cubical, which is
17 just outside of my office, just outside of my secretary's
18 office. He got on his computer.

19 He was sitting at his cubical. She was sitting at
20 the edge of his cubical. They are fairly small, a little
21 bit bigger than this but fairly small, and he got on his
22 computer where the statement forms were and started taking
23 her written statement.

24 Q So they were -- statement forms are -- explain that
25 to the jury.

1 A We have all of our statement forms on the computer
2 because our handwriting is oftentimes not the best and
3 it's hard to read, so we prefer taking it on the computer,
4 when we can.

5 Q And to your knowledge, was that done at the time?

6 A Yes, it was.

7 Q Now, were you sitting there or standing there when
8 this written statement was being taken?

9 A Not the entire time, no, sir.

10 Q What were you doing?

11 A I was back and forth checking on him from time to
12 time.

13 Q Were you doing other work at that time?

14 A I was.

15 Q Pretty busy at that time?

16 A Always.

17 Q Now, after a period of time, did Sergeant Isenhoward
18 call you over to the cubical?

19 A Yes.

20 Q And tell the jury what happened then.

21 A He had finished the statement and was ready to review
22 the statement with the defendant. To the best of my
23 recollection, he had printed out a copy, handed it to her.

24 He was reading off his computer screen, but he went
25 over the entire statement with her and asked her if

1 everything was correct or if there were any changes that
2 needed to be made.

3 At that time, everything was correct, and he swore
4 her in as a Notary Public to swear that she was telling
5 the truth to that statement. She signed the statement,
6 two places on each page, and we signed and witnessed it.

7 Q Now, were you actually there when Sergeant Isenhoward
8 was reading the statement over?

9 A I was.

10 Q So you actually watched him read it to her?

11 A Yes.

12 Q As she sat there?

13 A Right.

14 Q And as she followed on her own copy?

15 A That's correct.

16 Q And once that was completed, you actually witnessed
17 her signature?

18 A I did.

19 Q Before you said something about Sergeant Isenhoward
20 swearing her in. What is that, again?

21 A We have her raise her right hand and swear that
22 everything, all the information she has given, is the
23 truth.

24 Q And that's what notaries do?

25 A That's correct.

1 Q And Sergeant Isenhoward, I believe, is a notary?

2 A I believe so, yes, sir.

3 Q I hand you what's been marked State's Exhibit No. 9,
4 could you look at all three of those pages and tell me if
5 you can identify that?

6 A Yes, sir.

7 Q What is that?

8 A This is the written statement.

9 Q Now, you say it's the written statement.
10 Specifically on State's Exhibit No. 9, is your signature
11 on there?

12 A Yes, sir. My signature would be in this position on
13 all three of those pages as a witness.

14 Q As a witness to what?

15 A The fact that she gave that statement, the fact that
16 she gave it freely and voluntarily as it reads.

17 Q And her signature?

18 A That's correct.

19 Q So you actually saw her sign this written statement?

20 A Two places on each page, yes, sir.

21 Q And the signature on the bottom where it says "Notary
22 Public" is?

23 A Kevin Isenhoward.

24 Q Now, Chief, I'm going to ask you one more time:

25 While you were in contact with Andrea Persons on the 17th

1 of April of 2007, did you or anyone that you saw or
2 anybody that worked for you promise her anything to make
3 that statement?

4 A No, sir.

5 Q Did you threaten her in any way?

6 A No, sir.

7 Q Did you withhold any hope of reward if she made the
8 statement?

9 A Absolutely not.

10 Q Did she appear to understand her rights?

11 A Yes, sir.

12 Q Did she appear to freely talk to you?

13 A Yes, she did.

14 Q Once she had made that statement, the written
15 statement, did you have any contact with her that day?

16 A I did.

17 Q And not on this case --

18 A No.

19 Q Not on any matter --

20 A No.

21 Q -- concerning this event?

22 A No, sir.

23 MR. STRICKLER: Objection, Your Honor. I have a
24 matter of law to take up.

25 THE COURT: Yes, sir. You can approach.

1 (WHEREUPON, a bench conference was held in the
2 presence but not within the hearing of the jury).

3 MR. GIESE: That's all I have.

4 MR. STRICKLER: Beg the Court's indulgence, Your
5 Honor.

6 THE COURT: For the record, I note there's an
7 objection by the State (sic), and I'll take up the matter.

8 (Pause).

9 MR. STRICKLER: Thank you.

10 CROSS-EXAMINATION:

11 BY MR. STRICKLER

12 Q Good afternoon, Deputy Chief. You've been with law
13 enforcement for a long, long time?

14 A Yes, sir.

15 Q It's a fair statement, I take it, correct? And as --
16 s I understand it, in the hierarchy in the sheriff's
17 department, you have Sheriff Lott. You have an
18 individual, Dan Johnson, who is the Chief Deputy; is that
19 correct?

20 A That is correct.

21 Q And then immediately under him is -- are three, four
22 deputy chiefs for various areas?

23 A Three deputy chiefs that report directly to the
24 sheriff.

25 Q Okay. So you're the third tier in the command

1 structure?

2 A Yes.

3 Q Part of the third tier. Okay. And you've been
4 involved in investigation yourself, since 1983, either as
5 a supervisor or an investigator to a supervisor, correct?

6 A Yes, sir.

7 Q At this point, you're supervising investigations in
8 forensics, if I understand your testimony, correct?

9 A Yes, sir.

10 Q And during the course of your 30 years or so of law
11 enforcement, you have received repeated and ongoing
12 training in various aspects of law enforcement, correct?

13 A Yes, sir.

14 Q And would it surprise you if -- to learn that the
15 Criminal Justice Academy lists you as having in excess, by
16 my count, 1200 hours of education, continuing education?

17 A No, sir.

18 Q It wouldn't surprise you? And during the course of
19 your education, you have been trained in techniques
20 involved in interrogation, correct?

21 A Yes, sir.

22 Q You've been trained personally in what's been
23 referred to as the Reid Technique.

24 A I have.

25 Q There's other techniques, but that's one of the

1 foremost, but there are multiple techniques, correct?

2 A That's correct; yes, sir.

3 Q And I understand what your testimony is here today.
4 Your testimony is, as I understand it, that point in time
5 that Ms. Person came in contact with you, you introduced
6 yourself and asked her what happened, and that was it.
7 She just told you.

8 A Yes, sir.

9 Q I mean, in so many ways. Is that a fair summary?

10 A Yes, sir.

11 Q So you didn't find necessity, I take it in your
12 testimony, to educate her in any aspects of the facts of
13 the particular case, correct?

14 A That is correct.

15 Q And that's sometimes done in the course of
16 interrogating someone, correct?

17 A There are some times that you talk to them about the
18 case.

19 Q Okay. You didn't, if I understand your testimony
20 correctly, have to engage in perhaps providing excuses to
21 her for her behavior in order to go ahead and encourage
22 her to admit to what she was involved in, correct?

23 A That is correct. There is very minimal conversation.

24 Q And that, too, is one of the techniques involved, or
25 which can be employed, during interrogation, correct?

1 A Yes, sir.

2 Q You didn't have to suggest to her that she minimize
3 her involvement but still agree that she was involved in
4 order to go ahead to get her to confess, correct?

5 A No, sir. As I stated, there was no conversation
6 along those lines.

7 Q You didn't have to imply or suggest that her
8 confession would help bring closure to the victim's family
9 in this case and appeal to her in that regard, correct?

10 A That's correct.

11 Q That, too, however, is a technique that's used in
12 interrogation, correct?

13 A At times.

14 Q Okay. And given the substantial -- or a portion of
15 what your training is -- this ongoing training is in
16 updating on legal standards and what's permissible and
17 what's not permissible.

18 You know that it is during the course of the
19 interrogation permissible to go ahead and lie to someone
20 in -- in order to go ahead and facilitate the
21 interrogation, but that didn't happen in this case either,
22 correct?

23 A No, that did not happen. We are allowed to use
24 trickery at times, tell people we have evidence we don't
25 have such as fingerprints, stuff like that, but none of

1 that occurred.

2 Q No trickery, no lying. Now, I believe your testimony
3 was that you spent some period of time, however long it
4 was, with her and then Investigator Isenhoward, now
5 Sergeant Isenhoward, in your office. And after some
6 period of time in there, the two of them left and went to
7 his cubical, which is a short distance away from your
8 office, correct?

9 A That's correct.

10 Q And you testified about coming over to his office and
11 witnessing the signing of the statements. Were you back
12 and forth between your office and the cubical prior to
13 that?

14 A Yes.

15 Q Okay. So during the course of the time that he's
16 talking with her in his office, he made one or more trips
17 back and forth there just during the course of typing up
18 the statement itself?

19 A That is correct.

20 Q And isn't it true at one point in time that you got
21 on the phone and -- and claimed to be calling your friend,
22 the coroner?

23 A I don't recall calling the coroner.

24 Q Okay. Isn't it true at one point in time you got on
25 the phone and claimed to have called your friend, the

1 coroner?

2 A No.

3 Q Okay. And isn't it true that during the course of
4 your conversation with her, that in your office, be it
5 over at Investigator Isenhoward's cubical, that you were
6 back and forth with her, and Mr. Isenhoward was back and
7 forth with her, about the fact that what she said wasn't
8 making any sense?

9 A I don't recall anything like that.

10 Q You don't recall that, and that you latched on to
11 this hysterectomy as explaining how she might have acted
12 out of -- had -- how she might have snapped or whatever
13 the use may be and suffocated the child.

14 A I didn't latch on to that at all. That was something
15 that she brought up.

16 Q Didn't you and/or Sergeant Isenhoward imply that she
17 was almost done and imply that to go ahead and give a
18 statement, she could go ahead and go home?

19 A No.

20 Q And if you remember, and I don't know that it's in
21 your notes, do you remember what Andrea's demeanor was
22 like when she was in your office?

23 A I remember her being totally cooperative, very nice.
24 I mean, we were talking, you know, but she was giving her
25 side of the story. She was very open and very honest.

1 Q She wasn't crying?

2 A Pardon?

3 Q She wasn't crying?

4 A I don't recall her crying at that point.

5 Q You don't recall her being upset?

6 A I seem to recall her being remorseful, but I also
7 seem to recall her being relieved, as well, and making
8 some statements to that effect.

9 Q And I take it that you also would not recall her
10 denying that she did anything to Zachary, repeatedly
11 denying that she did anything to Zachary Ulengchong?

12 A She never denied it.

13 Q You never saw that?

14 A She gave the story.

15 Q Now, and I understand your statement is there, and
16 it's witnessed by you and notarized by -- by Sergeant
17 Isenhoward. It's not tape recorded, correct?

18 A No.

19 Q It's not videotaped, correct?

20 A No.

21 Q And as a matter of policy in the sheriff's
22 department, these things are not, statements like this,
23 are not tape recorded or videotaped, correct?

24 A That's correct.

25 Q It's a policy of it?

1 A That's correct.

2 Q So as a matter of policy, the sheriff's department --
3 I don't debate the merits of the policy one way or the
4 other, but as a matter of policy, the sheriff's department
5 decision is that what you all would rely on as far as
6 proving the statement was a document and the officers who
7 were involved in taking it as opposed to any kind of
8 recording package, correct?

9 A It is a policy, and it's based on the fact that we
10 have over 500 deputies. Our deputies interview both
11 witnesses and suspects every day.

12 In order to equip 500 deputies -- and we feel like,
13 and we've looked at this year in and year out -- if you're
14 going to tape record, you're going to videotape one type
15 of statement, we need to do them all.

16 We would like nothing better than to do them all;
17 however, when you're talking 500-something deputies every
18 day interviewing multiple people and technology, reliable
19 technology, just isn't there.

20 We searched and tested stuff. We're in the process
21 of testing video and audio technology now.

22 Q Now, I understand what you're saying. You and I both
23 know that there's serious crime in Richland County, and
24 there's a lot that does not quite rise to that level,
25 correct?

1 A It depends on whether or not you're the victim.

2 Q Well, I understand. It is much in the eyes of the
3 beholder, however. How many homicides?

4 A It varies from year to year: Low end, probably 14,
5 15; high end, 32, 33.

6 Q You define homicide as any case in which there is a
7 death, okay.

8 A Then it goes up significantly.

9 Q I'm sorry?

10 A An actual homicide, as you're going to define it as
11 just a death, then it goes up significantly.

12 Q Your characterization of a homicide, would that, the
13 initial statement, 30, 40 -- 20, 40, would include
14 homicide by child abuse?

15 A Yes.

16 MR. STRICKLER: Beg the Court's indulgence.

17 (Pause).

18 Thank you, Your Honor. Nothing further.

19 THE COURT: Any redirect?

20 MR. GIESE: Just two questions, Your Honor.

21 REDIRECT EXAMINATION:

22 BY MR. GIESE

23 Q Mr. Strickler was asking you about different
24 techniques used in interrogation. While you were present,
25 were any interrogation techniques used?

1 A Absolutely not.

2 Q He also asked you about how she reacted when she was
3 speaking with you, and I believe you testified that she
4 looked to be -- I believe I wrote this down wrong,
5 "relieved"?

6 A I remember her making statements that she was
7 relieved to finally get this off her chest; that she had
8 not told anybody anything like this or anything about
9 this.

10 MR. GIESE: Thank you. That's all I have.

11 THE COURT: You may step down. Thank you.

12 THE BAILIFF: Watch your step down.

13 THE COURT: You may call your next witness.

14 MR. MEADORS: If it please Your Honor.

15 MS. PRINGLE: May we approach, Your Honor?

16 MR. STRICKLER: May we approach?

17 THE COURT: Yes.

18 (WHEREUPON, a bench conference was held in the
19 presence but not within the hearing of the jury).

20 MR. MEADORS: The State would now call Dr. William
21 Armstrong.

22 WILLIAM ARMSTRONG, after being duly
23 sworn, testified as follows:

24 THE CLERK: Please have a seat. State your full name
25 for the record.

1 THE BAILIFF: Both of them; state your full name for
2 the record.

3 THE WITNESS: Full name is William Roger Armstrong.

4 DIRECT EXAMINATION:

5 BY MR. MEADORS

6 Q Good afternoon, Dr. Armstrong.

7 A Good afternoon.

8 Q Now, if you will, I know you've testified plenty of
9 times. Just, obviously, speak up loud enough so these
10 ladies and gentlemen and the court reporter can hear you.

11 Doctor, would you please relate to the jury a little
12 bit about yourself, specifically where you're from, where
13 you were raised, your background, your education, and in
14 particular your education in the field of expertise that
15 we have asked you to testify here today about, please?

16 A Well, I was born in Michigan, raised there in
17 Michigan. I graduated from medical school at the
18 University of Michigan.

19 I did my pathology residency at the University of
20 Michigan, and while I was not in specific training in
21 forensic pathology, we did -- we performed forensic cases
22 as residents.

23 I spent a few years in the United States Army as a
24 pathologist, and I worked at Henry Ford Hospital as a
25 pathologist for two years. I've been in this community as

1 a pathologist for 31 years, 23 at Richland and eight at
2 Lexington Medical Center.

3 We perform general pathology duties there, which
4 includes certain aspects of the clinical labs and blood
5 testing; reading out pap smears; reading out surgicals;
6 interpreting biopsies; and also, we perform the forensic
7 autopsies for either the county, Richland County, or
8 Lexington County, and I -- I do those.

9 Q What's the difference between pathology and forensic
10 pathology, Doctor?

11 A Well, a general pathologist is qualified to do the
12 things that I mentioned first. A forensic pathologist is
13 more -- has more expertise in -- or has more qualification
14 to make estimates of situations based on his findings;
15 whereas, you know, a general pathologist would simply look
16 at what he has. In other words, we put together clinical
17 information, investigative reports for someone that is not
18 living.

19 Q How many autopsies have you performed?

20 A Here, probably a couple thousand.

21 Q And have you previously been offered as an expert in
22 courts of record of this state in the field of forensic
23 pathology?

24 A Yes, I have.

25 Q And have you been so accepted?

1 A Yes.

2 MR. MEADORS: Your Honor, at this time, we would
3 offer Dr. William Armstrong as an expert in the field of
4 forensic pathology?

5 THE COURT: Any voir dire there?

6 MR. STRICKLER: No, Your Honor. I have no voir dire.

7 THE COURT: Any objection?

8 MR. STRICKLER: No, Your Honor.

9 THE COURT: Then I'll find him qualified as an expert
10 in forensic pathology.

11 BY MR. MEADORS

12 Q Thank you.

13 Doctor, I would like to take you back, and am going
14 to take you back to December 2nd of 1998. Where were you
15 employed then?

16 A Richland -- it was called Richland Memorial Hospital
17 at that time, now Palmetto.

18 Q And what department were you in?

19 A Department of pathology.

20 Q Did you have an occasion on December 2nd of 1998, to
21 perform an autopsy on the body of Zachary Ulengchong?

22 A Yes, I did.

23 Q And that took place in the morgue?

24 A It did, in the morgue at -- in the hospital.

25 Q Yes, sir. And I guess as, perhaps as you do in all

1 autopsies but specifically in this autopsy, can you tell
2 the jury what you did with Zachary's body? How do you
3 perform an autopsy? What's the -- what do you do in the
4 morgue?

5 A Well, a forensic autopsy, the performance of it is a
6 little bit different, as well. We -- in that, we tend to
7 first inspect the external portion of the body, the skin
8 all over, to check for any traumatic lesions.

9 After that is done, we may take photographs or
10 x-rays. After that is done, we open the organs of the
11 chest and abdomen and remove them and examine them with
12 our -- visionally in our hands with gloves and then
13 inspect them and take small pieces of tissue, which we
14 will then later affix in formalin, a formaldehyde process
15 for making microscopic sections so that we can look at
16 tissue underneath a microscope. We may take cultures at
17 that time.

18 The head is -- the scalp is reflected, and the brain
19 is removed and examined with the same procedures there.
20 We often save certain tissue portions such as brain,
21 kidney, liver, for possible toxicology use later on.

22 The organs are returned to the body, and the body
23 goes to the funeral home. We keep the tissue that was
24 saved for further evaluation.

25 Q Okay. It's kind of just a set procedure, isn't it,

1 external examination, look at the organs, kind of go
2 through. You have a procedure that you use, correct?

3 A Yes. It's a standard procedure used all over.

4 Q And, Doctor, as a result of your external examination
5 of Zachary Ulengchong, can you tell the jury what, if
6 anything, you found?

7 A I found no evidence of traumatic lesions. Things --
8 other things that we look for are the perineum, because
9 young children like that, if there is parental neglect of
10 any kind, we often see if they get a rash down there if
11 it's not cared for. Sometimes babies get that anyway, but
12 I found no evidence of that. The baby looked well cared
13 for.

14 Q What did you do next after your internal -- you
15 describe it generally, but with Zachary Ulengchong
16 specifically, did you look into his body?

17 A Yes. I did the whole complete autopsy there.

18 Q Can you tell the jury what you found?

19 A That includes the microscopic and so forth. Well,
20 the examination of the heart, some things that we look
21 for, are -- in this age, there any congenital anomalies.
22 There were no congenital anomalies there.

23 Of course, he would not have any hardening of the
24 arteries or atherosclerosis at that age. It's mainly
25 congenital defects, and I found no -- I found none.

1 The lungs were heavy, heavier than normal. They were
2 firm, acutely congested, at least. That was on the
3 initial inspection. That is not an entirely unusual
4 finding for someone who dies for a variety of reasons. So
5 at that time, I did not suspect any infectious process,
6 and no cultures were taken of the lung but sections were
7 taken.

8 Under microscopic examination of the lung, I did find
9 that there was a pneumonia there and the bronchitis. The
10 -- actually, in my original report I, did not quantitate
11 the degree of pneumonia, but it was actually a mild case
12 at that point.

13 Q A mild case?

14 A A mild case. We don't have, really, a good scale,
15 but it was, you know, early.

16 Q And were slides taken, or pictures taken, slides made
17 of the lungs of Zachary?

18 A Yes.

19 Q And were you able to look at those in December of
20 1998?

21 A Yes, I was.

22 Q And did you look at them again recently in
23 preparation for this trial?

24 A Yes, I did, and my opinion is the same of the
25 interpretation of those, of the slides.

1 Q Correct, sir; minimal pneumonia?

2 A Minimal pneumonia.

3 Q Now, what were your findings in December of 1998, as
4 to the cause of death, in 1998, as to the cause of death
5 of Zachary Ulengchong?

6 A Well --

7 Q And before I do that, you said considering the age of
8 this child. This child is approximately 12-and-a-half
9 months?

10 A Yes.

11 Q Okay.

12 A To finish up the story, all of his other internal
13 organs were normal. In the brain, I did find one thing,
14 and that is that he had early swelling of the brain.

15 That is detected by, you know, just looking at,
16 really, the circuits of the brain. I think many of you
17 have seen the pictures of the brain or simulated drawings
18 of it. It's kind of got these convolutions in it.

19 When the brain gets too much fluid in it, it swells,
20 these convolutions kind of flatten out. And so you can --
21 so you can -- that's basically how we determine that there
22 has been swelling. You can't really quantitate it, but --
23 so there was swelling right there.

24 Q Thank you, sir. Before we get to your findings in
25 December of '98, is there anything else about the body of

1 Zachary Ulengchong you'd like to convey to the jury, as a
2 result of your examination?

3 A Well, I had mentioned that the lungs were red and
4 kind of heavy, and some of it was pneumonia, but most of
5 it was just what we term acute hemorrhagic edema.

6 Now, people in heart failure, where they get foam,
7 that's just with no red cells in it, just fluid backs up.
8 Hemorrhagic edema is one where there is fluid and red
9 cells. That means that there generally has been, usually,
10 a leakage of all whole blood out of capillaries in the
11 lung. That is a nonspecific finding.

12 It can be seen in a variety of conditions, terminal
13 deaths from a variety of conditions can cause that.
14 Drowning is one classic example of it; suffocation from a
15 variety of reasons, or strangulation tends to cause that,
16 as well, but it is not specific for any of those things.

17 Q So your findings or cause of deaths in December of
18 1998, based on the information you had was what, Doctor?

19 A Pneumonia, and this was basically due to the lack of
20 any other specific findings that I could -- in fact, in
21 toxicology, we also do -- I did not mention it, but
22 toxicology showed no abnormal or dangerous drugs in the
23 body.

24 Q And you send those on for testing, and that was
25 negative, basically?

1 A Yes.

2 Q In December of 1998, Doctor, did you have a medical
3 history of Zachary Ulenchong that prior year?

4 A No, I did not.

5 Q In December of 1998, did you have a timeline of when
6 he was dropped off at a day care, and that he was dead two
7 to two-and-a-half hours later?

8 A Only a -- no. I didn't really have a -- a clear
9 understanding of that.

10 Q And in December of 1998, did you have a statement
11 from an individual that said she had put her hand over the
12 mouth and throat of Zachary Ulenchong until the body went
13 limp? Did you have that information?

14 A No, I did not.

15 Q Let me ask you: As a forensic pathologist, what
16 information do you like to have -- I mean, in an ideal
17 world, I mean, if you could just make your own world here
18 in pathology, with what would you like to know about a
19 death before you come in and tell these folks, "This is
20 what I think the cause of death is"?

21 A Well, the list is very long on that in that it kind
22 of depends on the initial circumstances we find, but time
23 intervals are often extremely important for us. Other
24 things that may be is position of the body; you know,
25 clothing; the temperature in the room; any history of

1 other illnesses that the person may have.

2 Q Doctor, since April of 2007, have you -- have you had
3 an occasion to review the medical history of Zachary
4 Ulengchong the year before?

5 A Yes.

6 Q Have you had an occasion to review the timeline
7 through either E.M.S. run sheets or...

8 A Yes, I have.

9 Q Have you had occasion to look at and/or discuss
10 statements made by this defendant regarding what she said
11 she did to the body of Zachary Ulengchong?

12 A Yes, I did.

13 Q Have you conferred with Dr. Nichols?

14 A Yes.

15 Q Have you talked with us and the Solicitor's Office?

16 A Yes.

17 Q Have you talked with representatives of the Public
18 Defender's Office?

19 A Yes.

20 Q After reviewing this information, and you also went
21 back and looked at the slides.

22 A I did.

23 Q Will you tell the ladies and gentlemen of this jury
24 on November 19th, 2009, what is your opinion, to a
25 reasonable degree of medical certainty, of the cause of

1 death of Zachary Ulangchong?

2 A Well, I have adjusted my opinion on that, and now I
3 feel that it is due to a suffocation.

4 Q And tell them why. Tell them why you now say that is
5 your opinion, Doctor, please.

6 A Well, in the first place, the severity of the
7 pneumonia was mild, and while it was the only thing I had,
8 it generally -- in order to kill a person, we like to see
9 it be more extensive, in other words fill the lungs.

10 I cannot -- and at the time I did not know what the
11 bacteria was that caused this. And certainly, there are
12 some bacteria that release a lot of toxins that are
13 dangerous and lethal to the body even though you don't
14 have a lot of pneumonia, but in this case, not knowing any
15 of that information, the degree of pneumonia was
16 relatively mild; and it would be unusual for that in the
17 average germ to cause death.

18 There was, in addition to that, and I think probably
19 the most important thing that I got -- I would use to make
20 this new diagnosis, or adjusted diagnosis, is the timeline
21 at which things occurred. There was, you know, roughly a
22 half an hour between the baby being well and the baby
23 dying.

24 Q Two hours -- or what did you say, half an hour?

25 A Well, one to two hours. Well, half-an-hour to two

1 hours. In either case, whatever time you use --

2 Q Are you saying two hours, two-and-a-half hours is too
3 quick for the baby to die of mild pneumonia? Is that what
4 you're trying to say?

5 A Yes, sir. I was about to say that. I thought that
6 was too precipitous, and in the intervening time, there
7 was apparently a covering up and compensating the
8 patient's respiratory system in the interval that she was
9 well and at the time that she died -- he died.

10 There was a little -- some supporting evidence that
11 the child suffered acute brain swelling.

12 Q Is that -- let me -- on your report on number three,
13 and I was going to ask you that in a minute. By the
14 brain, you said early acute cerebral edema.

15 A Yes. That's the same thing.

16 Q All right.

17 A Acute cerebral edema is the same as acute brain
18 swelling.

19 Q And that's what you found back in December of '98,
20 also, correct?

21 A Yes.

22 Q And with this new information that you were also
23 provided this since April of 2007, how was your finding
24 back then of the acute cerebral edema? What can cause
25 that? What is that, Doctor?

1 A Well, there's just too much fluid in the brain, and
2 the brain swells. It's seen in a wide variety of these
3 conditions, which I've already mentioned but I'll mention
4 again: It is head trauma, drugs, and some form of
5 restricting your oxygen; that can be a drowning; that can
6 be a strangulation. It can be even in mountain climbers
7 where they have a mountain sickness, a brain swelling, and
8 nausea, and vomiting. It's just the oxygen level is too
9 low for them there. So --

10 Q Could that be consistent with suffocation?

11 A It is now.

12 Q Doctor, is there anything else about the body or the
13 anatomy of this child after reviewing that would also play
14 a part in your opinion today?

15 A I can't immediately think of one.

16 Q To -- with all due respect to everybody, did you have
17 an occasion to examine the genitals of young Zachary
18 Ulengchong?

19 MR. STRICKLER: I'm sorry, I didn't hear the
20 question.

21 MR. MEADORS: Genitals. Genitals.

22 MR. STRICKLER: Oh, thank you.

23 THE WITNESS: Yes, sir.

24 BY MR. MEADORS

25 Q Anything from your examination back in December of

1 1998, that plays a part in your opinion today?

2 A Yes, there is. Actually, his fingernails were
3 slightly blue and his penis, the glans penis, the tip of
4 it, was very blue. What that basically means is that the
5 blood is -- blood that is not oxygenated is blue, and
6 blood that has oxygen in it is red.

7 And if you find blue under the fingernails and blue
8 anywhere else, that generally means that there is
9 insufficient oxygen. In other words, hypoxia or low
10 oxygen. That, like the brain swelling, is not entirely
11 specific, but it is certainly always seen in suffocation,
12 but it can be seen in other -- other conditions. The
13 other conditions that it could be seen in I don't think
14 were present in this situation.

15 Q But always seen in suffocation?

16 A Yes, sir.

17 Q Doctor, if you had had all of this other information
18 that you acquired after April of 2007, back in December of
19 1998, would your opinion as to the cause of death of
20 Zachary Ulengchong been different?

21 A Yes, it would.

22 Q Would it have been the opinion you just gave to this
23 jury today on November 19th, 2009?

24 A Yes, it would.

25 MR. MEADORS: Thank you, Doctor.

1 Judge, that's all.

2 THE COURT: Any cross?

3 MR. STRICKLER: Beg the Court's indulgence.

4 (Pause).

5 CROSS-EXAMINATION:

6 BY MR. STRICKLER

7 Q Good afternoon, Doctor.

8 A Good afternoon.

9 Q Several things. As I understand it, your diagnosis
10 in 1998 when you conducted this autopsy, was young Zachary
11 Ulengchong had a mild case of pneumonia, correct?

12 A Yes.

13 Q And where is that reflected in your report?

14 A The fact that he has a pneumonia is in my report.

15 Q Right.

16 A Whether it was mild or not is not.

17 Q Mild, that's not in the report, sir, correct?

18 A Could you say that again, please?

19 Q The fact that you considered it mild at that time is
20 contained nowhere in your report, is it, Doctor?

21 A The -- that's correct. It was not quantitated.

22 Q But evidently, it was mild enough to kill him,
23 according to you, in 1998, correct?

24 A It was the only finding that I had at that time.

25 Q Now, you indicated in your direct testimony, sir,

1 that you went back and reviewed the slides that were taken
2 during the autopsy in this matter. When did you review
3 these slides, the tissue slides?

4 A Yes; currently, you mean?

5 Q Well, you reviewed them in 1998 prior to rendering
6 your final opinion as to the cause of death then, correct,
7 '98, '99?

8 A Yes.

9 Q When did you again review them?

10 A Two days ago.

11 Q Two days ago. And you indicate that you reviewed
12 Zachary Ulengchong's medical history in reconsidering your
13 opinion. When did you do that, sir?

14 A That was several months ago. I don't remember the
15 exact date.

16 Q Now, in your testimony as to your current findings
17 that it -- and the severity is mild, I believe you
18 indicated you would have liked to have seen more extensive
19 evidence of pneumonia to have it as a cause of death,
20 which was sufficient in 1998.

21 You also indicated that you didn't know what bacteria
22 caused it, what organism caused it, correct?

23 A That's correct.

24 Q You also indicated that -- and I'm sure I didn't get
25 down the exact words, some bacteria are extremely toxic,

1 correct?

2 A That's correct.

3 Q So a mild case of pneumonia could be still extremely
4 toxic, correct?

5 A It could be.

6 Q Okay. And we -- you may have referenced this. We
7 don't know what bacteria it was, because as you indicate
8 in your autopsy from -- the report done February 2nd,
9 1999, "Because of the lack of gross findings, the lungs
10 were not cultured for bacteria or viruses," correct?

11 A That's correct.

12 Q Okay. So whether or not there was an extremely
13 virulent bacteria capable of killing through a mild
14 pneumonia, we don't know because you didn't check for what
15 kind of bacteria it was, correct?

16 A Yes.

17 Q Now, I'm still a little confused as to what you meant
18 by timeframe. What timeframe did all of this occur in?

19 A Well, as I recall from the words of the defendant,
20 that she saw the baby was crying after it had eaten --
21 drink -- drunk formula; that she placed her hand over the
22 baby's mouth and nose; the baby stopped crying. She left
23 in approximately 20 minutes, maybe half-an-hour, came back
24 and the baby was dead.

25 Q So that's the half hour?

1 A Yes.

2 Q But then I heard something about two hours. That's
3 where I'm getting confused.

4 A Yeah. Well, I -- two hours is probably incorrectly
5 stated.

6 Q A half-hour. Were -- what did you review? Let me
7 ask you that. Let me finish up the question, here. Did
8 you review a statement from Ms. Person about finding the
9 child face down in vomit in the Pack N Play?

10 A I did not remember that statement.

11 Q Okay. Did you review any of these photographs
12 labeled State's 1, 2, and 3? Take a closer look.

13 A I'm going to have to take my glasses off --

14 Q Yes, sir.

15 A -- so I can see.

16 (Pause).

17 No. I have not seen these photographs.

18 Q All right, sir. If you'll pass them to me, please.

19 Specifically, sir, as to State's Exhibit No. 2,

20 okay --

21 A Yes.

22 Q -- which reflects staining to the mattress of the
23 Pack N Play?

24 A Yes, sir.

25 Q Okay. Which has been testified as -- to by another

1 witness in the trial, as being damp, recent, consistent
2 with vomit in the Pack N Play. You didn't see that,
3 correct?

4 A That's correct.

5 Q So you were not presented with the evidence that was
6 consistent with the statement that Ms. Person gave
7 contemporaneous with the incident, not with the one in
8 2007 -- contemporaneous with the incident which says she
9 found the child face down in vomit?

10 A I did not get the information on that.

11 Q Okay. That would have no impact on your decision
12 here today or the changing on your opinion as to the cause
13 of death I take it, correct?

14 A Well, let me just -- I'm not entirely sure. Let me
15 just say this: That the vomit soaked into the -- into the
16 bed covering so that it wasn't a result of somebody who
17 was lying in fluid and occluded their nose, if you
18 understand what I mean.

19 In other words, it wouldn't be like sticking your
20 nose in a pile of stuff and you couldn't breathe because
21 of that. It soaked right on through because it was
22 formula.

23 I -- I did not find any evidence that -- in examining
24 the child's lungs extensively that the baby had aspirated
25 any formula, and that can cause aspiration. So I probably

1 would not have changed my opinion and would add that
2 agonal vomiting is very common. In other words, some
3 people can just regurgitate as they're dying, so I don't
4 think it would change. The answer is no.

5 Q Were you provided with the statement of one Mandy
6 Fortson, who was the first person, other than Andrea, to
7 arrive at the scene at that point?

8 A I read over that briefly; yes, sir.

9 Q Do you remember reading, "I began compressions. The
10 very first compression I did formula, or what appeared to
11 be formula, sprayed from his nose and mouth." Do you
12 remember reading that?

13 A No, not -- not exactly but that again, is not
14 uncommon.

15 Q Do you remember reading right after that, "It
16 appeared that the lungs might have been filled with
17 formula"?

18 A The lungs were not filled with formula.

19 Q Well, they weren't filled with formula at the time
20 you looked at it?

21 A Well, if it were filled with formula at some time, I
22 would have seen it.

23 Q If it were filled with formula some time, you would
24 have seen it?

25 A The recitation efforts could explain why there was

1 formula on the bed and the baby actually did not vomit it
2 themselves.

3 Q Your testimony is that the recitation efforts did not
4 take place at the death.

5 A Wait...

6 Q Now --

7 MR. MEADORS: Judge, I object. There wasn't
8 testimony to that one way or the other.

9 MR. STRICKLER: The testimony was, I believe from
10 Ms. Fortson, that she found the child on the floor, not on
11 the bed, and the C.P.R. was conducted there. That's the
12 basis for my question.

13 THE COURT: I think the jury has heard the evidence,
14 and they can make the decisions as to what they believe is
15 the correct statement.

16 BY MR. STRICKLER

17 Q Now, your findings in your final autopsy was actually
18 February of 1999, correct, the final?

19 A Yes.

20 Q And your findings were as to the lungs, acute and
21 chronic bronchitis, correct?

22 A Yes.

23 Q Those are still your findings, correct?

24 A Yes, that's still there.

25 Q And acute and chronic means long-standing bronchitis

1 and recent bronchitis, current bronchitis?

2 A That's correct.

3 Q Correct? Chronic belongs to anything, it's acute,
4 chronic; lobular pneumonia, correct?

5 A Yes.

6 Q You still find that there was lobular pneumonia?

7 A Yes.

8 Q You just don't think it's enough to kill the child.

9 A I think that there is supervening circumstances that
10 could cause me to choose another cause of death.

11 Q Intra alveolar hemorrhage, okay.

12 A Yes.

13 Q Now, what's that because that's a nonspecific
14 finding, isn't it?

15 A It is. It's where edema fluid and red blood cells
16 are in the alveolar sacs.

17 Q The alveolar sacs are the sacs in the lungs that
18 transfer oxygen from the lungs into the blood?

19 A Yes.

20 Q Is that correct, in very laymen's terms?

21 A In very what?

22 Q Laymen's terms?

23 A Yes; that's correct.

24 Q And acute visceral congestion, what's that refer to?

25 A It means that blood pools in organs. I mean, there's

1 a lot more blood in there than is normal, and they look
2 congested.

3 Q Okay. That's a nonspecific finding.

4 A It's nonspecific.

5 Q And I think you mentioned acute hemorrhagic edema as
6 far as the lungs. Is that the intra alveolar hemorrhage?

7 A Yes.

8 Q Okay. You mentioned possibly being associated with
9 drowning, suffocation, and any one of a number of other
10 things.

11 A Yes.

12 Q Correct?

13 A That's correct.

14 Q A long, long list of things?

15 A A long list.

16 Q You can Google inter-alveolar hemorrhage and get an
17 extremely long list of things that can be associated with
18 it, correct?

19 A Yes.

20 Q Now, you are board certified in, what, clinical and
21 anatomic pathology?

22 A Yes.

23 Q Okay.

24 A And hemopathology.

25 Q Okay. You are not board certified in forensic

1 pathology, correct?

2 A That's correct.

3 Q You are qualified as an expert in forensic pathology
4 due to the fact that you have testified in courts before,
5 as I understand it.

6 A On forensic cases, yes.

7 Q Okay. Are you familiar with Spitz and Fisher's
8 medicolegal Investigation of Death?

9 A Yes.

10 Q Would you agree or disagree with me that it is
11 regarded as one of the standard texts in the field?

12 A It's widely read.

13 Q Widely read, okay. Is there a more widely read
14 general text on forensic pathology?

15 A I can't really answer that, because I -- I don't know
16 what buys what, but it is my book.

17 Q Well, Spitz and Fisher and the Demille's father and
18 son?

19 A Yeah.

20 Q Those are pretty much the biggest names in forensic
21 pathology texts?

22 A They are very big names.

23 Q Okay. Let me ask you just a few things: Do you
24 agree or disagree, frequent noncardiovascular causes of
25 sudden death include chronic bronchitis and emphysema,

1 asthmatic bronchitis, lobular pneumonia; it goes on to
2 seizure disorder; chronic alcoholism. Do you agree?

3 A Broadly speaking but he does not quantitate any of
4 those causes. I think all of us have had chronic
5 bronchitis, but we're still alive.

6 Q Lobar and bronchopneumonia; lobar pneumonia and
7 extensive confluent bronchopneumonia account for the
8 single largest group of victims dying unexpectedly from
9 acute pulmonary disease, agree or disagree?

10 A Well, he uses a little word in there, confluent
11 lobular pneumonia. This pneumonia was not confluent, and
12 there are lobules of the lung that the bronchi would not
13 only get smaller and smaller and then form a lobule, or
14 what's called lobule.

15 In this case, Zachary's lung had lobules of acute
16 inflammation. Confluent lobule pneumonia is when it gets
17 so bad that the two fuse together, and you can't tell the
18 difference. In other words, it's a lot more extensive.

19 Q Okay. Let me ask you this: "The observer is
20 impressed with the striking discrepancy between the
21 classical textbook description of the clinical
22 manifestations demonstrated by the patient with grave
23 pneumonia; that is to say shock, frustration, marked
24 dyspnea, and the like in the fact that many persons with
25 extensive pneumonia are able to be up and about and to

1 carry on in some fashion up to the moment of collapse and
2 death." Do you disagree with that statement?

3 A Not entirely.

4 Q You listed some reasons for your changing your
5 opinion in this particular matter. The truth be told, the
6 reason you changed your opinion in this matter is one in
7 nature: That is the statement from Andrea Person relating
8 to the death of Zachary Ulengchong, correct?

9 A That's a strong point, yes.

10 Q Absent that statement, you would still not have
11 enough to call this as a suffocation.

12 A Could you clarify something for me, and that is
13 you're talking about my taking the statement from
14 Ms. Person, statement about whether she covered his face
15 or statement of the time when she left him and returned?

16 Q All right. Well, I was encompassing both, actually,
17 just the entirety of the statement, just to cover the
18 bases.

19 Let me ask you this: Her statement is to the effect
20 that she placed her hand over the nose and mouth of
21 Zachary Ulengchong for 15 to 20 seconds; removed the hand;
22 he took a deep breath, and she thought he went to sleep,
23 words to that effect; 15 to 20 seconds, removed the hand
24 and a deep breath. Two questions: First of all,
25 restricting oxygen flow for 15 to 20 seconds will not kill

1 someone, will it?

2 A A normal person, no.

3 Q Okay. A person with a mild case of pneumonia?

4 A It's possible. I think that actually that is a very
5 short time, if indeed, it was 15 to 20 seconds.

6 Q Well, that's all you have as far as the statement as
7 to time of restriction of the oxygen, correct?

8 A Yes.

9 Q Fifteen to 20 seconds?

10 A Yes, but it is a significant time.

11 Q Well, let me ask you this then: Restrict the oxygen
12 flow, and then there is a deep breath. When there is a
13 deep breath, what is someone doing, intaking oxygen,
14 right?

15 A Yes.

16 Q And so then at that point this time when her hand is
17 removed, according to her statement, the child is
18 breathing?

19 A Yes.

20 Q All right.

21 A Well, I do not know when she said gasp, whether it
22 was an intake of air or whether it was exhaling what
23 little air she had left -- he had left.

24 Q "When I took my" -- this has been entered into
25 evidence. "When I took my hand off, he took a deep breath

1 and appeared to me he fell asleep"?

2 A Okay. He did breath in.

3 Q And that's breath in?

4 A Yes.

5 Q That is respiration, right?

6 A Yes.

7 MR. STRICKLER: Beg the Court's indulgence, Your
8 Honor.

9 (Pause).

10 Thank you, Your Honor. Nothing further.

11 MR. MEADORS: Very briefly.

12 THE COURT: Yes, sir.

13 REDIRECT EXAMINATION:

14 BY MR. MEADORS

15 Q Just a couple of direct follow ups. He asked you
16 about some slides, and I believe you said you reviewed
17 them back in '98?

18 A Yes.

19 Q Correct, Zachary's tissues from the lungs, and he
20 also asked you the next time they reviewed was -- and you
21 said?

22 A Two days ago.

23 Q Two days ago. Were you aware they were not in your
24 our possession?

25 A They were not in our possession.

1 Q We were trying to get the slides several weeks now,
2 correct?

3 MR. STRICKLER: I object.

4 MR. MEADORS: To what?

5 MR. STRICKLER: I object to the implication.

6 MR. MEADORS: Let's go.

7 (WHEREUPON, a bench conference was held in the
8 presence but not within the hearing of the jury).

9 BY MR. MEADORS

10 Q He asked you about mild and where that was in your
11 report. Did you use the word "patchy"?

12 A I did use the word "patchy".

13 Q And he asked you about this timeframe, and I may have
14 confused you. I was asking you about the whole timeframe
15 from that morning. Based on his question, were you
16 talking about the timeframe in her statement, "I gave him
17 a bottle, and 30 minutes or so later he was dead"?

18 A Yes.

19 Q And, in fact, earlier he asked you what you based
20 your opinion on besides the statement. Wasn't the first
21 thing you said earlier was the timeframe?

22 A Yes.

23 Q On the statement where she said, "I gave him a
24 bottle, and 30 minutes or so later he was dead" or out?

25 A Yes.

1 Q All right. Is it okay for you to go back and look at
2 new information that you didn't know about? I mean, is
3 that --

4 A It frequently happens.

5 Q I mean, is that what you're supposed to do in your
6 job as a forensic pathologist?

7 A Absolutely.

8 Q If people bring new evidence?

9 A Absolutely.

10 Q Shouldn't you look at it?

11 A Absolutely.

12 Q And he asked you about confluent lobar pneumonia and
13 quoted something in that book, but this wasn't confluent,
14 was it?

15 A It was not confluent.

16 Q And really, that has nothing to do with this case,
17 does it?

18 A No, it does not.

19 Q And he asked you about a statement, Doctor. Would it
20 be consistent with your opinion, "I put my hand over his
21 mouth, and he went lump"?

22 A That's very significant.

23 Q And in addition to her statement, you testified his
24 fingers and his penis, would that also go into your
25 factors for your opinion?

1 A It did.

2 Q And your --

3 A And changing the opinion.

4 Q And changing the opinion. And you observed that on
5 Zachary's body with your own eyes.

6 A Yes.

7 Q Have you got anything in that book about somebody who
8 said, "I gave him milk, and they were out 30 minutes
9 later"?

10 A No, not that I'm aware of.

11 Q That's all. Oh, and one final question. I
12 apologize. I hope everybody is okay.

13 He asked you about the mouth and all. If you -- a
14 child was suffocated, would it necessarily leave marks?

15 A No.

16 Q Explain.

17 A It hardly ever leaves marks. Well, this is not
18 really rocket science or take a medical education because
19 all you have to do is put your own hand over your mouth
20 and nose and pinch it.

21 You can see that it effectively stops air flow, and
22 if you look at yourself in the mirror, you will see no
23 marks. So I -- I would not expect it to make any marks.

24 MR. MEADORS: That's all. Thank you.

25 THE COURT: You may step down. Thank you.

1 THE WITNESS: Okay.

2 THE COURT: At this time, ladies and gentlemen, this
3 will be a good time to take an afternoon break. I'm going
4 to remind you of the instructions I've given to you
5 previously, that is not to begin to discuss this matter
6 among yourselves until you have heard all the evidence
7 that has to be presented.

8 Let's take a break, and then we'll continue on with
9 the trial of this case.

10 (WHEREUPON, the jury left open court at approximately
11 2:42 p.m.)

12 THE COURT: I believe there was a matter we needed to
13 put on the record, Mr. Strickler, in reference to an
14 objection you had to a question that was asked of
15 doctor...

16 MR. MEADORS: Chief Wilson.

17 THE COURT: I'm sorry, Chief Wilson.

18 MR. STRICKLER: Yes. I was going to move -- the
19 objection was that -- and Mr. Giese can correct me on the
20 exact question. I'll get it wrong I'm sure, that your
21 last contact with Ms. Person that day, the answer was no.
22 Mr. Giese followed up with that was your last contact in
23 reference to this charge, I believe.

24 THE COURT: To this charge.

25 MR. STRICKLER: You're right, Your Honor, I'm sorry.

1 MR. GIESE: No, it was not "this charge". It was
2 not -- I don't remember the exact quote, but it was not in
3 this case.

4 MR. STRICKLER: In this --

5 MR. GIESE: I'm sorry, to this defendant. Thank you.
6 That's what they believe.

7 Your Honor, can I just speak briefly? There's no --
8 there was no mention about a case. There was no mention
9 of other investigations; no mention of the other two
10 deaths. We've been dancing around this subject. You
11 know, just that he had other contact with her. I left it
12 at that.

13 THE COURT: I believe what was said to me at sidebar
14 was, "Was there any other contact with the defendant that
15 day?"

16 The answer was, "Yes," and the question was, "Not
17 about this matter."

18 MR. STRICKLER: And, Your Honor, I -- I can't
19 affirmatively say one way or the other as to the precise
20 word.

21 My -- my -- the impression I have, and the record is
22 going to speak to what that is. My impression was that it
23 raised the speculum of additional charges. The objection
24 was made and the motions for a mistrial.

25 THE COURT: And I noted your objection. I -- I think

1 while it's possible, it can raise a specter, I believe
2 that there at least has been some discussion that she had
3 been contacted additionally about another matter in the
4 officers responding to another matter.

5 So I don't think it's inconsistent that there be
6 further contact. There was no discussion as to what that
7 other contact was.

8 While I agree that it probably would have been best
9 for the question and the answer not to have been given, I
10 don't think it's prejudicial at this particular point.
11 And I'm sure it won't be discussed further, either through
12 testimony or in closing arguments.

13 MR. STRICKLER: Thank you, Your Honor.

14 MR. GIESE: Thank you, Your Honor.

15 THE COURT: And so I'm denying your request for a
16 mistrial at this particular point.

17 MR. GIESE: And I apologize for the vagueness of the
18 question.

19 THE COURT: And there was also some question about
20 whether there was a juror who was sleeping.

21 Ms. Pringle pointed out to the Court what she
22 believed was a juror who had been sleeping; that she had
23 had other persons to observe.

24 I did not see the juror appear to be sleeping. I'll
25 subsequently watch that particular juror. There are times

1 that I noticed that his eyes are closed and his head is
2 down, but what I gather from my vantage point, looking at
3 him, he is not asleep. He is either looking at something
4 on the floor, or I know once or twice he was holding his
5 head up in between questions, but when the question
6 started back, he opened his eyes, and he -- he paid
7 attention and seemed to be alert.

8 I did notice that there were other jurors -- you
9 know, when they take notes, it's hard to figure out
10 whether they're sleeping or not, and I've seen jurors who
11 are taking notes who, if you didn't know they were taking
12 notes, looked like they were asleep. Luckily, I've seen
13 hands moving, so I know they're taking notes.

14 I will certainly advise them when they come into
15 court they need to remain alert and pay close attention to
16 the evidence that's been presented, but I don't want to
17 call attention, certainly, at this particular point to any
18 one particular juror. And I think a general admonition
19 will suffice.

20 Is there anything further you would like to place on
21 the record?

22 MS. PRINGLE: If I may place on the record, Your
23 Honor, what I observed, was the gentleman -- I don't
24 remember his juror number -- he is a middle aged
25 gentlemen, a white male. He is today wearing a white polo

1 with strips across the shirt.

2 I observed him through -- I actually noticed him
3 yesterday looking as if he was nodding off, but I didn't
4 know for sure. I continued to watch him. I just -- just
5 sort of, as you said, I couldn't tell for sure.

6 This morning the podium that is directly in front of
7 where this gentleman is sitting in the jury box, and so I
8 was watching Mr. Strickler during his cross-examination of
9 Mr. Wilson, and during the entire time that I was looking
10 at Mr. Strickler, I could see this juror nodding off.

11 His eyes were closed. His head would go down slowly.
12 His chin would hit his chest, and he would bob his head
13 up, occasionally opening his eyes.

14 There were a couple of times I observed him with his
15 chin on his chest for a couple of minutes. When I
16 observed that, I asked my paralegal, Annie Andrews, to
17 watch him and see if she saw what I was seeing.

18 I'd be happy to offer her, if you'd like to put her
19 under oath, and have her place on the record her
20 observations. I don't know what else I can do or need to
21 do.

22 I observed it. There wasn't any question in my mind.
23 I don't believe there is any question in Ms. Andrew's
24 mind, but she can speak for herself.

25 THE COURT: Okay. And I'll be happy to question the

1 juror if you like.

2 MR. MEADORS: Judge, we -- I have it -- oh, I'm
3 sorry.

4 THE COURT: Yes, sir.

5 MR. MEADORS: Judge, I have not watched.

6 Ms. McDuffie has. We kind of think he's looking down, but
7 we don't necessarily think he's sleeping.

8 No disrespect to my boss. Sometimes he looks down
9 like that, and I know he's listening. So I think it may
10 be it's his way of listening. I don't know.

11 Obviously, we can start watching him, or if you want
12 to give him an instruction. I haven't seen what they say
13 -- of course, I haven't looked; Ms. McDuffie has not seen
14 that.

15 THE COURT: I would be happy to call the juror out
16 and inquire of the juror. I can do that without -- first,
17 and then determine whether or not based upon what I've
18 learned there should be further inquiry, if that's
19 acceptable.

20 MS. PRINGLE: I think that's required by the case law
21 for us to request, Your Honor. I'm asking that he be
22 excused, but I do think that under the case that I read,
23 that is the proper procedure at this point.

24 THE COURT: And to make sure we're on the same page,
25 what case are you referring to?

1 MS. PRINGLE: There is a State vs. Hurd, H-U-R-D, but
2 then I think there's a case following that.

3 THE COURT: I've looked at Hurd.

4 MS. PRINGLE: I have it on my screen if my commuter
5 will wake up.

6 MR. MEADORS: Judge, I don't know what evidence --
7 respectfully there, this juror may have a quirky way he
8 listens.

9 THE COURT: I think what State vs. Hurd requires is
10 that I make a probing but tactful inquiry into the
11 circumstances to determine whether or not he is, in fact,
12 paying attention.

13 I would be happy to do that and report back. If I
14 have any suspicion that he may not have been provided --
15 that he may have missed testimony, I think that there are
16 options that are available at that particular point.

17 MR. MEADORS: I just thought she didn't -- I thought
18 she was asking to skip that step. That's all I was
19 objecting to.

20 MS. PRINGLE: I --

21 THE COURT: Yes. I mean, initially, she asked that
22 he be excused, but I understand. I mean, I won't speak
23 for her, but that's what I thought I heard her say.

24 MS. PRINGLE: That's exactly what I said. The case,
25 the second case I'm looking at is State vs. Smith, Court

1 of Appeals case. I just very quickly will look at this,
2 Your Honor.

3 THE COURT: A 1999 case?

4 MS. PRINGLE: Yes, with the hearing in 2000.

5 I think if I may, I would like to present testimony
6 of Ms. Andrews, as well, if I could have her placed under
7 oath.

8 THE COURT: Yes, ma'am.

9 MR. MEADORS: Your Honor, yesterday I saw the
10 forelady kind of leaning over one way or the other. I
11 know she is listening. So that's all I'm saying.

12 THE COURT: I understand. I'll take all of those
13 factors into consideration. I'd just rather make the
14 record, have it on the record and have no discussion later
15 on.

16 MS. PRINGLE: I'd call Ms. Annie Andrews to the
17 stand.

18 ANNIE ANDREWS, after being duly sworn,
19 testified as follows:

20 THE CLERK: Please have a seat. State your full name
21 for the record.

22 DIRECT EXAMINATION:

23 BY MS. PRINGLE

24 Q Ms. Andrews, please state your full name for the
25 record.

- 1 A Annie Elizabeth Andrews.
- 2 Q Ms. Andrews, where are you employed?
- 3 A Richland County Public Defender's Office.
- 4 Q And in what capacity are you employed?
- 5 A I am Mr. Strickler's administrative assistant, and I
- 6 work as a paralegal, as well.
- 7 Q All right. Have you been present during the -- this
- 8 trial against Ms. Andrea Person?
- 9 A I've been here throughout the duration of the trial.
- 10 Q All right. Have you been here since the beginning?
- 11 A Yes, ma'am.
- 12 Q Okay. Have you been present during all of the
- 13 testimony today?
- 14 A I have.
- 15 Q What time did we start testimony today?
- 16 A One o'clock.
- 17 Q Okay. Were you here during the testimony of
- 18 Mr. David Wilson of the Richland County Sheriff's
- 19 Department?
- 20 A I was.
- 21 Q At some point, did I turn to you and make a request
- 22 of you?
- 23 A You did. I believe that was 1:34.
- 24 Q You made a note of that?
- 25 A I did.

1 Q And did I -- what did I ask you to do?

2 A To watch him because it looked as though he was

3 dozing off.

4 Q All right. And when you say "him", who are you

5 talking about?

6 A The juror. I believe he sits in the second row all

7 the way to the left, white male, maybe mid 50s.

8 Q Okay. And what kind of shirt is he wearing today?

9 A A white striped shirt.

10 Q And did you observe him?

11 A I did.

12 Q Do you know for about how long you watched him?

13 A I watched him until 1:40 exactly.

14 Q Okay. And what did you observe?

15 A He would -- he would look down, and then he would

16 jerk his head back up.

17 Q Okay. And how is his head positioned when he was

18 looking down?

19 A It was directly on his chin.

20 Q Was he resting his head on his chest?

21 A He was resting his head on his chest.

22 Q What is your opinion as to whether he was awake or

23 asleep?

24 A He appeared to be asleep. I know when -- when I'm

25 writing something, sometimes I turn my head to the side,

1 but I don't usually jerk up and down. That's usually
2 something you see when someone nods off asleep and maybe
3 they hit their -- their chin on their chest, and that
4 wakes them back up.

5 Q So it was your testimony you believe he was nodding
6 off?

7 A I believe he was nodding off, yes.

8 Q Were his eyes open or closed?

9 A They were closed.

10 MS. PRINGLE: I have no further questions,
11 Ms. Andrews.

12 MR. MEADORS: Very briefly.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION:

15 BY MR. MEADORS

16 Q So you watched him for how long prior to 1:40?

17 A It was 1:34 to 1:40 that I -- that he appeared to be
18 sleeping.

19 Q And then other than that, did he appear to be
20 sleeping throughout the whole trial?

21 A He looked -- he didn't look as though he was paying
22 attention throughout the entire trial.

23 Q Did it --

24 A Sitting in the back, I had been looking at various
25 jurors throughout the duration of the trial.

1 Q Did it appear he was paying attention?

2 A He -- he would be looking away.

3 Q Is that the first thing you noticed prior to his
4 sleeping?

5 A That he was looking away?

6 Q That he wasn't paying attention. You said you had
7 noticed that.

8 A I probably noticed -- I mean, I had -- I had been
9 looking at him and all the other jurors ever since this
10 trial began yesterday.

11 Q Was anybody else looking away?

12 A I think people probably look away all the time, but I
13 think it's a very different situation in which someone is
14 closing their eyes, putting their head to their chest and
15 jerking back up.

16 Q I wasn't -- I wasn't asking you about that right
17 then, with all due respect.

18 A Right.

19 Q I've never done this before.

20 A I haven't either, for the record.

21 Q That was my next question. You weren't an expert in
22 sleep pattern. You don't know how to tell whether this
23 fellow listens with his head down or not. I mean, nobody
24 knows that.

25 A (There was no response).

1 Q Scratch that. Don't worry about that.

2 A (Laughing). Okay.

3 Q Was he taking -- you said he was taking notes some?

4 A I wouldn't know if he was taking notes.

5 Q I thought I heard you say that earlier. If I
6 didn't --

7 A No, you didn't. You did not. I think what I said
8 earlier was that I don't think people jerk their head when
9 they take notes, because I think that would probably
10 detract from --

11 Q That's what I heard. So you don't know if he took
12 notes. I don't know --

13 A No one knows if he took notes, right.

14 MR. MEADORS: Thank you.

15 THE WITNESS: You're welcome.

16 THE COURT: Anything further.

17 MS. PRINGLE: I have no further questions of
18 Ms. Andrews. I would like to call Mr. Deon O'Neil to the
19 stand, Your Honor.

20 THE COURT: You may step down.

21 THE BAILIFF: All right. Place your left hand on the
22 Bible, raise your right. Face the clerk.

23 DEON O'NEIL, after being duly sworn,
24 testified as follows:

25

1 THE CLERK: Please have a seat. State your full name
2 for the record.

3 THE WITNESS: Ernest Deon O'Neil.

4 DIRECT EXAMINATION:

5 BY MS. PRINGLE

6 Q Mr. O'Neil, where are you employed?

7 A The Richland County Public Defender's Office.

8 Q And in what capacity are you employed at the Richland
9 County Public Defender's Office?

10 A Assistant Public Defender.

11 Q And Mr. O'Neil, have you been observing some of the
12 proceedings this week in the case of State vs. Andrea
13 Person?

14 A I have.

15 Q About how much have you observed of this case?

16 A Approximately about four witnesses.

17 Q About four witnesses?

18 A (Nods in the affirmative).

19 Q Did you observe -- was one of those witnesses
20 Mr. David Wilson?

21 A It was, the cross-examination.

22 Q Okay. Did you also observe some testimony yesterday?

23 A On Monday I observed.

24 Q On Monday. All right. And you said that you
25 observed the cross-examination of Mr. David Wilson?

1 A I did.

2 Q And at some point, did I come up to you and make a
3 request during his cross-examination?

4 A I did. I look at the clock in the courtroom. It was
5 about 1:28 when you did that.

6 Q When I -- and what did I do?

7 A You asked me to observe the older gentlemen, second
8 row, on the very end.

9 Q All right. And what was his -- do you recall what
10 his shirt looked like?

11 A He had a striped shirt on.

12 Q And you recall specifically -- you would -- did you
13 know -- you looked at the time when I asked you to do
14 that?

15 A I looked at the time when you asked me.

16 Q What did you observe?

17 A I observed during -- I observed the individual during
18 Mr. Strickler's cross had his head down for the majority
19 of the time I was there. I think I was there from about
20 1:28 to around 1:41.

21 Q All right. And were his eyes opened or closed?

22 A From where I was sitting at, it appeared his eyes
23 were closed.

24 Q What was your opinion as to whether he was awake or
25 asleep?

1 A He appeared to be nodding off, asleep.

2 Q Did you also observe him at any other time sleeping,
3 in your opinion?

4 A Actually, it first came to my attention on Monday.
5 He came -- I was in the courtroom right after the jury
6 selection, and the attorneys, and the judge, and the court
7 reporter were both gone at that point. At that time, he
8 was sitting on the very end, on the opposite end, with the
9 orange shirt on. He appeared to be sleeping that time, as
10 well.

11 Q And just to be clear for the record, the attorneys
12 and the judge, we were in chambers during the Batson
13 hearing?

14 A Yes.

15 Q You were aware of that? But you actually noticed
16 that when you came in?

17 A I did because there were -- I'm assuming there were
18 people in -- I was sitting in the back gallery. The
19 people in front of me, they commented that the jury was
20 already asleep at that point. That's what brought it to
21 my attention.

22 Q So someone else noticed it, as well?

23 A Yes.

24 MS. PRINGLE: No further questions, Mr. O'Neil.

25 THE COURT: Any cross?

CROSS-EXAMINATION:

BY MR. GIESE

Q So you watched him from 1:28 to 1:41 today?

A That's correct.

Q Okay. And you said that he was nodding off.

A His head appeared down for the good majority, I guess, of that 14 minutes. His head was down almost the -- almost the entire time of that.

Q But you don't know if he just had his head down or whether he was asleep at that time?

A He appeared to be asleep.

Q All right. But you don't know?

A I didn't ask him. How would I know?

Q You have no idea. You have no reason to know.

A Well, he appeared to be asleep. That's my assumption.

Q But you have no idea whether his eyes were closed and his head down, or he was listening, or whether he was asleep?

A He had his head down. I can't tell whether he was listening. I don't know.

Q So you don't know whether he was asleep or not?

A No.

Q Okay. Thank you. Now, you also said you were here on Monday. Was court going on at that time when he had

1 his head down again?

2 A No.

3 Q So there was no testimony going on?

4 A Not at that time, no.

5 Q All right. So there was nothing for him to listen

6 to.

7 A No.

8 Q He was just sitting there --

9 A Yeah.

10 Q -- because we were all back in chambers.

11 A Yes.

12 Q All right. There again, he had his head down, but

13 you can't tell this judge whether he was asleep or not,

14 because he had his head down.

15 A He had his head down.

16 Q And you had been watching him during this whole

17 trial, right?

18 A Today I have. He -- he sits right behind the -- the

19 stand, so I watched him, actually, during the entirety of

20 the next witness, as well.

21 Q Okay. You watched him take notes?

22 A No. I didn't see him take any notes.

23 Q So he hadn't taken any notes to your -- it's your

24 testimony he has taken no notes today?

25 A It's my testimony I didn't watch him take any notes

1 today.

2 Q Okay. So you can't say whether or not he took notes
3 today?

4 A No. I could say that when I watched him, he was not
5 taking notes.

6 Q You can't say today whether or not that man took
7 notes?

8 A I didn't see him take any notes.

9 Q Correct. Thank you.

10 MS. PRINGLE: Nothing further, Your Honor.

11 THE COURT: You may step down.

12 THE BAILIFF: Watch your step.

13 THE COURT: Anything further at this point?

14 MR. MEADORS: No, sir. I -- we're not going to offer
15 Isenhoward. I can proffer that he has -- when he seen
16 him, he thought he was listening and not sleeping, but
17 other than that, if Your Honor is going to make an
18 inquiry, what I've seen before, and Your Honor, knows far
19 better than I do, just a general inquiry, "Does anybody
20 have any issues either from listening and staying awake?"
21 If they are, let us know.

22 "If you are having trouble, we need to know. If
23 anybody does have trouble, we observe it, I'm going to
24 have to discuss it with you." That's what I've seen
25 before, but whatever Your Honor says.

1 THE COURT: I will talk to the juror during the break
2 and determine whether there are issues that need to be
3 addressed and report what he has to say.

4 I've given you my impressions once it was brought to
5 my attention that there was a belief that he was sleeping.
6 I observed him throughout the testimony of Dr. Armstrong,
7 and while I did see him hold his head, as I stated, at the
8 times that he was holding his head, there were no
9 questions being asked. And as soon as there was
10 additional activity, the sound of someone's voice, he
11 responded appropriately and seemed to be paying attention.

12 I could not tell specifically whether he was taking
13 notes or not. I know that he was looking down, but I
14 didn't see him, what you would commonly say would be
15 nodding, and his head certainly wasn't resting on his
16 chest when I observed him. I continued to watch him
17 throughout the course of the testimony. I'll inquire
18 further.

19 I did receive a note from the jury, once again, that
20 asks everyone to speak up. The juror's note says, "Please
21 ask attorneys to speak louder. They tend to start loud
22 and then get lower. Some jurors can't hear the
23 questions."

24 I repeatedly told you that. I noticed it again with
25 the testimony of David Wilson, but I ask that you, again,

1 remember to keep your voices up.

2 If that means that you need to move away from the
3 witness, I would suggest and encourage that you do that.
4 I also notice that at the end of your sentences, several
5 of you appear to drop your words at the end or get lower
6 at the end of the sentence and can't hear what was said.
7 So please keep your voices up. We'll take a break and
8 come back.

9 MR. MEADORS: Your Honor, since we've been in here,
10 are we going to have a decent break here?

11 THE COURT: You can go.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: The juror at issue is juror number 115,
14 Robert Heath. I spoke to Mr. Heath. He admitted that he
15 was nodding. He says that, however, he perked up, and
16 that he has been taking notes and asked me to quiz him
17 about what had been going on.

18 I told him that I am required under the law to
19 inquire as to what's going on, and he said -- and he said
20 yeah; he said got sleepy; he started nodding, but he
21 perked up after that and has been paying attention.

22 I did not ask him about yesterday. I inquired about
23 today, and that seems to coincide -- I asked him did he
24 miss any of the testimony that was presented today. Did
25 he not hear it or missed any of it. He assured me that he

1 had heard all of it.

2 So I think -- and I have told him that when the jury
3 came back in, that I would remind all of the jurors that
4 they have the duty and responsibility to remain alert, and
5 you know, that if they need to take a break or whatever or
6 they -- you know, whatever they need to do in order to be
7 able to stay alert, they need to do that.

8 I told him, you know, that it's very easy after lunch
9 to get a little lethargic -- and I'm sure that we've all
10 fallen victim to that on occasion -- but that we have to
11 stay alert throughout the course of this trial.

12 I don't find a reason to disqualify him at this
13 particular point, but as I stated, I will admonish the
14 entire jury that they have to remain vigilant in listening
15 to all the testimony and evidence as it's being presented,
16 and we'll go from there.

17 MS. PRINGLE: May I just for the record, Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. PRINGLE: I respectfully understand your ruling.
20 I think that for the record, I do have to object and renew
21 my request to have him excused, even though I do
22 understand your ruling.

23 His acknowledgment that he was nodding off confirms
24 what Mr. O'Neil and Ms. Andrews testified to, specifically
25 noted that it was during Mr. David Wilson's

1 cross-examination.

2 Mr. Wilson is one of the most important witnesses in
3 the case -- one of the witnesses who took some of the most
4 significant information from Ms. Person -- and I think
5 that it is important that he heard everything from that
6 witness. Indeed, from every witness, but he was observed
7 to be sleeping. He has now acknowledged that.

8 For the record, I must object to him remaining on the
9 jury and request that he be excused.

10 THE COURT: And your objection is noted. I do note
11 that under both State vs. Hurd and State vs. Smith cases,
12 it is within the discretion of the Court.

13 Based upon what I observed today -- I have heard the
14 testimony of the witnesses; I had also heard the testimony
15 of the witness whose testimony you assert that the juror
16 missed.

17 I will note that it was somewhat cumulative to other
18 testimony that has been provided. While there were a few
19 additional points that were raised, I think those were
20 adequately addressed, and I think that he certainly heard
21 portions of that.

22 I don't believe that he was sleeping through the
23 entire cross-examination. The fact that he acknowledged
24 that he was nodding did not, in fact, say that he was
25 asleep during the entire portion of the testimony, and

1 your objection is noted for the record. I note that.

2 I discussed the problem with the juror. I brought to
3 his attention the fact that he will be questioned further
4 if there is some problem.

5 He did not indicate that he had any physical or --
6 condition that caused that, and I suspect, like all of us,
7 he simply after lunch got lethargic.

8 He did admit that he nodded and that he had corrected
9 that behavior and had been attentive through the testimony
10 of the next witness, who was Dr. Armstrong. So your
11 objection is noted for the record.

12 MS. PRINGLE: Thank you, Your Honor.

13 THE COURT: Anything else we need to take up before
14 we bring the jury in?

15 MR. MEADORS: No, ma'am.

16 THE COURT: Nothing from the State?

17 MR. STRICKLER: No, Your Honor.

18 THE COURT: You may ask the jury to come in, please.

19 (WHEREUPON, the jury came into open court at
20 approximately 3:35 p.m.)

21 THE BAILIFF: The jurors are all present, Your Honor.

22 THE COURT: Good afternoon, ladies and gentlemen. It
23 has come to my attention that sometimes we get a little
24 lethargic, and we begin to nod a little bit.

25 I remind you all your duty and your responsibility to

1 be attentive to all of the testimony and all of the
2 evidence of the attorneys as it's presented throughout the
3 course of this trial.

4 State law requires that if there is a juror that is
5 observed sleeping or appearing to be asleep, then I must
6 make a probing and tactful inquiry to determine whether or
7 not the juror is qualified to continue in service.

8 I will inform you at this point, ladies and
9 gentlemen, that I will engage in such a probing and
10 tactful inquiry, but I do remind you that you are to
11 remain vigilant in listening to the testimony and evidence
12 as it's presented.

13 If, by chance, you feel that you get to the point
14 where you need to take a break and I'm not taking one or
15 I'm not having more frequent breaks, if you will certainly
16 let us know that, and we will take what steps we need to
17 take to make sure we can all remain alert.

18 I -- I know that sometimes after lunch with your meal
19 in your stomach, you tend to get a little heavy eyed. It
20 happens to all of us.

21 We just need to make sure that we are attentive to
22 all of the information and evidence that is being
23 presented. So I just remind you of that.

24 Please, if we need to take more -- if I'm not taking
25 -- having enough breaks for you all, please let your

1 foreperson know so that she can write me a note about
2 that.

3 I have passed on to the attorneys, once again, your
4 request that they need to speak more loudly and -- so that
5 you can hear all of the questions, as well as the answers
6 that are being asked and given.

7 At this time, we're ready to continue on,
8 Mr. Meadors, with your next witness.

9 MR. MEADORS: If it pleases Your Honor. The State
10 would now call Dr. Clay Nichols.

11 CLAY NICHOLS, after being duly sworn,
12 testified as follows:

13 THE CLERK: Please have a seat, and state your full
14 name for the record.

15 THE WITNESS: Clay Allen Nichols, N-I-C-H-O-L-S.

16 DIRECT EXAMINATION:

17 BY MR. MEADORS

18 Q Doctor, I don't believe you'll have any problem, but
19 if -- as always, speak up so everybody can hear you. And
20 good afternoon, Dr. Nichols.

21 A Good afternoon.

22 Q Would you please tell the jury a little bit about
23 Dr. Clay Nichols, just generally where you're from, where
24 you were raised, your education, and in particular, your
25 education in the field of expertise that we are offering

1 you here today, Doctor?

2 A I was born and raised in Los Angeles, specifically,
3 the San Fernando Valley area of L.A.; joined the Air Force
4 when I was 18; spent six years in the Air Force; got out
5 of the Air Force; went back to school; received my
6 Bachelor of Science degree from the University of Oklahoma
7 in 1981; my M.D. degree also from Oklahoma '85; after
8 that, I entered a residency program in both forensic and
9 anatomic pathology at Charleston, completing that in 1999;
10 from 2000 -- excuse me, from '89 to 2000, I was on the
11 faculty at M.U.S.C. where I taught pathology, forensic
12 pathology, to medical students, dental students,
13 residents, and fellows.

14 In 2000, I left the University, entered private
15 practice here in Columbia. I'm a staff pathologist at
16 both Baptist and Richland Memorial Hospitals.

17 I also am a staff pathologist at Kershaw County
18 Medical Center. I am the Chief Medical Examiner for
19 Richland County. I am board certified in both anatomic
20 and forensic pathology. I hold an unrestricted license to
21 practice medicine and surgery in the State of South
22 Carolina.

23 Q How many autopsies have you performed?

24 A Thousands.

25 Q At this time, we would offer Dr. Clay Nichols and an

1 expert in the field of forensic pathology?

2 THE COURT: Any voir dire?

3 MR. STRICKLER: No, Your Honor.

4 THE COURT: Any objection?

5 MR. STRICKLER: No, ma'am.

6 THE COURT: I'll find him qualified as an expert in
7 forensic pathology.

8 THE WITNESS: Thank you, Your Honor.

9 BY MR. MEADORS

10 Q Tell us very briefly, what is the difference between
11 pathology and forensic pathology, Doctor?

12 A Pathology is a branch of medicine which deals with
13 the laboratory diagnosis of disease. Instead of seeing
14 patients, we see parts of patients, such as when an
15 appendix is taken out during surgery. That is sent to a
16 pathologist where it's looked at, first with the naked
17 eyes, called gross pathology, and then underneath the
18 microscope, that's looked at for the diagnosis of disease.

19 One of the areas that pathologists get training is in
20 is the performance of autopsies, which is the dissection
21 of a person after they die in order to determine the cause
22 of death.

23 A forensic pathologist has specific training for one
24 or two years after general pathology residency in dealing
25 with people who die of unnatural or suspicious deaths.

1 Q Doctor, getting right to it, in April of 2007, did
2 Coroner Watts request that you review this case?

3 A Yes.

4 Q Did you have any part in the December '98 autopsy of
5 Zachary Ulengchong?

6 A No, I did not.

7 Q And as of April of 2007, and thereafter, at the
8 request of Coroner Watts, did you receive certain
9 information about this case?

10 A Yes, I did.

11 Q And have you looked at the autopsy that was performed
12 by Dr. William Armstrong?

13 A Yes, I did.

14 Q And have you been provided or looked at an E.M.S. run
15 sheet?

16 A Yes, I have.

17 Q Emergency room report?

18 A Yes, I have.

19 Q Statements that have been submitted to you that were
20 made by the defendant in this case?

21 A Yes, I have.

22 Q Of Zachary Ulengchong's medical records and/or
23 history for the year, of that last year of his life?

24 A That was almost his entire life, yes, sir.

25 Q Thank you. Did you talk to law enforcement?

1 A Yes.

2 Q And have you looked at some slides that were --
3 originally came from the lungs of Zachary Ulangchong,
4 which Dr. Armstrong got and ultimately you got?

5 A Yes, sir.

6 Q Reviewing all of that, and you said you are the
7 medical examiner for this county?

8 A That's correct.

9 Q And it's fair to say you and Coroner Watts work
10 together all the time?

11 A Yes, we do.

12 Q Based on your review of the autopsy and the other
13 documents that you have been provided, either through law
14 enforcement or our office, do you have an opinion to a
15 reasonable degree of medical certainty the cause of death
16 of Zachary Ulangchong?

17 A Yes, I do.

18 Q And what is that opinion?

19 A Zachary Ulangchong died as a result of asphyxiation
20 due to suffocation.

21 Q Now, I want you to look at these ladies and gentlemen
22 of the jury and tell them, Dr. Clay Nichols, what do you
23 base that opinion on?

24 A Well, first off, in reviewing the original autopsy
25 report, which had a diagnosis of lobular pneumonia, the

1 degree of pneumonia was, in my opinion, insufficient to
2 cause death.

3 In addition, the timeline of the child's death where
4 it was dropped off in the morning, I believe around 7:30,
5 and the child was otherwise healthy and being a child and
6 then approximately two-and-a-half hours later was dead, is
7 inconsistent with lobular pneumonia.

8 In addition, there's also a statement provided to me
9 that the defendant placed the hand, her hand, over the
10 child's mouth until the child quit breathing.

11 Q And if I'm pronouncing it wrong -- my brother is a
12 doctor. I'm not. What is lobular pneumonia?

13 A Lobular pneumonia is an inflammation of one of the
14 smaller geographic units of the lung.

15 Q Geographic units?

16 A Yes, anatomic units.

17 Q And you've look at the slides.

18 A Yes, sir.

19 Q And how would you describe the amount of pneumonia in
20 Zachary Ulengchong?

21 A Minimal. The pneumonia was there, but it's minimal,
22 and in my opinion, insufficient to cause death.

23 Q And you said you reviewed, I think, the E.M.S. run
24 sheet, or you said the timeline was important, in your
25 opinion. Did you review what E.M.S. had said about

1 whether the child was flatlined when he got there?

2 A It's my understanding that, essentially, the child
3 was D.O.A. and should have been declared dead at the scene
4 of the day care.

5 Q Just it's your opinion that based on a review of the
6 autopsy and his records, that his death is inconsistent
7 with pneumonia based on that timeframe?

8 A That's correct.

9 Q And the amount of pneumonia --

10 A That's correct.

11 Q -- that was in his body?

12 Beg the Court's indulgence.

13 (Pause).

14 If you've said it in your background, you are board
15 certified in forensic pathology?

16 A Yes, I am.

17 Q And would this be standard procedure if the coroner
18 asked you to look into something, that you would go look
19 into it?

20 A Yes, I would.

21 Q And would you request law enforcement to provide what
22 information they have?

23 A As necessary, yes.

24 Q Would you request the original autopsy?

25 A Yes.

1 Q Did you talk to that doctor?

2 A Yes, I did.

3 Q You reviewed the statements that the defendant made,
4 correct?

5 A Yes, sir.

6 Q Based on your training and experience, and just
7 looking at all of these bodies you said you've done, would
8 it be unusual not to find marks on a child that had been
9 suffocated?

10 A Unfortunately, that's quite common, and it's a real
11 difficult point in forensic pathology. These young
12 children can be suffocated relatively easily without
13 leaving marks. They are relatively young, obviously
14 young, but they also don't put up much of a fight. In a
15 very short time, they can be subdued. I've already
16 crossed that several times in my career.

17 MR. MEADORS: Doctor, thank you. That's all I have.

18 THE COURT: Any cross?

19 CROSS-EXAMINATION:

20 BY MR. STRICKLER

21 Q Thank you, Your Honor. May it please the Court.

22 Good afternoon, Doctor.

23 A How are you doing, Mr. Strickler? Nice to see you
24 again.

25 Q Yes, sir. As you stated in your direct testimony,

1 you weren't involved in the autopsy in 1998 or the
2 conclusion collected in your report, final report from
3 1999, in this case at all, correct?

4 A That's correct.

5 Q All right. If I understand you correctly -- if I
6 took correct notes, I believe it was in April of 2007,
7 Coroner Watts asked you to review the findings.

8 A Yes, sir.

9 Q Okay. And in April of 2007, were you supplied with
10 the autopsy report?

11 A Yes..

12 Q Were you supplied with the slides associated, the
13 tissue slides associated, with the autopsy?

14 A I had access to the slides, yes.

15 Q Did you have an opportunity to review them at that
16 time?

17 A Yes, I did.

18 Q The E.M.S. run sheet?

19 A That was supplied later.

20 Q Later. Emergency room reports?

21 A Supplied later at the same time with the run sheet.

22 Q Okay. Statements alleged to have been made by
23 Ms. Person.

24 A That was also provided later.

25 Q Okay. And then the medical record and history of

1 Zachary Ulangchong?

2 A Yes, I looked at that.

3 Q When did you have an opportunity to do that?

4 A This morning.

5 Q This morning?

6 A Yes, sir.

7 Q And when did you have an opportunity to look at the
8 E.M.S. run sheets?

9 A That was several months ago, but I also reviewed
10 those again this morning.

11 Q Same question, as to the emergency room.

12 A Same answer.

13 Q Having had an opportunity to review the medical
14 records of Zachary Ulangchong, you were aware that on
15 February 2nd, 1998, he went to Moncrief emergency care
16 with a temperature of 102?

17 A Yes, sir.

18 Q And was followed up on the 3rd?

19 A Well, I don't know exactly what the date was but yes.

20 Q Okay. And that on April 28th, 1998, he went to
21 Moncrief emergency care with complaint of fever, loss of
22 appetite, temperature of 101.4, and the assessment and
23 diagnosis at that time was pneumonia?

24 A Yes.

25 Q A return visit on the 29th with the notation that the

- 1 presumptive pneumonia was resolving.
- 2 A Sure.
- 3 Q You're aware of that?
- 4 A Yes.
- 5 Q Again, on the 30th of April to Moncrief emergency
6 care with a rash all over his body, attributed to adverse
7 reactions to medications he was given?
- 8 A I was not aware of that particular finding.
- 9 Q Fever of 102 on May 5th to Moncrief emergency care
10 with the complaint of rash over his entire body for about
11 four days. The temperature is 99.2 and a diagnosis of
12 viral exanthema?
- 13 A (Nods in the affirmative).
- 14 Q Are you aware of that?
- 15 A No.
- 16 Q Are you aware that on May 12th, he visited the
17 Moncrief Family Clinic, and the follow up on pneumonia
18 resolving. So they're still following up on pneumonia --
- 19 A Right.
- 20 Q -- on May 12th. On July 5th, Moncrief emergency
21 care, are you aware where he went to the emergency room
22 there coughing, runny nose for two days, temperature of
23 99.6? Are you aware of that?
- 24 A Yes, sir.
- 25 Q Are you aware that on August 27th, 1998, he went to

1 Moncrief pediatric clinic and was referred from the
2 emergency room where they noted a temperature of 104 and
3 noted the history of pneumonia. They found his
4 temperature, however, to be normal at the pediatric
5 clinic. Are you aware of that?

6 A No.

7 Q At some point in time, were you aware that he was put
8 on Zithromax during the summer, August of 1998?

9 A No.

10 Q Do you know what Zithromax is?

11 A Yes.

12 Q What is that?

13 A It's known as a Z-Pack. It's an antibiotic.

14 Q And what's it used for?

15 A A generalized antibiotic for any sort of infection.
16 That's often used to cover viral infections to ensure that
17 the child does not get a bacterial infection.

18 Q Okay. And you're aware that on October 31st, he was
19 in the Moncrief hospital with fever, cough, runny nose for
20 a couple of days, and a temperature of 101.3?

21 A He was in the hospital for a couple of days?

22 Q No. Excuse me, runny nose for a couple of days.

23 A Yes.

24 Q Now, in your review of the documents you provided,
25 you understand that Andrea had indicated that she had

1 found Zachary lying face down in a pool of milky vomit.

2 A That's my understanding.

3 Q Okay. Are you aware that, indeed, there are
4 photographs that show the crib with what has been
5 testified to be liquid that had recently soaked through
6 the surface of the mattress?

7 A Yes, sir.

8 Q And you're aware that the coroner's preliminary
9 report, December 8th, 1998, found no sign of foul play?

10 A That's correct.

11 Q And you're aware that the death certificate as issued
12 found the cause of death of lobular or lobular pneumonia?

13 A That's correct.

14 Q And final postmortem examination found acute and
15 chronic bronchitis.

16 A Yes.

17 Q Do you agree with that?

18 A I was very unimpressed with the amount of bronchitis.

19 Q Would you disagree that there was bronchitis present?

20 A No.

21 Q Do you disagree that the bronchitis was both of an
22 acute and a chronic form?

23 A In a very minimal fashion, yes.

24 Q Minimal as to acute or minimal as to chronic or
25 minimal as to both?

1 A Minimal as to both.

2 Q That's based on the tissue cultures and slides that
3 you're looking at?

4 A Yes.

5 Q There's no other basis on that other than the slides?

6 A That's correct.

7 Q You didn't have an opportunity to observe the
8 physical body and see whether there is anything to lead
9 you -- or provide any information that --

10 A That is correct. Once again, I was not at the
11 original autopsy.

12 Q And that diagnosis included lobular or lobular
13 pneumonia?

14 A Yes.

15 Q And you agree with -- with the presence of that
16 disease?

17 A Yes.

18 Q You characterize it as minimal?

19 A Yes.

20 Q Do you have the autopsy report?

21 A Yes, I do.

22 Q Referencing the final part of the microscopic
23 description, the bottom of the page, last sentence,
24 actually: "The findings of soft tissue in intra alveolar
25 hemorrhage suggests a virulent organism."

- 1 A Yes, sir.
- 2 Q That's correct; they do, correct?
- 3 A I do not think so.
- 4 Q You do not think the findings of the soft tissue or
5 intra alveolar hemorrhage suggests that?
- 6 A Not in this particular case, no.
- 7 Q There is no indication of the marks externally to the
8 body consistent with suffocation, correct?
- 9 A That's correct.
- 10 Q There are no marks to the interior of the mouth, the
11 interior of the lips such that you might find in some
12 cases?
- 13 A That's correct.
- 14 Q And I understand what you've testified to as to the
15 fact that such is not present at times in autopsies.
16 They're not present in this case?
- 17 A They were not documented, and I have no indication
18 that they were present.
- 19 Q So if I understand it correctly, if I understand your
20 notes correctly, the basis for the conclusion or your
21 disagreement with the diagnosis of -- in 1999 when the
22 autopsy was completed, and your conclusion that it was
23 asphyxiation and suffocation as to cause of death was the
24 degree of pneumonia was insufficient to cause death?
- 25 A Yes.

1 Q And the timeline in the case, 7:30, healthy baby,
2 two-and-a-half hours later was inconsistent with lobular
3 or lobular pneumonia?

4 A That's correct.

5 Q And Ms. Person's statement?

6 A That's correct.

7 Q Okay. And absent Ms. Person's statement, what
8 conclusion can you draw?

9 A Absent the statement, I think, once again, the
10 pneumonia is insufficient to cause death, and another
11 cause of death should be sought.

12 Q You could not rule on a cause of death, then?

13 A Undetermined might be a possibility. On the other
14 hand, once again, since children can be asphyxiated
15 without any signs, in this age group, that might be a
16 possibility to be entertained.

17 Q Absent the statement of Andrea Person, you're
18 testifying that you could rule the cause of death as being
19 asphyxiation?

20 A I did not say that.

21 Q Well, then I'm trying to figure out, trying to figure
22 out exactly what you are saying.

23 A What I am saying is that absent the statement, still
24 the pneumonia is insufficient to cause death; that other
25 causes of death should be sought, and as in cases that's,

1 as I have before, that the possibility of asphyxiation
2 should be entertained.

3 Q Okay. And when you come down with a cause for -- of
4 death, what do you list in that situation?

5 A "Pending" or "undetermined".

6 Q Pending or undetermined?

7 A Yes, sir.

8 Q Would you agree that the onset of pneumonia can be
9 fast?

10 A Yes.

11 Q Have you ever had, for example, in conducting an
12 autopsy, initial assessment that appears to be S.I.D.S.,
13 and then it later turns out to be pneumonia, a separate
14 question than earlier?

15 A I do not recall that specific incident, but
16 certainly, that could also be a possibility.

17 Q And just so we're not talking Greek around here --

18 A Right.

19 Q -- S.I.D.S., Sudden Infant Death --

20 A Right.

21 Q -- Syndrome, that's a diagnosis of exclusion?

22 A That's correct.

23 Q That you can't find any cause of death.

24 A That's correct, in a certain age group.

25 Q Correct, in an age group. Then what you're saying is

1 that it's possible that you could arrive at that diagnosis
2 and then later be able to determine if pneumonia was a
3 cause of death, correct?

4 A That's possible, but I think a trained forensic
5 pathologist should know, even before the autopsy is over,
6 whether or not the child had pneumonia.

7 Q You would agree that respiratory viruses in children
8 are common?

9 A Yes.

10 Q And that serious side effects and consequences of
11 such viruses are secondary bacterial infection?

12 A Yes, especially we're seeing that now with the H1N1
13 flu virus.

14 Q Bronchitis?

15 A Yes, sir.

16 Q Pneumonia?

17 A Yes, sir.

18 Q And these could happen, these secondary consequences
19 and side effects can occur fairly rapidly?

20 A They can occur fairly rapidly, but their course
21 should be lengthy and well known.

22 Q Now, as to the autopsy conducted in 1998, report from
23 1999, again, same page, the microscopic page, indeed, the
24 preceding sentence, "Because of the lack of gross
25 findings, the lungs were not cultured for bacteria or

1 viruses"?

2 A Yes, sir.

3 Q Did you see that? Gross finding meaning that you
4 could not see evidence of infection visually, and then as
5 a result of that, cultures were not taken for bacteria or
6 viruses.

7 A Correct.

8 Q Am I reading that correctly?

9 A Yes, sir.

10 Q Okay. So as a result of that, they didn't know then,
11 and we don't know now, what precise infection was?

12 A That's correct.

13 Q We know infection was there.

14 A Yes, sir.

15 Q And we don't know what it was. We don't know because
16 the culture wasn't done.

17 A That's correct.

18 Q Okay. And some bacteria, viral infections, could be
19 extremely toxic?

20 A Yes.

21 Q And you're sitting here saying that based on the
22 appearance of it, I guess because of the spotty nature of
23 it --

24 A The spotty nature, the quantity of it, the
25 surrounding tissue action.

1 Q -- that there could be no way that the infection
2 could be of such a toxic nature that it could cause death?

3 A I don't believe it is.

4 Q Well, that's not my question. You're testifying that
5 because of the appearance of the pneumonia, that
6 regardless of the fact that -- that infections can range
7 from -- the precise infection can range from relatively
8 mild to extremely toxic, despite that, even if it were the
9 most toxic infection around, it still, because of the
10 appearance of the pneumonia and spotty nature of the
11 pneumonia, could not have caused death?

12 A That's what I'm saying, yes.

13 Q You are a member of the State Child Fatality Advisory
14 Committee?

15 A That's correct. I'm the chairman.

16 Q Chairman. Also on that committee is Mr. Meadors,
17 correct?

18 A That's correct.

19 Q Okay. Now, Dr. Nichols, you as a member of the human
20 species makes mistakes, correct?

21 A That's correct.

22 Q You have made mistakes in your career as a forensic
23 pathologist, correct?

24 A Yes, I have.

25 Q You've reported the existence of an organ in a body

1 that an autopsy was conducted on when it's clear that the
2 organ had been removed several years, right?

3 A That is correct.

4 Q Yet, you feel confident sitting here after the fact
5 of rendering an opinion that you have rendered?

6 A Yes, I do.

7 Q To include being able to exclude any possibility of
8 the pneumonia being present, the pneumonia present,
9 regardless of the nature of the organism it causes, any
10 possibility that that was the cause of death?

11 A To a reasonable degree of medical certainty, yes.

12 Q And what's that? That's your standard right?

13 A It is, yes.

14 MR. STRICKLER: Thank you.

15 THE COURT: Any redirect?

16 MR. MEADORS: Just a few.

17 REDIRECT EXAMINATION:

18 BY MR. MEADORS

19 Q Mr. Strickler I think started off asking you about
20 the information that you've had in reaching your opinion.

21 A Yes.

22 Q And as a forensic pathologist, what information do
23 you like to gather before you reach or give an opinion to
24 a reasonable degree of medical certainty?

25 MR. STRICKLER: I'll object, Your Honor. He went

1 through the information he had.

2 MR. MEADORS: I'm not asking him that.

3 MR. STRICKLER: I'm sorry. I'm objecting. Changing
4 redirect. That's my objection.

5 MR. MEADORS: Objection to speaking objections. If
6 he wants to object, then do it, Your Honor. My opinion,
7 he opened the door to it. I'm just going to ask him, "Do
8 you like to gather all information?" I wasn't going to be
9 specific.

10 THE COURT: One moment. Had you finished asking the
11 question?

12 MR. MEADORS: I can't remember.

13 THE COURT: Then I say rephrase the question.

14 BY MR. MEADORS

15 Q As a forensic pathologist, in addition to the body
16 itself -- in an ideal world, what type of information
17 would you like to be provided, generally?

18 A You would like to be provided a complete, accurate
19 history of the events leading up to the death and
20 following the discovery of the body.

21 Q Would that include, as Mr. Strickler spent a long
22 time asking you, any statements made from anybody involved
23 in a case?

24 A Yes.

25 Q In an ideal world, would you like to be at the scene,

1 if you could?

2 A Yes.

3 Q These visits, or whatever Mr. Strickler was asking
4 you from the medical records, well baby visits or whatever
5 they were, in any one of those visits to the doctor, did
6 Zachary Ulengchong die?

7 A No.

8 Q I wrote this down. He asked you about acute and all.
9 Does "acute" mean a lot?

10 A No, it doesn't.

11 Q That doesn't mean "a lot", does it?

12 A No, it does not.

13 Q What does "acute" mean?

14 A Rapid onset.

15 Q He asked you about lobular. Very briefly, lobular --
16 what does that mean? Is that a geographical location?
17 What does that mean?

18 A Lungs are divided up to right, left lung; the right
19 lung has three lobes, or three main divisions; the left
20 lung has two lobes. The lungs are then further divided as
21 the airways divide down deeper along like branches of a
22 river into lobar units and lobular units. So lobular
23 units are the smaller units of lung tissue.

24 Q He asked you about the toxicity level from pneumonia.
25 What are the symptoms from a high toxicity level from

1 pneumonia?

2 A You'd have a very sick child on your hands, obviously
3 ill, high fever, often nausea, vomiting, maybe sweating,
4 diarrhea possibly. In addition, the child may also go
5 into a condition known as D.I.C., which is disseminated
6 intravascular coagulopathy, where you no longer have the
7 ability to clot your blood in a normal fashion, and you
8 start to bleed spontaneously into your skin and your major
9 organs.

10 Q Would that be consistent with drinking a couple of
11 bottles of milk and/or fluid a couple of hours before you
12 die?

13 A No.

14 Q He asked you, I think, about one of your prior cases.
15 Was that a murder case?

16 A Yes, it was.

17 Q In -- in this courthouse?

18 A Yes.

19 Q I think Ms. -- was Ms. Campbell the prosecutor?

20 A If I remember correctly.

21 Q And the cause of death in that case was what, Doctor?

22 A Blunt head trauma.

23 Q Blunt head trauma?

24 A Yes, sir.

25 Q And you testified as such, correct?

1 A That's correct.

2 Q And either you or Dr. Armstrong said you used forms.
3 On that particular form, what was incorrect that
4 Mr. Strickler asked you about?

5 A I dictated or had in the dictation a gallbladder,
6 which was not there.

7 Q Did that have anything whatsoever to do with the
8 blunt force trauma to the head that killed that poor
9 individual?

10 A No, it did not.

11 Q And was that a scrivener's error, or a failure to
12 fill out the form right on your office part or your
13 office's part?

14 A We have standard templates for autopsies that pretty
15 much a person is otherwise normal, and the abnormal areas
16 get redictated. In this particular case, the dictation
17 included a standard line for gallbladder. The gallbladder
18 dictation should have been removed. It was not. That's
19 my responsibility.

20 Q And if it had been removed, would that change in any
21 way the cause of death of that victim?

22 A No.

23 Q And finally, Mr. Strickler asked you about pneumonia,
24 and you testified it was minimal.

25 A Yes.

1 Q And you testified right at first you like to look at
2 everything that's involved. Dr. Nichols, you do have her
3 statement that she put her hand over his mouth, and he
4 went limp, right?

5 A I believe that was a misstatement that I read. I do
6 not actually have a copy of that statement.

7 Q As a pathologist and medical examiner for Richland
8 County, do you think it's appropriate to consider that she
9 said, "I did it" in your conclusions?

10 A Yes.

11 Q And is that consistent with the findings of your
12 review of Zachary's body and the lack of pneumonia?

13 A Yes, it is.

14 MR. MEADORS: Thank you. That's all.

15 THE COURT: You may step down. Thank you.

16 THE WITNESS: Thank you, Your Honor.

17 THE BAILIFF: Watch your step for me, please.

18 THE WITNESS: Thank you for your time.

19 THE COURT: You may call your next witness.

20 MR. MEADORS: If it pleases you. Dr. Gratin Smith.

21 GRATIN SMITH, after being duly sworn,
22 testified as follows:

23 THE COURT: Would you state your name for the record,
24 please?

25 THE WITNESS: My name is Horace Gratin Smith.

DIRECT EXAMINATION:

BY MR. MEADORS

Q Good afternoon, Doctor. Would you please tell the ladies and gentlemen of this jury about Dr. Gratin Smith, just generally where you're from, your education, and in particular, your field of education in the field of expertise I'm offering you today?

A Okay. My name is Gratin Smith. I'm from South Carolina, grew up in Aiken County, went to public schools, finished at Clemson, and then went to the Medical University of South Carolina in Charleston, finished there in 1981, and then I came to Richland Memorial and did a Family Medicine internship and did a three-year pediatric residency at Richland Memorial.

Since 1985, when I finished my residency, I have been in general pediatrics, first in Walterboro for four years, and then I moved to Greenwood and had been there for 20 years.

In Greenwood, I worked for Self Regional Healthcare, which is a hospital system in Greenwood, and I helped teach the family medicine residents at a residency program there.

Within that setting, I also have a private practice where I take care of my own patients. So I combine working with the residents every day and seeing my own

1 patients.

2 I am board certified as a pediatrician, meaning I
3 have completed that residency, which is an accredited
4 residency program, and I have taken the certifying
5 examinations to maintain board certification by the
6 American Board of Pediatrics.

7 MR. MEADORS: Your Honor, at this time, we would
8 offer Dr. Smith as an expert in the field of pediatrics.

9 THE COURT: Any voir dire?

10 MR. STRICKLER: I have no voir dire and have no
11 objection.

12 THE COURT: I find him qualified as an expert in the
13 field of pediatrics.

14 BY MR. MEADORS

15 Q Doctor, just generally, how many patients have you
16 treated with pneumonia?

17 A Hundreds. It's something that I see just about every
18 week.

19 Q At my request, at my request, did you get involved
20 with on this case?

21 A Yes, I did.

22 Q And are we both on the State Child Fatality Review
23 Board together?

24 A Yes, we are.

25 Q And did you have occasion to review the medical

1 records of Zachary Ulungchong in the first year of his
2 life?

3 A Yes, I did.

4 Q And the emergency department records?

5 A I did.

6 Q E.M.S. run sheet?

7 A Yes.

8 Q The coroner's report?

9 A I did.

10 Q And the autopsy done of -- done by Dr. Armstrong of
11 Zachary Ulungchong?

12 A I did.

13 Q And I first tried to get in touch with you a few
14 weeks ago; is that correct?

15 A That's correct.

16 Q And did Ms. McDuffie e-mail you these documents?

17 A Yes, she did.

18 Q Or in fact, I think even...

19 Okay. After reviewing these documents and based on
20 -- and how many years have you been a doctor, a
21 pediatrician?

22 A I've been practicing for 24 years.

23 Q After reviewing all of the documents, and based on
24 your training and experience, do you, Dr. Smith, have an
25 opinion on the amount of pneumonia this child had at the

1 time of his death?

2 A After reviewing the autopsy report, I would classify
3 the amount of pneumonia being a very small amount to --

4 MR. STRICKLER: Your Honor, I have to object to that.
5 That's outside the area of expertise involved. He's
6 qualified as a pediatrician.

7 MR. MEADORS: Your Honor, can I ask him why, what he
8 bases that on?

9 THE COURT: Let's go out.

10 Ladies and gentlemen, we have a matter we need to
11 take up outside of your presence. I'm going to ask that
12 you retire to the jury room so that we can discuss this
13 matter in more detail.

14 I ask that you not begin to discuss this matter among
15 yourselves, as you still have not heard all the testimony
16 that has to be presented. We'll take a short break.

17 (WHEREUPON, the jury left open court at approximately
18 4:25 p.m.)

19 THE COURT: Yes, sir, Mr. Strickler.

20 MR. STRICKLER: Yes, Your Honor. Thank you.

21 I had no objection to his qualifications in
22 pediatrics. He's prepared to testify or render an
23 opinion, as I understand the questions are coming, as to
24 the degree of pneumonia present at the time of the death.

25 He starts to -- he was starting to refer to the

1 autopsy. The autopsies contains -- the material from the
2 autopsy consists of two things: The report itself, which
3 was a written document, and tissue samples. I guess three
4 things, the toxicology; test results also.

5 I'm trying to figure -- the only way he could render
6 or come to any kind of opinion as to the degree of
7 pneumonia infection present would be through evaluation,
8 the slides, the tissue samples here.

9 I have heard nothing qualifying him in that area.
10 That's pathology, as best I understand it. So my
11 objection is to qualifications to render an opinion.

12 THE COURT: Any response?

13 MR. MEADORS: Yes, ma'am. May it please the Court.

14 Any doctor who has now been accepted as an expert can
15 look at all documents, and any doctor can see patchy and
16 lobular, which I think his testimony is going to mean,
17 based on his experience and training, "I can say I think
18 that's small, minimum." Then they're going to move on,
19 "What symptoms you would see," which I think he clearly is
20 because he does deal with actual living patients, and
21 that's the bulk of his testimony.

22 I think looking at the shear report, which I think an
23 expert is allowed to do, or ask him -- they can cross him
24 based on patchy, lobular: "What does lobular mean during
25 your training?"

1 "This is why I think it was a small amount."

2 "What type of symptoms would you, or had you seen,
3 consistent with this?"

4 I think, clearly, in his expertise with pediatrics,
5 he deals with kids; that respectfully he should be allowed
6 to testify.

7 THE COURT: So what I hear you saying then in
8 response to the objection is he's not so much relying on
9 observing the slides as he is the written report, as well
10 as the other medical records that he may have reviewed.

11 MR. MEADORS: Without question. As a matter of fact,
12 one of the delays in getting it to him was the records
13 were not in our possession. This is one of the folks I
14 wanted to look at it.

15 When I finally talked to him, which is true. I
16 didn't mean to sound -- that is true. When I finally
17 talked to him, I said, "Doctor, I was waiting to get the
18 slides."

19 He could have said, "That wouldn't help me anyway."
20 I will ask him that, so he could have said, "I wouldn't
21 have even needed the slides," and that is true, for the
22 record.

23 So yes, just based on the sheer words that he's going
24 to see -- he's -- on his training, I think he can testify
25 to that, respectfully, and then we're going to move on to

1 symptoms, which I think in his -- that is what he deals
2 with, living children.

3 THE COURT: To the extent that he would rely on
4 actually viewing the slides, then I think that you have to
5 lay some additional foundation, but based upon what you've
6 indicated at this particular point, I'll overrule the
7 objection.

8 MS. PRINGLE: Thank you.

9 MR. MEADORS: Thank you.

10 THE COURT: Anything else we need to take up before
11 we bring the jury back?

12 MR. MEADORS: Let me -- just one other -- just please
13 beg.

14 (Pause).

15 No, ma'am; thank you.

16 THE COURT: Anything else?

17 MR. STRICKLER: No, ma'am.

18 THE COURT: You may ask the jury to come back.

19 (WHEREUPON, the jury came into open court at
20 approximately 4:29 p.m.)

21 THE BAILIFF: The jurors are all present, Your Honor.

22 THE COURT: Yes, sir, Mr. Meadors.

23 BY MR. MEADORS

24 Q Thank you, Your Honor.

25 After reviewing the records, do you have an opinion

1 on the amount of pneumonia that Zachary Ulengchong had in
2 his body at the time of his death?

3 A After review of the autopsy report, it's my opinion
4 that he had a small amount of pneumonia in his lungs.

5 Q Thank you. Tell these ladies and gentlemen of this
6 jury why you say that, Dr. Smith?

7 A We had two lungs. His -- his pneumonia was confined
8 to the right lung, and it was described as lobular.
9 Within the lung -- in the right lung, there are three
10 lobes, which are big segments of lung.

11 Within those lobes are lobules, and a lobule is -- on
12 the outside of the lung is represented by a space of about
13 one inch. It's a little section of a lobe, kind of like
14 sections in an orange or grapefruit, something like that.
15 And in the description, he had some involvement of
16 lobules, but nowhere was there a description of an entire
17 lobe being involved or the entire lung itself.

18 Q And what type of -- you've been around. I don't mean
19 that bad, but what type of symptoms would you expect --
20 based on your practice and seeing patients with a child of
21 this age with that minimum amount of pneumonia, what kind
22 of symptoms would you...

23 A Symptoms could be as mild as being hardly noticeable.
24 Most of the time children cough, if they have some degree
25 on pneumonia. Depending on how much they have, they have

1 more significant symptoms of illness.

2 Q What type of symptoms would you expect to see from a
3 child who was two-and-a-half hours away from dying, if it
4 had pneumonia?

5 A The usual progression of symptoms in children who
6 develop respiratory failure, which is what makes children
7 die of pneumonia, is they go through, initially, a period
8 of fast breathing, because they are trying to increase air
9 movement in the lungs.

10 They have symptoms of increased work of breathing,
11 which means they -- they look like they're tugging to
12 breathe. It's obvious when you watch a child breathe,
13 they're using extra muscles to try to increase the
14 expansion in their chest.

15 They go through fast breasting, increased work of
16 breathing, and they begin to fatigue or tire out. When
17 that happens, that's when a child goes from having
18 respiratory distress to having respiratory failure.

19 During respiratory failure children, it's obvious
20 that they are critically ill. They go from looking like
21 they have increased work from breathing to looking like
22 they just can't breathe.

23 They often grunt and sometimes moan. These are signs
24 that they are fatiguing and doing all they can do to keep
25 breathing. Eventually, that progresses to the point where

1 they just stop breathing. That -- that is a process that
2 occurs over time.

3 Q And if a child with that extensive pneumonia, a
4 couple of hours-and-a-half away from death, would that be
5 noticeable?

6 A Yes, it would.

7 Q Let me ask you this, Doctor: If what you testified
8 to, you believe that this child had a minimal amount of
9 pneumonia in his body -- if it was just left there with
10 this child, with no care, no love, no comfort, anything,
11 just left there -- how long would it take for that minimum
12 amount of pneumonia to get to the degree you just talked
13 about?

14 A Some children can have minimal amounts of pneumonia
15 they clear spontaneously and get over. The usual
16 timeframe for progression from that degree of pneumonia to
17 respiratory failure would usually be more in terms of
18 days, even, before a child would reach that point.

19 Q And are you able to state with a reasonable degree of
20 medical certainty, based on your review and your
21 experiences, whether or not Zachary Ulengchong died
22 December 2nd, 1998, from pneumonia?

23 A I am able to state with a reasonable amount of
24 confidence that based on the information I have learned in
25 reviewing these documents, that this child did not die of

1 pneumonia.

2 Q And do you base that on the lack of pneumonia and the
3 lack of symptoms?

4 A Both.

5 Q And do you see these symptoms every day in your
6 patients? I mean, you see symptoms. You deal with live
7 folks?

8 A I see children with pneumonia every week.

9 Q If you said it, I don't know, but can pneumonia
10 progress from a mild amount to that amount you described
11 in two-and-a-half hours?

12 A To...

13 Q That would kill -- that would cause respiratory
14 failure?

15 A I have never seen that happen in all my years of
16 practice.

17 Q And how many years of practice have you been
18 practicing?

19 A Twenty-four years.

20 Q You've never seen that happen in 24 years?

21 A Never.

22 Q Tell these folks how much am I, or we, Solicitor, are
23 we paying you today?

24 A I'm not aware that I'm being paid anything.

25 Q You're not.

1 (The jury laughs).

2 Thank you. Thank you, sir.

3 THE COURT: Any cross?

4 CROSS-EXAMINATION:

5 BY MR. STRICKLER

6 Q Doctor, you're not being paid anything. What it took
7 in this case is a phone call from Mr. Meadors, who is also
8 on the State Fatality Child Advisory Committee, right?

9 A That's true.

10 Q And I believe Mr. Meadors indicated he first tried to
11 contact you a couple of weeks ago.

12 A Two or three weeks ago.

13 Q Two or three weeks ago. Do you know when he finally
14 got in touch with you, and when we were able to go ahead
15 and get the material for you to review?

16 A It was last week.

17 Q Last week?

18 A We did have some e-mail contact, and I got the
19 documents last week.

20 Q Okay. And the documents you received, you got the
21 autopsy report?

22 A Yes.

23 Q And you're not a pathologist, correct?

24 A That's correct.

25 Q And the autopsy report is something generated by

- 1 pathologists, correct?
- 2 A That's correct.
- 3 Q Using language used by pathologists, correct?
- 4 A And any educated person in medicine.
- 5 Q Did you get the forensic toxicology report?
- 6 A I have seen that report.
- 7 Q Did you receive the coroner's incident report?
- 8 A Yes.
- 9 Q Did you receive the death certificate in this matter?
- 10 A Yes.
- 11 Q Which is the original final cause of death of lobular
12 pneumonia?
- 13 A Yes.
- 14 Q Did you receive the statement of Mandy Fortson?
- 15 A I don't remember who Mandy Fortson is.
- 16 Q Being an E.M.S. worker who arrived on the scene and
17 who provided, I don't know, a page, page-and-a-half long
18 single-page statement to the police.
- 19 A I'm not sure if I received that or not.
- 20 Q And in which she described finding a pool of milky
21 vomitus in the crib in the Pack N Play that Zachary was
22 lying in?
- 23 A I read a description of -- of a pool of vomit.
- 24 Q The kids are sick in vomit, right?
- 25 A Yes.

1 Q Did you receive the South Carolina Law Enforcement
2 Division report in this regard, March 2000?

3 A Yes, I did.

4 Q Okay. That was from the Child Fatality Review Board?

5 A Yes.

6 Q Correct? It's not the same that you're on, the
7 predecessor of yours?

8 A No, it's the same --

9 Q It's the same --

10 A -- committee, yes.

11 Q I'm not sure if the name changed or not, so the cause
12 of death was found to be natural at that point in time,
13 correct?

14 A Yes.

15 Q And I take it that you had an opportunity to review
16 Zachary Ulengchong's medical file, correct?

17 A Yes, I did.

18 Q Okay. And you are aware of the fact that back in
19 April 1998, he was diagnosed with pneumonia?

20 A I'm aware of that fact.

21 Q Treated with, I guess he had an adverse reaction to
22 something, then was treated with Augmentin?

23 A That's what he had the reaction to.

24 Q That's what he had the reaction to. That is an
25 antibiotic?

1 A Yes.

2 Q Okay. Used, among other things, to treat pneumonia,
3 correct?

4 A Yes.

5 Q And that in early September, late August 1998, he was
6 placed on Zithromax.

7 A Yes.

8 Q Do you see that? That is also an antibiotic?

9 A Yes, it is.

10 Q That he had a number of visits to Moncrief Emergency
11 Care Family Clinic, pediatric clinic, for high
12 temperatures, pneumonia, fever, cough, runny nose --

13 A Yes.

14 Q -- et cetera?

15 A Yes.

16 Q Over the course of the year, 1998?

17 A Yes.

18 Q Correct? In answering the question to Mr. Meadors,
19 how long would it go from a minimal pneumonia infection to
20 respiratory failure? I believe your answer was "usually
21 days"; is that correct?

22 A Yes.

23 Q And is it correct to term -- well, you don't have the
24 slides there. You don't know how extensive the infection
25 was, correct?

1 A I have not looked at any slides. I'm not a
2 pathologist.

3 Q Mr. Meadors used the term "minimal". What you have
4 seen is the autopsy itself?

5 A Yes.

6 Q Correct? And finally, in the autopsy itself,
7 includes acute and chronic bronchitis, correct?

8 A Correct.

9 Q Chronic inflammation is also identified in the
10 epiglottis?

11 A Correct.

12 Q Associated with bronchitis is an acute lobular
13 pneumonia?

14 A Correct.

15 Q Correct? It is patchy?

16 A Correct.

17 Q Correct. There is, however, generalized intra
18 alveolar hemorrhage, correct?

19 A Correct.

20 Q Okay. So -- and correct me if I'm wrong, please,
21 what you say will base -- I thought your statement was he
22 had a small amount of pneumonia.

23 A Yes.

24 Q What you're basically saying, he had a small amount
25 on -- is that associated with the bronchitis is an acute

1 lobular pneumonia. It is patchy; is that correct?

2 A Yes.

3 Q Is that the sum total of what you base the statement
4 that it is a small amount of pneumonia on?

5 A There is -- are you looking at the second page of the
6 report or the first page?

7 Q I'm looking at the microscopic description of the
8 page.

9 A Okay. I was basing it on my review of the entire
10 document which the -- the gross pathology, the microscopic
11 and the summary.

12 Q All right. I assume that what you're dealing with as
13 far as the degree of pneumonia is going to concern itself
14 with the neck and thorax, correct?

15 A Thorax is the chest.

16 Q Yeah, exactly. Let me show you this and ask if you
17 recognize it, sir.

18 A Yes, I do.

19 Q And ask you to refer to this page.

20 A Yes.

21 Q And that would be the general description that you
22 just mentioned as opposed to the microscopic?

23 A Yes.

24 Q Okay. Could you just tell me what additional there
25 is in the general description that you relied on in

1 finding a -- in determining that there was a small amount
2 after pneumonia?

3 A The sentence in the description of the neck and
4 thorax says, "The right lower and upper lobes have a
5 darkened appearance over the pleural surface where the
6 left is completely pink."

7 Q Okay. Is that it?

8 A Yes.

9 Q Okay. Thank you, sir, I'm just trying to flesh out
10 exactly the basis, because the basis is this right here.
11 So the statement that, "The right lower and upper lobes
12 have a darkened appearance of over the pleural surface;
13 whereas, the left is completely pink combined with the
14 microscopic observation that they're associated with the
15 bronchitis in acute lobular pneumonia. It is patchy."

16 A Yes.

17 Q Right? Now, I'm just about done.

18 "A small amount of pneumonia" is what I wrote down as
19 I listened to your testimony. I'm not trying to put words
20 in your mouth at all. That's what I wrote down.

21 What I wrote down towards the end, Mr. Meadors asked
22 you how long it would take a minimal pneumonia to go from
23 minimal to respiratory failure. Are you terming,
24 according to your review of the document, what was present
25 as minimal pneumonia or small amount of pneumonia?

1 A Well, I --

2 Q Because the terms have no difference to you.

3 A Well, they don't have a lot of difference to me, but
4 I would -- if I had to choose, I would say small.

5 Q Small would be greater than minimal or lesser?

6 A What did you mean?

7 Q It's minimal as a descriptive for you, because that
8 descriptive was used by him not by you. You used "small",
9 okay. I'm trying to figure out whether you call it
10 minimal or was it somewhat more than minimal?

11 A I call it small, which would be more than just a
12 trace.

13 Q Small to you means more than just a trace?

14 A Yes.

15 Q All right. Thank you.

16 THE COURT: Any redirect?

17 MR. MEADORS: Beg the Court's indulgence.

18 REDIRECT EXAMINATION:

19 BY MR. MEADORS

20 Q He asked you about specifically an April 28th visit,
21 I believe. Do you know what I'm talking about?

22 A Yes.

23 Q And about whether or not the pneumonia was present
24 that I think they -- he was prescribed something, correct?

25 A Correct.

1 Q The visit where the diagnosis was pneumonia?

2 A Yes.

3 Q What did the x-ray show?

4 A The x-ray on that visit, of the 28th, said it was
5 normal, and they -- they showed no pneumonia.

6 Q And what was he treated with?

7 A He was treated with Augmentin.

8 Q Why would -- is that a precautionary? Why would that
9 have been the treatment, in your opinion if...

10 A If there were a strong clinical suspicion that a
11 child had pneumonia, most physicians would treat a child
12 with antibiotics.

13 From review of the record, it appears that they were
14 concerned this child had pneumonia; although, it was not
15 verified by chest x-ray. That's why they put the child on
16 antibiotics.

17 Q So it turns out he didn't have pneumonia, but they
18 went ahead in a precautionary manner?

19 A Yes.

20 Q And prescribes an antibiotic, antibiotic.

21 Mr. Strickler was asking you about your opinion as to
22 the small amount of pneumonia. Your opinion, based on the
23 autopsy, I think is specifically what he's asking you
24 about.

25 Is your opinion that there was a small amount of

1 pneumonia in Zachary also based on other information as
2 far as lack of symptoms that he had exhibited that you
3 were provided with?

4 A Yes, he is.

5 Q Finally, these -- is there anything unusual about the
6 number of visits to the doctor or the type of visits to
7 the doctor for Zachary's first year of life?

8 A No. To me, there is not. The average child in day
9 care has anywhere from eight to 12 colds a year.

10 Q And he didn't die from any of those visits?

11 A No.

12 Q That's all. Thank you.

13 THE COURT: You may step down. Thank you.

14 MR. MEADORS: I'm begging, Your Honor, if we could
15 have a brief recess.

16 THE COURT: Approach for a moment.

17 (WHEREUPON, a bench conference was held in the
18 presence but not within the hearing of the jury).

19 THE COURT: Ladies and gentlemen, this is a good time
20 to take a break for the evening. I'm going to remind you
21 all the instructions that you have heard throughout the
22 course of this trial: Once again, that you not discuss
23 this matter among yourselves, as you still have not heard
24 all of the evidence that has to be presented, and even if
25 you have heard all of the evidence, you are still not in

1 the position to be able to determine any facts in this
2 case.

3 Also, I ask that you remember not to allow anyone to
4 approach you to discuss this matter. Again, if someone
5 attempts to do that, please tell them that you are a juror
6 and you cannot discuss it, and I also would like to remind
7 you that you should not allow anyone to approach you to
8 discuss this matter with you.

9 As you come and go from the courthouse, I ask that
10 you not listen to conversations that you may hear in the
11 hallways as you come and go. Again, for the reasons that
12 you will have to make the decisions based upon the
13 evidence that's presented here in this courtroom and not
14 based upon other comments.

15 Ladies and gentlemen, I remind you this evening that
16 you should not, again, listen to, or watch, or read any
17 media reports. Again, that's someone else's recitation of
18 what they've heard and what they have seen throughout the
19 course of this trial, and that would not be appropriate
20 for you to consider that information.

21 Please remember also not to discuss this matter with
22 family members or friends, again, for the reasons that you
23 have to make the decisions based upon what's been said
24 here in this courtroom.

25 I also remind you, again, not to conduct any

1 independent research or investigation and that you not
2 engage in any research on the internet, whether it's in
3 the form of Facebook, Google, Twitter, MySpace, any of --
4 any type of social networking site that would allow you to
5 be able to have conversations regarding what you have seen
6 or what you have heard throughout the course of this
7 trial, or what someone else may have heard or seen, or any
8 media reports that may exist about this particular trial.

9 Again, that's all for the reasons that you have to be
10 sure -- to make sure that your decisions are based
11 strictly upon the evidence that's been presented
12 throughout the course of this trial, and your view of what
13 that evidence shows, and my instructions to you on the
14 law. I ask that you not engage in any of that research or
15 investigation.

16 Ladies and gentlemen, I'm going to ask that you
17 report tomorrow morning at ten o'clock to the same jury
18 room.

19 When you report tomorrow morning, then we will be
20 ready at that time to continue along with the trial in
21 this particular matter. I hope that you have a pleasant
22 evening, and we'll see you tomorrow at ten o'clock.

23 (WHEREUPON, the jury left open court at approximately
24 5:02 p.m.)

25 THE COURT: Are there any matters that we need to

1 take up at this particular time?

2 MR. MEADORS: No, ma'am, nothing from the State.

3 THE COURT: And so what I understand from the State
4 is the State has not quite determined at this particular
5 point whether or not it wishes to rest; is that correct?

6 MR. MEADORS: I -- I think that decision is very
7 close to being made as we conveyed at sidebar. I think if
8 we can do that first thing in the morning. We just want
9 to review the materials and make sure we've covered
10 everything.

11 THE COURT: I understand. What I'd like to do at
12 this point is to go ahead and advise Ms. Person of her
13 rights relating to a defense in this case.

14 Ms. Person, you understand that you have certain
15 rights in connection with this particular trial. One of
16 those is your right to remain silent.

17 Very shortly, we will reach that portion of the trial
18 in which you may present a defense. As part of that
19 defense, you may decide whether or not you wish to testify
20 as a witness in this case.

21 If you decide that you -- you can consult with
22 whomever you wish to consult with to determine whether or
23 not you wish to testify. That means you can discuss it
24 with your family members. You can discuss it with your
25 attorneys, but ultimately, the decision is yours as to

1 whether or not you wish to testify.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: If you decide that you wish to testify in
4 this particular matter and you have a criminal record
5 which carries possible term of imprisonment of more than
6 one year or you have been convicted of a crime that --
7 that denotes dishonesty, that crime can be used to impeach
8 you in your testimony; that is to challenge your veracity
9 and truthfulness while you are testifying.

10 If you do not have that criminal record, then, of
11 course, there would be nothing to impeach you with as it
12 relates to any criminal history.

13 If you decide that you do not wish to testify, the
14 jury would be informed that you have the absolute right to
15 remain silent. That is your Constitutional Right, and the
16 fact that you do not take the witness stand and testify in
17 your behalf cannot be considered by them in any manner
18 whatsoever in determining your guilt or innocence in this
19 particular case.

20 They would also be instructed that the fact that you
21 did not testify should not even be discussed by them
22 during the course of their deliberations after this -- at
23 the time that it's submitted to them to begin their
24 deliberations.

25 Again, Ms. Person, you have the opportunity to

1 consider that overnight. You can, again, talk with your
2 attorneys or with your family.

3 As I said, ultimately, the decision is up to you as
4 to whether or not you wish to testify in your defense in
5 this matter. Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you have any questions as it relates
8 to that point?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: I'll ask you in the morning whether or
11 not you wish to testify. I'll give you overnight to -- to
12 seek further counsel and to make that decision.

13 Thank you.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Then what I ask that we do is we come
16 together at 9:30 tomorrow morning.

17 To the extent that there may be any requests to
18 charge, I would ask that if you could provide those to me
19 by lunchtime tomorrow so that we can consider those and
20 perhaps take those up tomorrow afternoon.

21 I understand that there is a -- there is a witness
22 who is not expected to arrive until Friday morning and
23 provide testimony until that time, but to the extent that
24 we can address any requests to charge before that time,
25 I'd like to be able to take that up so that once that

1 witness has testified, we can continue on and try to get
2 to a resolution, at least get it to the jury before too
3 late on Friday afternoon.

4 Is there anything further?

5 MR. MEADORS: No, ma'am, nothing from the State.

6 MR. STRICKLER: No, Your Honor.

7 THE COURT: Then at this time we will recess until
8 tomorrow morning at 9:30.

9 (There was an overnight recess).

10 THE COURT: Good morning.

11 MR. MEADORS: Good morning.

12 THE COURT: I believe where we left off yesterday,
13 Mr. Meadors, you were going to make a decision about
14 whether you intend to rest or not.

15 MR. MEADORS: Your Honor, the State would rest at
16 this time.

17 THE COURT: Do we need to take up any motions at this
18 point?

19 MR. STRICKLER: Yes, ma'am.

20 THE COURT: Yes, sir.

21 MR. STRICKLER: If it please the Court. At this
22 point in time, the defense would move for a directed
23 verdict in this matter.

24 THE COURT: Mr. Strickler, would you do me a favor,
25 would you take that microphone and bring it down in front

1 of you?

2 MR. STRICKLER: I'm sorry. Perhaps if I stand up,
3 you won't have a problem.

4 THE COURT: No. Sometimes the microphone will pick
5 up just a little.

6 MR. STRICKLER: I'll be happy to. Now, it's too
7 close. I'll back off from that.

8 Thank you, Your Honor. At this point in time, of
9 course, Your Honor has to take the evidence in the light
10 most favorable to the State.

11 THE COURT: Yes, sir.

12 MR. STRICKLER: However, given that, I will submit
13 that the State has failed to prove the corpus of the crime
14 independent of, or aliunde of the confession of
15 Ms. Person.

16 It's equally well-established law that a conviction
17 cannot be had on the extra judicial confession of the
18 defendant unless corroborated by proof aliunde from
19 another source of the corpus delicti.

20 In that regard, I cite State v. Blocker, and State v.
21 Williams. State v. Blocker for the basic proposition
22 which is -- there's so many cases I'd point to that I
23 really don't need to go any further than that. I'll just
24 move on.

25 And State v. Williams at 321 S.C. 381; 468 S.E.2d 656

1 (1996). The procedural status that I take at this time --
2 considering this issue, I initially thought that I needed
3 to raise it prior to the admission of her testimony.

4 Williams stands for the proposition not only -- and
5 it cites Blocker; that a conviction could not be had on
6 the actual induced confession of the defendant, must be
7 corroborated by proof aliunde of the corpus, but also in
8 footnote two for the proposition that -- the final fact
9 that a hearing was held.

10 In Williams, a hearing was held pretrial, and the
11 case was disposed of at that time. It was appealed by the
12 State in this regard, if I remember correctly.

13 Yes, the State appealed, and the Court held that the
14 proper procedure is to go ahead and take all the evidence
15 in the case, and then deal with the issue at the final
16 motion for a directed verdict. So that's why I raise it
17 at this time rather than later. State v. Blocker is 205
18 S.C. 303; 31 S.E.2d 908 (1934).

19 Your Honor, if you look at the evidence in this case,
20 consider the evidence in the case, it falls into two
21 classes: It falls into the evidence that was -- extent in
22 1998, and 1999 at the time that the death occurred and the
23 autopsy was conducted, and the conclusions were withdrawn
24 at that point in time.

25 Then there's a body of evidence that's introduced or

1 comes to light in 2007 at the time that of Ms. Person's
2 arrest, interrogation, and giving of the statement in this
3 particular case.

4 Now, what evidence does the Court have aliunde from
5 other sources of the statement as to the corpus? First of
6 all, what's the corpus here? I can't find specific
7 reference as to what the corpus is in a homicide by child
8 abuse case.

9 The corpus in a homicide case is the death of an
10 individual and the criminal lack of another in causing
11 that death, so I'm going to have to just say that the
12 corpus in a homicide by child abuse case may have the
13 death of a child under 11 years old through the criminal
14 act of another.

15 It's not the same as proving every element of the
16 charge, but it does require at least the establishment of
17 the death, and the establishment of the death as being at
18 the hands of someone else, being nonnatural cause.

19 So in 1998, '99, the ruin was that the death was as a
20 result of a motive.

21 In 2007, we have a statement from Ms. Person which
22 the State contends is a confession, which then puts
23 into -- starts the sequence of events, at least from the
24 reevaluation of the medical filings.

25 In talking with the doctors during their testimony

1 yesterday, the medical finding is that the piece of
2 evidence in consideration needs them to say now it's a
3 homicide, as opposed to death by pneumonia or undetermined
4 or needs further review, is the statement from Ms. Person.

5 They've got -- I went through that with both Drs.
6 Armstrong and Nichols. Absent her statement, the --
7 Armstrong has backed off on his finding that the pneumonia
8 was sufficient to kill her, but doesn't have a finding
9 independent of her statement that her death was the result
10 of the hands of another person.

11 And, specifically, we talk to Nichols. Absent her
12 statement, as I questioned him, what he had to say was the
13 death was one of two things: Pending or undetermined.

14 So the -- what allows the State to go forward and
15 establish the second of the two necessary prongs for the
16 corpus in this case is that being the agency of another
17 human being in causing the death is the statement of
18 Andrea Person.

19 Okay. So the corpus must be corroborated by evidence
20 independent of her statement. The evidence -- I'm done,
21 I'm done. The evidence that corroborates it is based on
22 her statement.

23 THE COURT: Let me ask this: Does the science of
24 forensic pathology and what forensic pathologists can
25 consider in determining a cause of death affect your

1 argument at all?

2 MR. STRICKLER: Well, you know, I will not stand here
3 and contend, and did not contend with witnesses, that the
4 proper item for consideration of a forensic pathologist is
5 not a statement given in a case. It certainly is.

6 THE COURT: Say that again.

7 MR. STRICKLER: Proper consideration of a forensic
8 pathologist should have properly considered whatever
9 evidence he or she can in evaluating the cause of death,
10 to include statements in cases. I make no contention
11 otherwise, okay.

12 THE COURT: Would the fact that a forensic
13 pathologist has the ability to consider those statements,
14 even if they are statements which are considered to be
15 extra judicial statements, would that affect the ability
16 to establish the corpus delicti?

17 MR. STRICKLER: Well, I guess that -- that is what I
18 am submitting at this point in time, Your Honor.

19 THE COURT: So, basically, what you're saying is that
20 the statement shouldn't be considered by anyone under any
21 circumstances in determining whether corpus delicti is
22 being established?

23 MR. STRICKLER: That's correct, because the State is
24 required to establish it by evidence independent of and
25 corroborating her statement.

1 The evidence that they used to establish it
2 independent of, and corroborating her statement, because
3 that's the forward mark is her statement, because her
4 statement is what leads the pathologists, ultimately, to
5 render the conclusions that they have in this case.

6 It's the circular -- that's the essence of the
7 problem, as far as I'm concerned. I think I've expressed
8 myself on that.

9 THE COURT: Mr. Meadors?

10 MR. MEADORS: If it pleases Your Honor. This case
11 was reviewed because of the Walker child's death to start
12 with, and then they found out that there were three
13 children.

14 THE COURT: You also need to speak up.

15 MR. MEADORS: Oh.

16 THE COURT: If you'll turn that microphone up,
17 please.

18 MR. MEADORS: I apologize, sorry about that.

19 (Blowing into microphone).

20 THE COURT: You don't have to blow on it. Just speak
21 up.

22 MR. MEADORS: That's why this investigation was
23 opened, Your Honor, because of -- they discovered there
24 were three deaths.

25 It's my understanding of the law, since I've been

1 doing it, is once you have a statement, you look to see if
2 there's any independent evidence that corroborates her
3 statement.

4 Well, you start off with mama, Mrs. Ulengchong.
5 "Yeah, I did go to that day care. I did drop her off that
6 morning." That's what's in the statement, "fine when I
7 went there." That right there, I think, is enough, quite
8 frankly, in my reading of the rule.

9 Then you go on through. You're talking about these
10 pathologists who testified. Dr. Armstrong, the time
11 interval was important to him; the lack of symptoms of the
12 pneumonia from Dr. Smith; Clay Nichols.

13 Your Honor, it wasn't just her statement. It was
14 also the minimum or small amount of pneumonia in there. I
15 don't know how else you can -- it is circular, like
16 Mr. Strickler says, to an extent, but you have a statement
17 she makes. We have a body. We have a day care. The
18 child was alive that morning, died later.

19 I think that, in and of itself, is enough. It's not
20 just a statement. If we didn't have any of these other
21 factors, I think there might be an issue.

22 If somebody just came in and said, "I killed this
23 child so and so," and that was it, there wasn't any
24 evidence of anything, no body, no place, no day care.

25 Now, I think it would be a problem, but here I think

1 we do have, in the light most favorable to the State at
2 this point, corroborating evidence of the statement, which
3 I think is, respectfully, what the law requires. And she
4 practically -- or she does -- Mrs. Ulengchong leaves
5 Zachary in the sole custody of the defendant.

6 And finally, this came out yesterday, the physical
7 manifestation that Dr. Armstrong testified to, all due
8 respect to everybody, the fingers and the penis, again,
9 would be independent evidence, we think, separate, and
10 corroborating her statement of suffocation, Your Honor.

11 THE COURT: Any response to that, Mr. Strickler?

12 MR. STRICKLER: No, Your Honor. I think I've
13 expressed myself in this regard.

14 THE COURT: Viewing the evidence in the light most
15 favorable to the State, I think that there has been
16 evidence that establishes the corpus delicti.

17 Mr. Strickler, obviously, you're correct in your
18 statement with respect to the law as to what's required
19 that despite the fact that there has been a statement by
20 Ms. Person, the State has to present evidence to show the
21 corpus of the offense separate and apart from her
22 statement.

23 It no longer has to be done before the statement is
24 introduced. And so in reviewing the evidence, the
25 evidence -- it -- I would agree with the State that the

1 evidence is that the child was dropped off at the day care
2 at the time -- and I'm considering the evidence in the
3 light most favorable to the State, as I'm required to do.

4 The child was dropped off at the day care. The child
5 was not exhibiting any signs of illness at the time that
6 it was dropped off; that subsequently, the baby died in
7 the custody of Ms. Person; that despite the autopsy
8 results in 1998, '99, the testimony has been that there
9 was a small amount of pneumonia; that the testimony from
10 Dr. Armstrong that the State just mentioned about the
11 color -- the color of the child's fingers, as well as the
12 color of the child's penis, indicated a lack of oxygen.

13 The -- in addition, I think that the science of
14 forensic pathologist allows the consideration of
15 information.

16 I think there might be some question as to whether or
17 not the statement that Ms. Person gave would be used in
18 considering the cause of death, considering that as part
19 and parcel of the signs of forensic pathology, I think
20 that it's proper for them to consider that.

21 I understand that their testimony is absent the
22 statement, that there still be some questions as to the
23 death, the cause of the death of the child.

24 I think that that really goes to the weight to be
25 given the testimony and the weight of the testimony to

1 determine whether it's sufficient to ultimately establish
2 that Ms. Person committed this particular offense, but I
3 think that the State has made a showing and has presented
4 evidence for consideration by the jury..

5 Ultimately, I think it really does become a jury
6 issue as to what weight to give the testimony in light of
7 the events that occurred in 1998, 1999, what was -- what
8 was said then, and what was said in 2000 when she was
9 actually arrested. So I will respectfully deny your
10 motion for a directed verdict at this point.

11 MR. STRICKLER: Yes, Your Honor. Thank you.

12 The only other thing at this point in time, Your
13 Honor, the Court will note that during the course of the
14 trial I had objected and moved for a mistrial in this
15 regard.

16 The record will reflect the basis for that is the
17 sole objection and motion for a mistrial, Your Honor, held
18 first at the bench and then later at the end of the day
19 yesterday.

20 I, at this point in time, renew my objection, renew
21 my motion as trying to revisit your ruling in that regard
22 and for a mistrial.

23 THE COURT: And that's in reference to the last
24 questions that were asked of Officer Wilson; is that
25 correct?

1 MR. STRICKLER: That's correct, Your Honor.

2 THE COURT: I think I made myself, my arguments and
3 my rulings, clear yesterday. I don't see a reason at this
4 particular point to revisit it in light of what's been
5 stated in addition to the evidence and testimony that's
6 come about.

7 I understand that there have been some statements
8 that she was contacted in 2007, and you specifically
9 discussed in great detail how to discuss the police
10 officers made initial contact with her.

11 While I would agree that the question may not have
12 been asked, it was asked, and I don't find that it's
13 prejudicial to the defendant at this particular point,
14 particularly with the manner in which the question was
15 asked and the answer. So I'll deny your motion for a
16 mistrial.

17 MR. STRICKLER: Thank you, Your Honor. Lastly, my
18 co-counsel brings to my attention, I need to also, Your
19 Honor, at this point, pretrial hearings -- Your Honor
20 asked for briefs regarding how to address the initial
21 contact in 2007.

22 We submitted a brief setting forth fully our position
23 in that regard. Your Honor has ruled and issued a written
24 order in that regard. To the extent that your written
25 order does not encompass all that we asked for in our

1 initial brief, we would register our objection at this
2 point.

3 THE COURT: And I understand that you're making your
4 motion in part to protect the record, but I want to make
5 sure I didn't omit anything in considering it.

6 As I understood the argument, of course, you did not
7 want any reference at all to the fact that a child was
8 involved, if they -- if they responded because a child was
9 involved in the incident. You certainly did not want
10 there to be any discussion about the fact that there were
11 additional deaths which caused them to respond --

12 MR. STRICKLER: Yes, sir.

13 THE COURT: -- or open the investigation, and I
14 believe that you also objected to comments relating to the
15 fact that she was afraid that it would look bad, and
16 that's why she had not discussed the death of Zachary
17 Ulenchong before that particular point.

18 MR. STRICKLER: Yes, Your Honor.

19 THE COURT: And I'm trying to think --

20 MR. STRICKLER: I'm sorry.

21 THE COURT: -- if I've left out anything else. There
22 might have been something else, and I can't remember if
23 there is.

24 MR. STRICKLER: And I think, in particular, I think
25 one of the first things you addressed in your comments is

1 our concern and our objection to mention of the 2007 case
2 being an incident involving a child.

3 THE COURT: Yes.

4 MR. STRICKLER: And you ruled as you ruled.

5 THE COURT: I understand.

6 MR. STRICKLER: And to the extent that you ruled that
7 much could be gone into --

8 THE COURT: That's --

9 MR. STRICKLER: -- that's clearly contrary to what we
10 asked for. I just want to preserve our objection in that
11 regard.

12 Co-counsel is standing beside me. I would ask if she
13 wants to elaborate on any that she be able to.

14 MS. PRINGLE: I just want to make -- I think we
15 failed to make our motion pretrial, our written motion, of
16 course, an exhibit. We'd like to do that at this time.

17 THE COURT: That's fine. I don't have any problem
18 with that, and...

19 (WHEREUPON, Defendant's Exhibits Nos. 1, 2 were
20 marked for identification only.)

21 (WHEREUPON, Court's Exhibit No. 1 was marked for
22 identification only.)

23 THE COURT: Is that the one called Motion in Limine
24 Testimony Relating to the Initiation of Investigation?

25 MS. PRINGLE: Yes.

1 THE COURT: It was filed November 6th, 2009?

2 MS. PRINGLE: Yes.

3 THE COURT: Okay. And that's okay. Anything else?

4 MR. STRICKLER: Your Honor, if I could --

5 THE COURT: Yes, sir.

6 MR. STRICKLER: -- just for completeness's sake, I
7 have a copy of Your Honor's order in that regard.

8 THE COURT: That's fine.

9 MR. STRICKLER: Just so we're all together in one
10 spot.

11 THE COURT: And you can make that a part of record,
12 too.

13 MR. STRICKLER: If you could, please. This is an
14 order by you filed November 10th, 2009.

15 (WHEREUPON, Court's Exhibit No. 2 was marked for
16 identification only.)

17 MR. STRICKLER: Thank you very much, Your Honor.
18 That's all I have as far as motions go. I think
19 Ms. Pringle has another issue, has an issue that she needs
20 to address.

21 THE COURT: Ms. Pringle, do we need to take up your
22 issue before I ask your client whether or not she intends
23 to testify in this matter?

24 MS. PRINGLE: Yes, Your Honor.

25 THE COURT: Yes, ma'am.

1 MS. PRINGLE: Your Honor, in going through
2 preparation of a defense for this case, obviously, I have
3 prepared a direct examination of Ms. Person. We also
4 intend to offer Rodney Person who is Andrea's husband and
5 Andrea's mother.

6 There are a couple of areas in which I want to be
7 very careful, and I want to make sure that we have a
8 ruling so that I can advise Ms. Person as to whether or
9 not she should take the witness stand at this point.

10 Those issues are as follows: I will address, first,
11 with respect to Mr. Rodney Person. My -- his testimony I
12 will keep very limited to background information on him
13 and his marriage to Ms. Person.

14 I will ask him, Your Honor, about the day of Andrea's
15 arrest, which was April 17th, and about an exchange that
16 he had with Investigator Isenhoward that evening.

17 I am specifically not asking him what time that
18 exchange was, what time he went down to the sheriff's
19 department, because it was at about seven o'clock,
20 six o'clock at night when he actually spoke to
21 Investigator Isenhoward, which was at the conclusion of
22 the more extensive interrogation of Ms. Person.

23 So as to avoid any question of timeframe, which would
24 make it appear that she was being held longer than what we
25 contend was up until the conclusion of her written

1 statement, I'm not going to ask him anything about time at
2 all. I just want to make sure that is understood and not
3 a problem.

4 MR. MEADORS: Which written statement? You're saying
5 he came to the conclusion of --

6 MS. PRINGLE: No. He came at night. It was about
7 seven -- 6:30 or seven o'clock, so I'm not going to ask
8 him --

9 THE COURT: You're talking about the 17th?

10 MR. MEADORS: Yes, ma'am.

11 MS. PRINGLE: I'm specifically not going to ask him
12 what time he got there. I'm just going to ask him, "At
13 some point in time on April 17th, did you become aware
14 that she was at the sheriff's department?"

15 "Did you go down there?"

16 "Who did you see?"

17 "I saw Investigator Isenhoward, and he came down to
18 the lobby and had a conversation," and that's all. He
19 will not say what happened what time, and Investigator
20 Isenhoward has already laid all of that out.

21 He testified that he did have that conversation with
22 Rodney and her family. He did not give the time either.
23 We're just going to stay consistent with that.

24 MR. MEADORS: Your Honor, curious about relevance,
25 this was when she was being interviewed about the Brown

1 child.

2 MS. PRINGLE: It was at the conclusion of all of the
3 interrogation and after her arrest, actually.

4 MR. MEADORS: Beg the Court's indulgence.

5 (Pause).

6 Your Honor, if she is just trying to establish that
7 Ms. Person came down and talked to Isenhoward? Is that
8 what she is trying to establish, his version of what
9 happened?

10 MS. PRINGLE: Yes.

11 MR. MEADORS: Of course, we would object to hearsay
12 at this point in time.

13 THE COURT: I think what he's going to talk about is
14 his conversation directly with the officer, so he can say
15 what he says and what happened.

16 MR. MEADORS: Right. That's the -- obviously,
17 anything Isenhoward would say to him, we would object.

18 MS. PRINGLE: It will be admissible under the hearsay
19 rule, Your Honor. He is being put up directly to impeach
20 Investigator Isenhoward.

21 Investigator Isenhoward was asked about this exchange
22 specifically. His testimony is in direct contravention to
23 Investigator Isenhoward. I don't think that would be an
24 issue once they heard the questions.

25 THE COURT: Well, we'll just have to wait and see

1 what -- but your specific question was about the
2 timeframe?

3 MS. PRINGLE: Yes. I -- I don't think there's going
4 to be any issue as to what his testimony is. I don't
5 think there's going to be any issue as to hearsay. My
6 specific issue is I don't want them to have a problem with
7 me.

8 THE COURT: The fact that you're not going to discuss
9 what time.

10 MS. PRINGLE: Yes.

11 THE COURT: Okay.

12 MS. PRINGLE: Exactly. If they ask him, then -- then
13 that's fine.

14 THE COURT: There doesn't appear to be an issue on
15 that.

16 MS. PRINGLE: Okay. On those same lines, I will do
17 the same thing with Ms. Person. I do think that time line
18 is something that we will want to take up again prior to
19 closing arguments. I will steer clear of that with
20 Ms. Person, if she testifies.

21 Secondly, Your Honor, one of the things that
22 Ms. Person would say is that when she is being questioned,
23 these investigators said to her, "Something must have
24 happened. Something, something, had to have happened.
25 This doesn't make sense."

1 I anticipated there may be a problem with that for a
2 number of reasons, but all of the investigators have
3 testified they that asked her no questions whatsoever;
4 that all they did was confront her and told her that they
5 thought she was untruthful.

6 She essentially took over the -- this entire
7 conversation, and they asked very little to no questions,
8 is my recollection of their testimony. I can't see that
9 that would be a problem, but out of an abundance of
10 caution, I mention that. Frankly, I don't know what they
11 meant by that but, I just mention it to be careful.

12 MR. GIESE: Your Honor, we will have an issue if she
13 testifies, I believe. I don't know if Ms. Fielding --
14 Ms. Pringle is going to get into that at this point or
15 not, but if she, Mr. Strickler has said, or implied to
16 some of his cross-examination, cross-examination to the
17 police officers, is that her will was overborne; that they
18 had used some kind of techniques against her to -- to
19 confess in this case.

20 The State's position is at that point that she says
21 she is overborne with the babies, any of these techniques,
22 which something had to have happened. It doesn't make
23 sense. That is a technique, I'm assuming.

24 At that point, the State's position is that we ought
25 to be allowed to go into the fact that she was also

1 questioned about the other two deaths, and in fact, in the
2 written statement that she gave, they asked her a specific
3 question about whether or not she had had anything to do
4 with the deaths of the other two children, at which time
5 she said no.

6 Therefore, if her will was overborne on the first
7 case, that she is going to say, we believe, and by what
8 Mr. Strickler has asked, it's the State's position that we
9 ought to be able to unredact that statement and show that
10 her will wasn't overborne, because she didn't confess to
11 all three. She confessed to one.

12 At that point, we also believe that fact that she
13 made a subsequent written statement that she signed, I
14 believe on Malique Brown case -- Eljia -- Malique Brown
15 case immediately after this written statement in which she
16 confessed.

17 It's the State's position, in all fairness, if she
18 says her will was overborne or anything to that effect,
19 then we have the right to go into that.

20 MS. PRINGLE: This interrogation was actually pretty
21 chronological. Other than the initial when they sent her
22 down, they polygraphed her on the Michael Walker case
23 first, and then that's the end of questioning on Walker up
24 until the end of the written statement, which is at 4:40
25 -- 4:58.

1 MR. STRICKLER: 4:48.

2 MS. PRINGLE: 4:48. They then proceed to polygraph
3 her on a simultaneous polygraph on Elijah Brown and
4 Zachary Ulungchong.

5 It's actually an invalid polygraph tool, but they
6 were using it in order to interrogate and question her and
7 come up with something to challenge her with.

8 When they do, they challenge her with Zachary
9 Ulungchong, what they maintain is an indication of
10 deception on the chart, although it is an invalid test.

11 They then -- it would be her testimony that there's
12 questioning, extensive questioning, repeated questioning,
13 only from that point to the end of Zachary Ulungchong's
14 statement is completed about Zachary Ulungchong.

15 I don't know how to navigate this and find a way for
16 her to testify to this without being completely hamstrung.
17 If -- she is not going to say my will was overborne.

18 She is going to report what they said to her. She is
19 going to report the questioning of her. She is going to
20 report being very stressed, very anxious, very upset.

21 Were we trying all three cases at once, the testimony
22 would be exactly the same. It continues. I mean, they
23 were just breaking her down all day long, but there is a
24 clear chronological interrogation up until the end of the
25 4:56 statement, the written statement that's in evidence,

1 only on Zachary Ulengchong.

2 And I just -- I can't imagine that she would not be
3 able to testify to what happened from that point to the
4 end of that statement.

5 The fact that her will was overborne at that time,
6 that's how they characterize; that this pressure came down
7 on her so hard -- I don't think the fact that she then
8 gave a second statement about Elijah Brown would -- would
9 impeach her on her will being overborne. They kept at
10 her. They kept at her for almost seven hours.

11 MR. GIESE: Your Honor, it's the State's position
12 that that -- it directly affects or directly intimates the
13 legality and the character of the -- of the interrogators.

14 That's why when she uses the word "breaking her down
15 all day", I believe is the word she just used, if she is
16 going to testify that she had been breaking her down all
17 day, the three cases, and they ask her about the three
18 cases, and she confesses to one and doesn't confess to the
19 two others after being broken down all day, it's the
20 State's position, in all fairness, in all fairness, we
21 ought to be allowed -- that opens the door, in all
22 fairness in court. You're going to be allowed to go into
23 it.

24 MS. PRINGLE: Well, perhaps I misspoke. What I was
25 -- my point is this was an ongoing interrogation, and that

1 I don't -- I don't think that the fact that they are --
2 are questioning her and pressing her and pushing her, and
3 she is getting upset and anxious and stressed out up until
4 4:56 means that -- that wouldn't have been the same thing
5 for the rest of the day.

6 The fact is they have actually maintained that there
7 is a confession in the Elijah Brown case. They have a
8 statement that in previous hearings they have maintained
9 is a statement, is a confession, and they have charged her
10 with the Elijah Brown case. The Michael Walker case,
11 there is no statement. None whatsoever, and I don't agree
12 with that.

13 THE COURT: Let -- let's be clear. I think she
14 can -- she can talk about what occurred and what was said
15 to her and her response. She can testify as to how she
16 felt at the time those questions were -- were asked.

17 What characterization you give that in argument to
18 the jury is separate and apart, but I think that she can
19 testify as to -- as it relates to that window, and
20 specifically, I'm only talking about specifically as to
21 the questions relating to Zachary Ulengchong. That's all
22 I'm concerned about with this particular case.

23 I think she can talk about that. I think she can
24 talk about what happened, and I think what happened after
25 she gives the statement, I don't think in fairness to the

1 State is -- if the -- if the -- if the claim is that the
2 statement she gave related to Zachary Ulengchong was
3 inappropriate, then I'm sure they're going to make the
4 same claim as it relates to any other statements given
5 after that point.

6 If -- if -- if the questions relating to what
7 happened and what went on in reference to Zachary
8 Ulengchong caused her to feel that she was -- whatever her
9 feelings are and that caused her to give the statement as
10 it relates to Zachary Ulengchong, I think that's
11 appropriate. You can cross-examine her about that
12 particular incident, and what she says happened, and how
13 she was feeling at that particular point.

14 I don't think it's appropriate, and I haven't heard
15 any -- and while -- while you have articulated a reason
16 why the State believes you ought to be able to go into the
17 subsequent statements, I don't find that that is
18 persuasive in determining whether or not there was an
19 issue with respect to the statement given as to Zachary
20 Ulengchong and -- and to its voluntariness and to what was
21 freely done.

22 So I think I covered the parameters. If there are
23 any questions? Yes, sir.

24 MR. GIESE: Your Honor, all three of these
25 statements, all of these investigations were coach marked.

1 THE COURT: I understand.

2 MR. GIESE: Clearly on the statement, written
3 statement that she gave, she was asked about the other two
4 children.

5 If -- the State's position is that her will was
6 overborne on one of the cases, why was it not overborne on
7 the other two?

8 I believe the State ought to be allowed to go into
9 that and at least unredact that portion of her written
10 statement concerning that.

11 THE COURT: Well, we're not trying those other two
12 cases, and we are -- we are also -- I'm not providing any
13 information, and I specifically stated that I'm not making
14 any ruling as to whether or not those other statements
15 would be admissible or could be admissible in a trial on
16 those particular charges.

17 MR. GIESE: Yes, ma'am.

18 THE COURT: So --

19 MR. GIESE: I'm sorry.

20 THE COURT: I can't say -- I can't say that they
21 are -- they would be freely and voluntarily given. I
22 haven't made a ruling on that. I haven't heard evidence
23 as of that.

24 So for you to then be able to say, "Well, she gave
25 these other statements, and they were freely and

1 voluntarily made; and therefore, I ought to be able to ask
2 her questions," I'm not getting into that particular
3 point.

4 We're talking about the conduct in this case. We're
5 talking about the conduct in this particular case that led
6 up to the statement relating to Zachary Ulengchong. I
7 don't know.

8 I know that there were several statements given over
9 the course of several days and several different times.
10 As I recall the statement that's in evidence relating to
11 Zachary Ulengchong, I don't know how much of that was
12 redacted.

13 MR. GIESE: Yes, ma'am. I could read it for you.

14 THE COURT: Okay.

15 MR. GIESE: It's one question. "Since Zachary's
16 death there have been two other children die in your care.
17 On 1/09 Elijah Malique Brown died at your home on Durham
18 Creek Court.

19 "On 04/02/07, Michael Harris Walker died at your home
20 on Scottish Court. Did you do anything to contribute to
21 the death of either of these two children?"

22 The answer was, "No, sir."

23 If they're going to say her will was overborne on
24 this statement on the Ulengchong case, we ought to be able
25 to go into the fact that it was not overborne when it came

1 to the other two deaths. That's the State's position.

2 THE COURT: Yes. Yes, ma'am?

3 MS. PRINGLE: I just I think I need to add that, in
4 fact, they did obtain a statement from her that they have
5 characterized as confession, and that was completed at
6 7:50.

7 So I think it's not accurate to say that there was no
8 will overborne as to any of the other cases. They got a
9 statement out of her that they would introduce, I'm sure,
10 as a confession in a trial against her on the case of
11 Elijah Brown.

12 That was obtained, finished at 7:50 at night. It is
13 true and accurate that they did not obtain any statement
14 from her regarding Harris Walker.

15 THE COURT: This is an issue about the conduct, and
16 I -- and I -- I fully understand the State's position. I
17 do understand the State's position. I understand why
18 you're making that argument.

19 To the extent that there are subsequent statements on
20 the same day that relate to Baby Brown, I'm sure that
21 there is some dispute as to whether or not those
22 statements were freely or voluntarily given.

23 So the fact that she was asked one question at the
24 conclusion of her statement related to Zachary Ulenchong
25 does not, in fact, demonstrate that the entire statement

1 was -- was not the subject of what she was claiming was
2 done.

3 I think that becomes a jury issue. That's the
4 argument that you'll have to make, but I don't think it's
5 appropriate to consider that one sentence, because I think
6 that, in fact, will end up opening the door to a whole
7 other series of incidents and questions that I -- that I
8 think I've tried very hard to exclude, properly exclude in
9 this particular case.

10 And I don't think that that particular question, nor
11 those other statements would be relevant as to the issue
12 of the statement she gave strictly as to Zachary
13 Ulengchong.

14 I think that whatever questions may have been asked
15 about her with respect to Baby Brown would be a whole
16 different situation, and I think that there will be
17 questions that will be raised about that. You know, there
18 are arguments that could be made.

19 I haven't heard any testimony and that, and I don't
20 want to hear any testimony about that. I think that she
21 is certainly entitled to say as it relates to the
22 questioning about Zachary Ulengchong, what it was, and
23 what occurred.

24 And as I said, whatever characterization you want to
25 give that is jury argument.

1 MR. GIESE: Yes, ma'am, and just for the record,
2 clearly if I believe she has opened the door by something
3 that she testifies to, prior to me asking her, I'll ask
4 her to --

5 THE COURT: We'll discuss it further. Yes. Thank
6 you.

7 Anything else?

8 MR. GIESE: That's all.

9 MS. PRINGLE: I think this will be the final issue
10 would be -- and this would be the other issue. I do not
11 intend to cross-examine her regarding the alleged illegal
12 operation of her day care from 2005 to 2007.

13 There was -- there were incidents following -- after
14 Harris Walker's death, D.S.S. responded. They issued a
15 cease operation letter to her the next day. They told her
16 to shut down. She did not shut down. She continued
17 operating.

18 The State alleges that she then moved her day care to
19 her sister's house, continued operating her day care. If
20 they don't intend to cross-examine her on that, then I
21 have no problem with that.

22 I don't intend to go into anything in 2007, the
23 interrogation, the fact that she was still keeping
24 Mrs. Ulungchong's other two children, which
25 Mrs. Ulungchong testified to.

1 Other than that, I am not going to talk anything
2 about her running a day care in 2007 or this alleged
3 illegal operation. If they intend to cross her on that,
4 then -- then we -- we need to object.

5 MR. GIESE: Your Honor, clearly, the parameters that
6 you set for us is that we're talking about the Ulengchong
7 case at this point.

8 I would not question her about something that
9 happened in 2007, unless she opens the door, such as, "I
10 run a clean day care," that kind of thing.

11 She might open the door. There again, I'll ask you
12 before I ask that kind of question, but I have no question
13 intention of examining her on something that happened --

14 THE COURT: And just to be clear, there's no question
15 that in 1998, when this incident occurred, she was
16 properly licensed.

17 MR. GIESE: Yes, ma'am.

18 THE COURT: Properly operating a day care.

19 MR. GIESE: That's my understanding.

20 THE COURT: And to the extent that she opens it
21 beyond that period of time, I'll be happy to entertain
22 your arguments, but as long as the time period is confined
23 to 1998, December 2nd, in particular, or the days leading
24 up to December 2nd, I don't have a problem.

25 MS. PRINGLE: I believe that's it. We'll just have

1 to see how it goes, Your Honor. I believe that's it.

2 THE COURT: You indicated that there was -- that
3 there might be an issue with respect to the mother
4 testifying?

5 MS.. PRINGLE: It was just -- it was just the same as
6 -- with respect to Mr. Rodney Person. He was with
7 Ms. Wells at the time that Mr. Isenhoward came down, and
8 she overheard the same thing that Mr. Person did.

9 THE COURT: Is there anything else?

10 MR. MEADORS: A little short break before we --

11 THE COURT: Yeah, we're going to take a short break.
12 Then if there is nothing else, we're going to take a
13 break, and we'll come back. I believe all of our jurors
14 are here.

15 Let's take a break, and we'll come back and get
16 started.

17 I assume, Mr. Meadors, that you're going to rest on
18 the record?

19 MR. MEADORS: I would love to. Yes, ma'am.

20 THE COURT: Thank you. Let's take a break, and we'll
21 come back.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Ms. Person, yesterday as you will recall,
24 I informed you that you had the right to be able to
25 testify in the trial in your own defense.

1 I told you that you could discuss it, of course, with
2 your family and friends and with your attorneys, and you
3 heard some discussions that we had this morning.

4 During the break, I hope that you had the additional
5 opportunity to discuss the matter with them. Have you
6 made a decision as to whether or not you wish to testify
7 in this matter?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And what is your decision?

10 THE DEFENDANT: I will.

11 THE COURT: Thank you very much.

12 Is there anything we need to take up before we get
13 started?

14 MR. MEADORS: Nothing from the State, Your Honor. I
15 will rest on the record, I'm sorry.

16 MR. STRICKLER: No, Your Honor.

17 THE COURT: You may ask the jury to come in, please.

18 THE BAILIFF: I'd be glad to, Your Honor.

19 (WHEREUPON, the jury came into open court at
20 approximately 10:42 a.m.)

21 THE BAILIFF: The jury is all present, Your Honor.

22 THE COURT: Good morning, ladies and gentlemen.

23 THE JUROR: Good morning.

24 THE COURT: We had some legal issues that we had to
25 take up this morning.

1 I did notice that there were media reports last
2 evening in reference to this particular trial. Is there
3 any member of the jury panel who has listened to, watched,
4 or read any of those reports, or have you had
5 conversations with anyone about what they may have heard
6 or seen or any issues that were raised or discussed during
7 the course of this trial? If so, please raise your hand.

8 (There was no response.)

9 Thank you, ladies and gentlemen. At this time, we're
10 now ready to continue on with the trial of this matter.

11 Mr. Meadors?

12 MR. MEADORS: If it pleases Your Honor. At this
13 time, the State of South Carolina rests.

14 THE COURT: Thank you. And at this point, we're now
15 ready to hear from the defense.

16 Mr. Strickler, Ms. Fielding -- Pringle, I'm sorry.

17 MS. PRINGLE: Your Honor, the defense calls Rodney
18 Person.

19 RODNEY PERSON, after being duly sworn,
20 testified as follows:

21 THE CLERK: Please have a seat. State your full name
22 for the record.

23 THE BAILIFF: Watch your step for me, please, and
24 speak into the microphone.

25 THE WITNESS: My name is Rodney LaVaughn person.

DIRECT EXAMINATION:

BY MS. PRINGLE

Q Good morning, Mr. Person.

A Good morning.

Q Mr. Person, where are you from?

A Originally from North Carolina.

Q Where did you grow up?

A I grew up in Asheboro, North Carolina.

Q And where are you currently living now?

A Currently living here in Columbia.

Q And where do you work?

A I work with Wachovia.

Q Just up the street?

A Yes, ma'am.

Q Right here on Main Street?

A The contact center on Greystone.

Q What is your position with Wachovia?

A I am a supervisor.

Q In the -- in the call center?

A Yes, ma'am.

Q And Mr. Person, where did you go to college?

A I went to the University of North Carolina, Chapel Hill.

Q And did you graduate?

A I did.

- 1 Q And while you were there, did you meet anyone?
- 2 A I did. I met my wife.
- 3 Q Who is your wife, Mr. Person?
- 4 A Ms. Andrea Person. She was Andrea Wells at the time.
- 5 Q When did you meet Ms. Wells?
- 6 A We met in the fall of 1985.
- 7 Q When did you graduate?
- 8 A I graduated in '88, in 1988.
- 9 Q Okay. So did you start dating in 1985?
- 10 A Yes, ma'am, we did.
- 11 Q Dated from 1985 to 1988?
- 12 A Yes, ma'am.
- 13 Q And did you guys get married at some point?
- 14 A We got married in 1989, May 20th, 1989.
- 15 Q May 20th?
- 16 A Yes, ma'am.
- 17 Q How long after you graduated did y'all get married?
- 18 A After I graduated, it was a little over a year.
- 19 Q And did Andrea graduate?
- 20 A She didn't graduate. She was, I think, one or two
- 21 courses shy of getting her degree.
- 22 Q But she came close?
- 23 A Yes, ma'am.
- 24 Q And you live here in Columbia now?
- 25 A Yes, ma'am.

- 1 Q Who do you live with?
- 2 A I live with Andrea and my kids.
- 3 Q Okay. You had -- you have how many children?
- 4 A I have four children --
- 5 Q And --
- 6 A But two in the household.
- 7 Q And what are the names of your children? Who -- how
- 8 many children do you have with Andrea?
- 9 A I have two: Tyler Person, and Courtney Person.
- 10 Q And how old are they?
- 11 A Tyler is 17; Courtney is 16.
- 12 Q Are they in the courtroom here today?
- 13 A Yes, ma'am, they are.
- 14 Q They've been in the courtroom throughout these
- 15 proceedings?
- 16 A Yes, ma'am.
- 17 Q And they are high school students?
- 18 A Yes, ma'am.
- 19 Q Mr. Person, have you been present in the courtroom
- 20 during this trial from Monday until today?
- 21 A No, ma'am.
- 22 Q And why is that?
- 23 A Because I'm a witness.
- 24 Q Okay. And were you allowed to be in the courtroom?
- 25 A No, ma'am.

1 Q Where have you been sitting?

2 A I've been sitting outside.

3 Q Okay. And that was so for what reason?

4 A I wasn't allowed in the courtroom.

5 Q Okay.

6 A So...

7 Q Were you able to visit with Andrea on breaks?

8 A Yes, yes; breaks and lunches.

9 Q And Mr. Person, will you be in the courtroom from
10 after you testify today until the conclusion of the trial?

11 A Yes, ma'am, definitely.

12 Q Mr. Person, after you graduated from the University
13 of North Carolina, you moved to South Carolina at some
14 point?

15 A Yes, ma'am.

16 Q And was that right after graduation?

17 A No, ma'am; it was 1993.

18 Q All right. And what brought you to South Carolina?

19 A At the time, I was working with Heilig Meyers
20 Furniture Company in my hometown in North Carolina, and I
21 was promoted to store manager. So we opened a store in
22 Camden, and that was what brought us to South Carolina.

23 Q All right. And have you been in South Carolina
24 since -- what year was that?

25 A That was in '93.

- 1 Q And have you been in South Carolina since 1993?
- 2 A Yes, ma'am.
- 3 Q All right. At some point, did you move from Camden
- 4 to Columbia?
- 5 A Yes, ma'am; we did.
- 6 Q When was that?
- 7 A I believe that was 1995, 1996.
- 8 Q Mid '90s. While you were working in Camden, did you
- 9 meet Mrs. Ulengchong?
- 10 A Yes, ma'am.
- 11 Q And how did that come about?
- 12 A She was one of the managers on staff. We had three
- 13 managers that ran the store, and Gina and I were two of
- 14 the managers.
- 15 Q And this was in the mid '90s?
- 16 A Yes, ma'am.
- 17 Q Did you and Mrs. Ulengchong develop a friendship?
- 18 A Yes, ma'am.
- 19 Q And did you introduce Mrs. Ulengchong to your wife?
- 20 A Yes, ma'am.
- 21 Q And did a friendship develop between Andrea and
- 22 Mrs. Ulengchong?
- 23 A Yes, ma'am.
- 24 Q And can you describe that?
- 25 A They were close friends. They shared, I guess as

1 close friends do.

2 Q Were -- were you also close friends with the
3 Ulengchong's?

4 A Yes, ma'am.

5 Q And when I -- you knew Pete, as well?

6 A Yes, ma'am.

7 Q And you guys -- that friendship began in the early
8 '90s and lasted for -- for years, correct?

9 A Yes, ma'am.

10 Q I'm going to take you back to December 2nd, 1998; of
11 course, the reason why we're here today Mr. Person. Where
12 were you living at that time?

13 A We were living on Durham Creek Court.

14 Q All right. Who were you living with?

15 A Andrea, Tyler, and Courtney.

16 Q How old would Tyler and Courtney have been at that
17 time?

18 A Let me see. They're 17 and 16 now.

19 MR. MEADORS: Your Honor, I apologize. What was the
20 question?

21 BY MS. PRINGLE

22 Q Just how old were the children in December 2nd, 1998?

23 A They would have been seven, eight, I believe.

24 Q They were little, right?

25 A Yes.

- 1 Q Okay. Do you remember December 2nd, 1998?
- 2 A Yes, ma'am, I do.
- 3 Q All right. And why do you remember that date?
- 4 A I remember that date because that was the day we lost
- 5 Zachary.
- 6 Q Did you know Zachary?
- 7 A Yes.
- 8 Q And had you had many occasions to see Zachary?
- 9 A Yes.
- 10 Q Zachary came to your house how often at that point?
- 11 A Every day for day care.
- 12 Q All right. Every day during the week?
- 13 A Yes, ma'am.
- 14 Q All right. And you would see -- would you see him on
- 15 your way out to work sometimes?
- 16 A Sometimes I would see him on my way out to work.
- 17 Q Okay.
- 18 A If they got there before I left.
- 19 Q On December 2nd, 1998, did you at some point during
- 20 that day receive a call from your wife?
- 21 A I did.
- 22 Q And what, if anything, did she ask you to do?
- 23 A She wanted me to come home. She was extremely upset.
- 24 She said something had happened at the day care.
- 25 Q Okay. Did you -- did you go home?

1 A I did.

2 Q Did you go home after work, or did you go home
3 immediately?

4 A I went home immediately.

5 Q All right. And --

6 THE COURT: I'm sorry to interrupt.

7 MS. PRINGLE: Yes.

8 THE COURT: I'm informed that the jurors are having a
9 difficult time hearing.

10 Mr. Person, if you would turn that other microphone,
11 the smaller microphone towards the other one, and I think
12 the smaller one is the one that amplifies for the
13 courtroom.

14 THE BAILIFF: Get that one right there.

15 THE COURT: I know one of them doesn't work.

16 THE BAILIFF: That don't work?

17 THE COURT: One of the microphones doesn't work, so I
18 think --

19 THE WITNESS: Is this better?

20 THE BAILIFF: Yeah, that's right. Just don't move --

21 THE COURT: Yes, but you don't have to --

22 THE BAILIFF: You don't have to speak that close.

23 THE COURT: You don't have to be directly on top of
24 the microphone as look as you speak towards it. It should
25 be able to amplify.

1 THE WITNESS: Okay. How is that?

2 THE COURT: A little bit, a little bit closer.

3 THE WITNESS: Is that better?

4 BY MS. PRINGLE

5 Q There you go. All right.

6 And just -- you were soft spoken. Maybe if you can
7 direct, look towards the jury, that will help, as well, a
8 little bit.

9 A Okay.

10 Q You just testified a moment ago that on December 2nd,
11 1998, you went home?

12 A I did.

13 Q And -- and why did you go home?

14 A Because Andrea had called and she said something
15 happened at that time day care, and she was upset.

16 Q When you got home, describe her demeanor.

17 A He was extremely upset that day. She was -- she was
18 crying, pacing. She was -- she was more upset, probably,
19 than I've ever seen her.

20 Q Okay. And then I'm going to ask you to move
21 forward -- oh, I'm sorry. On that date, did you -- after
22 you got home, did you take Andrea somewhere?

23 A I did.

24 Q Where did y'all?

25 A We went to the hospital later on that night.

1 Q All right. To where Zachary had been taken?

2 A Right.

3 Q All right. Now, I'm wanting to ask you to move to
4 April 17th of 2007, okay.

5 A Okay.

6 Q On that date -- at some point in time -- well, first
7 of all, did you know that Andrea was going down there that
8 day to answer some questions for law enforcement?

9 A No, I did not.

10 Q At some point during that day, did you learn that she
11 was down there?

12 A Yes, I did.

13 Q Okay. And when you learned that she was down there,
14 did you actually physically go down there yourself?

15 A Yes, ma'am, I did.

16 Q And when you got to -- and when you went to -- when I
17 say "there", you went to the Richland County Sheriff's
18 Department?

19 A Yes, ma'am, on Two Notch Road.

20 Q When you got to the Richland County Sheriff's
21 Department, what did you do?

22 A I went in, and I asked to see my wife.

23 Q Okay. And who -- was anybody else from your family
24 already there?

25 A Yes, ma'am. My mother-in-law was there, and my

1 sister-in-law was there.

2 Q All right. And your sister -- your mother-in-law's
3 name is what?

4 A It's Marquesne Wells.

5 Q All right. And your sister-in-law's name is what?

6 A Rachael Austin.

7 Q And where were they located at Richland County when
8 you got there?

9 A They were in the lobby.

10 Q All right. At some point as you're sitting in the
11 lobby with these family members, does someone come down
12 from inside of the sheriff's department to speak with you?

13 A Yes, ma'am.

14 Q Who?

15 A That was Detective Isenhoward.

16 Q All right. And when Investigator Isenhoward comes
17 down to speak to you, does he initially address the whole
18 group?

19 A Yes, ma'am.

20 Q Did he tell you during the conversation that your
21 wife was going to be arrested?

22 A He sure did.

23 Q All right. And then at some point, does he address
24 you more specifically?

25 A Yes, ma'am; he did.

1 Q And what, if anything, Mr. Person, does he say to
2 you?

3 A He told me that he wanted to speak with me alone.

4 Q Don't get quite so close, I'm sorry.

5 A I'm sorry.

6 Q All right. He wanted to speak with you alone?

7 A Yes.

8 Q And what else did he say?

9 A Well, I declined to speak with him alone at that
10 time, because he had told me that my wife was being
11 arrested. And I didn't feel comfortable. I didn't trust
12 him.

13 Q Okay. What did he tell you he wanted to talk to you
14 about?

15 A He said that -- he brought up Andrea's hysterectomy,
16 and he told me that, We know that women who have
17 hysterectomies have hormonal changes and mood swings, and
18 if I could think of some examples of when Andrea had mood
19 swings, that it would benefit her if I could tell him this
20 information.

21 Q And did he tell you anything about when you should
22 give that information?

23 A He did. He told me that it would be best if I shared
24 this information with him before I contacted an attorney.

25 Q Before the attorneys got involved?

1 A Before I contacted an attorney or the lawyers got
2 involved. He said if I waited until after then, they
3 would receive information differently.

4 Q Did he tell you anything with respect to what, if
5 any, impact your assisting or you're speaking to him would
6 have on her situation?

7 A He told me it would help her situation.

8 Q Just one final question. Mr. Person, would you
9 describe Andrea -- with respect to naivety, would you say
10 that Andrea is a naive person or not?

11 MR. MEADORS: Your Honor, could she repeat the
12 question? I couldn't hear a word she said.

13 BY MS. PRINGLE

14 Q Would you say Andrea is a naive person or not?

15 A Andrea can be naive when it comes to -- to dealing
16 with people. She -- Andrea takes people at face value.
17 She is -- she is more trusting than I am. She is more
18 trusting than most people are, I would say.

19 MS. PRINGLE: All right. I have no other questions,
20 Mr. Person. Please answer any questions the State has.

21 THE COURT: Any cross?

22 MR. MEADORS: Just a few.

23 Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 (Pause).

CROSS-EXAMINATION:

BY MR. MEADORS

Q Good morning, Mr. Person.

A Good morning.

Q Ms. Pringle asked you about being -- not in here and being separated during the trial. You knew that was on her motion for sequestration that all witnesses be separated.

A Yes --

Q I hope you knew that.

MS. PRINGLE: Objection, Your Honor. May we approach?

THE COURT: Yes.

(WHEREUPON, a bench conference was held in the presence but not within the hearing of the jury).

THE COURT: Change the subject.

BY MR. MEADORS

Q Mr. Person, at that -- you had been -- I couldn't hear everything, but you -- the Ulengchong's started keeping their baby with your wife because you knew -- you worked with whom, Mrs. Ulengchong?

A Yes, sir.

Q Okay. And Ms. Fielding asked you, and I believe you said y'all had been friends for a long time, from the early '90s?

1 A That's about right.

2 Q And when did that friendship end?

3 A I don't think it ever ended.

4 Q Well, since April of 2007, y'all haven't been out,
5 have you?

6 A No, sir.

7 Q You haven't communicated?

8 A No, sir.

9 Q Haven't talked?

10 A No, sir.

11 Q Is it fair to say that that relationship in May of
12 2007, is totally different from what it was prior?

13 A That's correct.

14 Q And as a matter of fact, after April of 2007, the
15 Ulengchong's never, ever, ever kept their children again
16 at the day care, did they?

17 A That's right.

18 Q And you said when you got -- what time did you get
19 home on -- you said December of '98 you were working at
20 Heilig Meyers?

21 A At that time, I was working at Wachovia.

22 Q I apologize. That's what I should have said. And
23 what time did you get home, Mr. Person?

24 A I don't -- I don't think I recall what time it was.

25 Q In the --

1 A In the afternoon.

2 Q Who was the other lady that was there that knew your
3 wife?

4 A I'm not aware.

5 Q Was there --

6 A I'm not aware of another lady.

7 Q There wasn't another lady or a friend there?

8 A I don't recall.

9 Q But you said that was the most upset you had ever
10 seen her?

11 A Yes. She was -- she was extremely upset; yes, sir.

12 Q Now, in April when you went down to the sheriff's
13 department, you testified you didn't know your wife was
14 going down there that day?

15 A That's right.

16 Q But she did go down there by herself?

17 A As far as I know.

18 Q I mean, nobody came to get her and take her. She
19 went down there on her own, voluntarily, I guess, is what
20 I'm saying.

21 A As far as I know.

22 Q And your first contact -- well, actually, you had
23 seen Investigator Isenhoward previously, hadn't you, to
24 that day?

25 A Yes, sir.

1 Q Okay. At the house?

2 A Yes, sir.

3 Q No problems with him that day, or y'all didn't have
4 any trouble with each other the first time you met him,
5 did you?

6 A The first time I met him, I wouldn't say we had
7 problems.

8 Q Okay. He's respectful to you?

9 A Yes, sir.

10 Q You're respectful to him?

11 A Yes, sir.

12 Q Now, when you -- you're saying this today; that he
13 wanted to speak to you alone, and that he wanted to ask
14 you about a hysterectomy and wanted you to tell him this
15 before he talked -- before you talked to an attorney.

16 Was that before or after he told you his wife (sic)
17 was under arrest. It -- it was after, right?

18 A It was after, yes, sir..

19 Q So he comes out, tells you your wife is under arrest,
20 right?

21 A Yes, sir.

22 Q That's the first thing he tells you. I mean, he
23 doesn't come out and say, "Let me talk to you about a
24 hysterectomy. Can you give me some background on that?
25 Let me know about that." I mean, he comes out initially

1 and says, "She is under arrest," correct?

2 A Yes, sir.

3 Q And wasn't mean about doing that, was he?

4 A I wouldn't say he was mean, no.

5 Q And then after that, your testimony today is that he
6 wanted you to call him before you called an attorney?

7 A That's correct.

8 Q And when he told you she was under arrest, you said
9 that's -- you didn't trust him then?

10 A That's correct.

11 Q All right. And the first time you have ever told
12 anybody this about him wanting you to call him before his
13 (sic) attorney is right here with these folks. I mean,
14 that's the first time you told anybody about this.

15 A No, that's not correct.

16 Q That's not correct?

17 A No.

18 Q Okay. You never told Kevin Isenhoward. You never
19 told the sheriff's department. You never told anybody,
20 "Hey this guy wanted me to give him information before I
21 called a lawyer." You never -- you never told anybody
22 that, called his boss or told anybody that, did you?

23 A I haven't communicated with his office.

24 Q So the first time this comes out in this
25 investigation is today, correct?

1 A Publicly, yes.

2 Q Thank you. I couldn't hear everything, but your wife
3 almost graduated U.N.C. Chapel Hill?

4 A Yes, sir.

5 Q Just a couple of courses short?

6 A As far as I recall, yes, sir.

7 MR. MEADORS: Thank you. That's all.

8 MS. PRINGLE: Just two very quick.

9 THE COURT: Yes, ma'am.

10 REDIRECT EXAMINATION:

11 BY MS. PRINGLE

12 Q The questions from Mr. Meadors were was this the
13 first time that you had told law enforcement this today.
14 Is that your understanding of his question?

15 A Yes.

16 Q Okay. Had you told this particular information to
17 anyone prior to today?

18 A Yes, ma'am.

19 Q Had you told it to me?

20 A Yes, ma'am.

21 Q And had you told it to Mr. Strickler?

22 A Yes, ma'am.

23 Q And you had discussed it with your -- had you
24 discussed it with your family?

25 A Yes, ma'am.

1 Q On April 17th of 2007, was Mr. Isenhoward trying to
2 talk to you right then --

3 MR. MEADORS: Objection --

4 BY MS. PRINGLE

5 Q -- or ask that you to call him later?

6 MR. MEADORS: -- leading.

7 BY MS. PRINGLE

8 Q When was Mr. Isenhoward wanting you to speak with
9 him?

10 A My understanding was at that moment.

11 MS. PRINGLE: Thank you. I have no further
12 questions.

13 THE COURT: You may step down. Thank you.

14 THE BAILIFF: Watch your step for me, please.

15 THE COURT: You may call your next witness.

16 MS. PRINGLE: The defense calls Andrea Person.

17 ANDREA PERSON, after being duly sworn,
18 testified as follows:

19 THE CLERK: Please have a seat. State your full
20 name.

21 THE BAILIFF: Watch your step, please. Speak into
22 the microphone.

23 THE WITNESS: My name is Andrea Person.

24 DIRECT EXAMINATION:

25

1 BY MS. PRINGLE

2 Q Ms. Person, where are you from?

3 A Originally, I'm from Canton, Ohio.

4 Q Is that where you -- you grew up?

5 A Yes, ma'am.

6 Q Did you go to high school in Canton, Ohio?

7 A Yes, ma'am.

8 Q Where did you go to high school?

9 A Canton McKinley.

10 Q Who did you grow up with?

11 A I grew up with my sisters, and brothers, and my mom,
12 and my dad.

13 Q What are your parent's names?

14 A My dad's name is Ewing Wells. My mom's name is
15 Marquesne Wells. I have a brother numbered Ewing, Jr. My
16 other brother is Dale. I have a sister named Mary Hall,
17 and my baby sister is Rachael.

18 Q And where do you fall -- so you have five brothers
19 and sisters?

20 A Yes.

21 Q Where do you fall in the order of children?

22 A I'm right there in the middle.

23 Q You're one of the middle children?

24 A Yes.

25 Q And do you see any of your family members in the

1 courtroom today?

2 A Yes, ma'am.

3 Q And who is here today?

4 A My brother, Dale; my sister, Rachael; there's my son,
5 Tyler; my daughter, Courtney; my nephew Trey; and Demareck
6 (phonetic); my sister, Mary; and my husband, Rodney.

7 Q And where is your mother today?

8 A My mother is outside in the hall.

9 Q Is your father here?

10 A No, he's not. He's -- he's very ill.

11 Q Your father -- is he unable to come here?

12 A He's unable to come.

13 Q Andrea, after you graduated from high school, did you
14 participate in any sports in high school?

15 A Yes, I did.

16 Q What sport?

17 A I was a volleyball player.

18 Q And at the end of high school, were you offered a
19 scholarship?

20 A Yes, ma'am. I -- I received a full ride scholarship
21 at U.N.C. Chapel Hill to play volleyball.

22 Q And that was to play volleyball?

23 A Yes, ma'am.

24 Q Did you attend U.N.C. Chapel Hill?

25 A I did.

- 1 Q And, Ms. Person, did you graduate from U.N.C.?
- 2 A I didn't. I was -- I was four hours short --
- 3 Q Okay.
- 4 A -- my senior year.
- 5 Q Okay. While you were there, we heard, you met your
- 6 husband?
- 7 A I did.
- 8 Q At some point, you and Mr. Person got married?
- 9 A Seven days after my senior year, we got married.
- 10 Q Okay. So that was a year after he graduated, seven
- 11 days --
- 12 A Seven days after my senior year.
- 13 Q Seven days after you would have graduated.
- 14 A Correct.
- 15 Q All right. Are you still married to this day?
- 16 A Yes, ma'am.
- 17 Q Been married since --
- 18 A Since '89, May 20th of 1989.
- 19 Q So you just celebrated your 20-year anniversary?
- 20 A Twentieth-year anniversary, yes, ma'am.
- 21 Q After college, after you guys got married, where did
- 22 you move? Did you move?
- 23 A Yes. We moved to his hometown in Ashboro, North
- 24 Carolina.
- 25 Q And at some point, did you move to South Carolina?

1 A Yes, we did.

2 Q And where did you move first?

3 A We moved first to Camden.

4 Q And eventually, as we've heard, to Columbia?

5 A Yes, ma'am.

6 Q All right. I want to take you back to December of
7 1998. Where were you living at that time?

8 A We were living at Durham Creek Court in Columbia.

9 Q 108 Durham Creek Court?

10 A Yes, ma'am.

11 Q And at that point, if my math is correct, you would
12 have been married about nine to ten years?

13 A Nine-and-a-half to ten years, yes, ma'am.

14 Q And did you become pregnant at some point?

15 A Did I become pregnant?

16 Q Yes.

17 A Yes.

18 Q All right. And you have how many children?

19 A I have two children.

20 Q All right. While you were pregnant, did you develop
21 any kind of a physical problem?

22 A Yes, ma'am. I developed gestational diabetes.

23 Q And after you had your children, did your -- did
24 you -- did you continue to have diabetes, or did it go
25 away as it sometimes can?

- 1 A I was told it would go away after I had my son, but
2 it never did. I remain diabetic today.
- 3 Q All right. And what type diabetes?
- 4 A Type 2 diabetes.
- 5 Q To do you take insulin?
- 6 A Yes, ma'am.
- 7 Q Insulin dependent?
- 8 A Yes, ma'am.
- 9 Q In December of 1998, how old were Tyler and Coco?
- 10 A Tyler was six going on seven, and Courtney was five,
11 five-and-a-half.
- 12 Q Were both of them in school?
- 13 A Yes, ma'am.
- 14 Q Kindergarten and --
- 15 A First grade.
- 16 Q And the younger is?
- 17 A Courtney.
- 18 Q I'm sorry. I didn't catch it if that came out.
- 19 A We call her Coco.
- 20 Q You call her Coco. And at that time, December of
21 1998, what were you doing?
- 22 A I was running a day care.
- 23 Q That was your employment?
- 24 A Yes, ma'am.
- 25 Q At that time, how long had you been running a day

1 care?

2 A For approximately five years.

3 Q And in December -- specifically December 2nd of 1998,
4 do you know how many kids you were keeping at that time?

5 A Five, six.

6 Q That's to the best of your recollection?

7 A Yes, ma'am.

8 Q I want to ask you about the Uleungchong's.

9 A Yes, ma'am.

10 Q At some point, did you meet Gina and Pete Uleungchong?

11 A I did.

12 Q Do you remember who you met first?

13 A I believe I met Gina.

14 Q And how did you meet Gina?

15 A Through my husband.

16 Q Rodney introduced you?

17 A Yes, ma'am.

18 Q All right. And you remember about when that was?

19 A I'm not sure. It was probably '95, '96.

20 Q And when you met Mrs. Uleungchong, did she have
21 Zachary before -- at -- when you first met her?

22 A No, ma'am.

23 Q Did she have two other children?

24 A Yes, ma'am, she did.

25 Q And those other children were?

- 1 A Shawnie and Elizabeth.
- 2 Q Did you at some point begin keeping Shawnie?
- 3 A Yes, ma'am.
- 4 Q And do you know what year that was?
- 5 A I believe Shawnie started with me in '97.
- 6 Q Okay. Did you at some time -- do you know how old
- 7 she was then or about how old she was?
- 8 A She is around the age of my daughter and my son, so
- 9 she was between five and six years old.
- 10 Q Was she closer to Coco's age or Tyler's age, do you
- 11 remember?
- 12 A Closer to Coco's age.
- 13 Q And you said that you also kept her -- I'm not sure
- 14 if you did. You kept their older child, Elizabeth, at
- 15 some point?
- 16 A Yes, ma'am.
- 17 Q Back in the '90s?
- 18 A Yes, ma'am.
- 19 Q And eventually, Mrs. Uleingchong testified that after
- 20 Zachary passed and she had her other two children, those
- 21 two babies, you kept those babies, as well.
- 22 A Yes, ma'am.
- 23 Q You had a professional relationship with the
- 24 Uleingchong's, correct?
- 25 A Yes, ma'am.

1 Q In that you were their day care provider?

2 A Yes, ma'am.

3 Q Did that relationship evolve into a friendship?

4 A Yes, ma'am, it did.

5 Q And can you describe your friendship with Gina and
6 Pete Ulengchong?

7 A Gina and Pete become really good -- we became really
8 good friends, really close friends. We looked after each
9 other. Of course, I watched after their -- their
10 children.

11 We shared things. They blessed me with an
12 entertainment center. She was my -- she was my Girl Scout
13 cookie connection. She was also my Notary Public. We
14 took care of business that way. She took care of things
15 for me that way. She also handled my banking. She was my
16 personal banker.

17 Whenever I got paid, I would hand her my -- my
18 checks, my cash, and she would take them to the bank for
19 me and make my deposits for me. And if I needed any --
20 any cash that evening or -- she would pick -- she would
21 make a withdrawal for me. We were -- we were close.

22 Q How often did you see each other?

23 A We saw each other every day.

24 Q For many --

25 A For many years.

1 Q -- years, and the testimony has been that that was
2 from when you met them up until 2007; correct?

3 A Yes, ma'am.

4 Q And you described the day-to-day things that were
5 involved in your relationship. How close would you say
6 Gina was to you? Describe your perception of your
7 relationship with her and how close she was to you.

8 A I loved Pete and Gina like they were my brother and
9 sister, like we were family. The -- we cared for each
10 other. I loved them like they were my brother and sister.

11 Q Is there anyone that you were closer to, other than
12 your family, than Gina -- or were?

13 A No, no, no.

14 Q Has anything changed about the way you feel towards
15 Gina and Pete?

16 A To this day, I love them with all my heart.

17 Q Have you attempted to contact them since April of
18 2007?

19 A No, ma'am.

20 Q Were you allowed to?

21 A No, ma'am.

22 Q At some point after you had been keeping Shawnie and
23 Elizabeth, and you had developed this friendship, did Gina
24 become pregnant?

25 A Yes, ma'am.

1 Q And tell the jury what happened when Gina become
2 pregnant.

3 A When children that become pregnant, they wanted me to
4 -- they told me they wanted me to keep their child.

5 Q And who was the child she was pregnant with?

6 A Zachary.

7 Q What was your reaction to her pregnancy?

8 A We were -- we were ecstatic. They were trying to get
9 pregnant, and we were praying over it. And it finally
10 happened for them, and we were excited.

11 Q And you did keep, start keeping, Zachary?

12 A Yes, ma'am.

13 Q And he was how old?

14 A When I started keeping him, he was about six weeks
15 old, six, eight weeks old.

16 Q A tiny newborn?

17 A Yes, ma'am.

18 Q What was his usual schedule?

19 A They would -- they were usually the first ones to
20 drop him off, so he would be dropped off between like
21 7:30, eight o'clock.

22 They first would come in, take a nap, wait for the
23 rest of the babies to arrive and give him a bottle. And
24 once the other children arrived, we would all get up, and
25 I would change diapers and feed them and play and love on

1 them and entertain them, sang to them. I read to them.

2 I would give them lunch and another bottle, and
3 they're ready to go down for their afternoon nap, which
4 usually happened around noon. They napped for about
5 two-and-a-half hours, maybe three hours, and after that,
6 we -- everybody got up. We changed diapers, fed snacks,
7 and just prepared for pick up.

8 Q Okay. And Zachary was with you from -- who was the
9 first to arrive, generally, during that time?

10 A During that time, Zachary was the first to arrive,
11 pretty much.

12 Q And he would be picked up at about what time,
13 usually?

14 A Picked up between 5:30 and six o'clock that evening.

15 Q Taking you to December 2nd, 1998, Andrea. Do you
16 remember that day?

17 A Yes, ma'am.

18 Q And do you remember what time -- you said Zachary was
19 usually the first to arrive.

20 A Yes, ma'am.

21 Q Do you remember him arriving that morning?

22 A I do.

23 Q Do you remember around what time he arrived?

24 A He arrived between 7:30, eight o'clock.

25 Q And do you remember who dropped him off?

1 A Gina dropped him off.

2 Q And when you got him, how did he seem that morning?

3 A He was fussy. He had been -- he had been sick. He
4 was uncomfortable, snotty nose. He was coughing. He
5 seemed uncomfortable. He was -- he was sick.

6 Q Had he, in the time that you kept him -- you kept him
7 for a year?

8 A Yes, ma'am.

9 Q At the time that you kept him, had he been sick at
10 other times?

11 A Yes, ma'am.

12 Q Is it unusual for you to see -- would it be unusual
13 for you to see a child with a cough, with a cold, sick?

14 A No, ma'am.

15 Q And on that morning, you recall he -- he was sick
16 that morning?

17 A Yes, ma'am.

18 Q You said that he was fussy. What, if anything, did
19 you do to try to comfort him?

20 A I tried to rock him. I gave him his bottles, tried
21 to make him comfortable.

22 Q When you say "rocked", would you rock in a rocking
23 chair? What did you mean?

24 A No, ma'am. I didn't have a rocking chair. I would
25 sit on my sofa and hold him in my arms and rock him.

1 Q And can you just show the jury what you're talking
2 about? Just by moving your body?

3 A Yes, by moving my body.

4 MR. GIESE: Your Honor, I hate to object at this
5 time, but I allowed her to lead at the preliminary stuff.
6 If she could stop leading since we're to the date in
7 question, I appreciate it.

8 BY MS. PRINGLE

9 Q What did you feed him that morning?

10 A I gave him a bottle of milk.

11 Q Okay. How was his demeanor after you give him the
12 first bottle of milk?

13 A He was still fussy. He acted -- was still hungry, so
14 I gave him another bottle.

15 Q All right. And what was the second bottle?

16 A The bottle, second bottle, was a juice bottle.

17 Q And while all of this was going on, did you have
18 other children there?

19 A Yes, ma'am.

20 Q And while you were trying to comfort Zachary, what,
21 if anything, were you doing with the other children?

22 A The other children were napping.

23 Q How did they -- gotten to nap?

24 A I -- I received them from their parents, take off
25 their coats or whatever and walk them into the day care

1 room and laid them down for a nap.

2 Q You're talking about the day care room. What was the
3 day care room?

4 A The day care room was where I kept the Pack N Play
5 and the mats the older children slept on.

6 Q What would -- describe your house at this time.

7 A When you go through the front door, the stairs are
8 immediately in front of you. To your right is what I call
9 my day care room, and it consisted of a den, which is just
10 and open space. And at the end of that den is what could
11 have been used as a dining room. I chose to use that to
12 put my Pack N Plays there. To the left from the door is
13 the living room, and that's where we spent most of our
14 time. Behind the living room is our kitchen, and it
15 connects to the day care room.

16 Q How big was your house?

17 A It was a two-story home, about 1800 square feet.

18 Q How many bedrooms?

19 A There were three bedrooms.

20 Q One or two levels?

21 A Two levels.

22 Q Where were the bedrooms?

23 A The bedrooms were upstairs.

24 Q You testified that that morning you fed Zachary a
25 bottle of milk, a bottle of juice. That was your

1 testimony.

2 A Yes, ma'am.

3 Q And rocked him. What happened at that point?

4 A At that point, I -- I rocked him and laid him down
5 for a nap.

6 Q Did he settle down?

7 A Yes, ma'am. He began to settle himself in the Pack N
8 Play, get comfortable, and fall asleep.

9 Q Did you see him asleep?

10 A Yes, ma'am.

11 Q And when you saw him, how did he seem?

12 A He seemed fine.

13 Q He seemed...

14 A He seemed fine.

15 Q At this point, after you put him down for a nap, how
16 many of the children are asleep?

17 A Everybody is.

18 Q Where was Zachary in the order of putting the
19 children down for a nap? I mean, was he first, second,
20 last? Where was he?

21 A He was last.

22 Q Once you put him down, what did you do next?

23 A After the children are put down, I usually straighten
24 up my home. I washed my -- washed my hands, used the
25 bathroom, took care of some phone calls.

1 Q Can you tell this jury, do you know specifically how
2 long that took you?

3 A I'm not sure. I -- I couldn't tell you specifically
4 how long that took me.

5 Q After you did all of that, did you at some point go
6 back and check on the sleeping children?

7 A Yes, ma'am, I did.

8 Q And when you went back, what did you see?

9 A Oh, Jesus. When I went back, I saw Zachary laying in
10 a pool of fluid, and I immediately picked him up. I
11 immediately picked him up and took him into the living
12 room. I called 911. I started C.P.R. I started C.P.R.,
13 started breathing for him, and listened to the person on
14 the other end of the phone.

15 Q You called who?

16 A 911.

17 Q What, if anything, did 911 tell you to do?

18 A They told me to continue C.P.R.

19 Q I show you what's been marked as State's Exhibit
20 Number 1.

21 A Yes, ma'am.

22 Q What is that?

23 A That's my day care room.

24 Q Is this the room, Andrea, that the children -- what
25 went on in this room?

1 A That's the room the children slept in.

2 Q Was that what this room was for?

3 A Yes, ma'am.

4 Q This is marked as State's Exhibit No. 3. What was
5 that?

6 A That was Zachary's Pack N Play.

7 Q And that Pack N Play is situated right next to what?

8 A The kitchen.

9 Q Let me show you what's been marked and entered as
10 State's Exhibit No. 2. What is that?

11 A That is Zachary's Pack N Play with his mattress
12 soaked with fluid.

13 Q Did you see -- what is this -- what is this circular,
14 uneven circular mark?

15 A That's the -- that's the -- that's the stain where
16 the fluid was.

17 Q What was the consistency? Was it -- was that wet or
18 dry? What was the --

19 A It was wet.

20 Q -- nature of that?

21 A It was fluid. I'm not sure exactly what, but it was
22 something that shouldn't have been there. It was wet. It
23 was vomit like.

24 Q When -- why did you pick Zachary up from the Pack N
25 Play?

1 A Because he -- he was face down in fluid, and he
2 didn't look...

3 I picked him up because he was face down in fluid.

4 Q Did you see the --

5 A I was --

6 Q -- stain?

7 A Yes.

8 Q And is that how it looked that day?

9 A Yes, ma'am.

10 Q You testified that you performed C.P.R.?

11 A Yes, ma'am.

12 Q Did you perform C.P.R. before or after you picked
13 Zachary up?

14 A After.

15 Q Where did you take Zachary?

16 A I took him directly into my living room.

17 Q And where did you place him?

18 A I placed him on the floor.

19 Q And what was the thing that you did next?

20 A I called 911, and I began C.P.R.

21 Q And what did 911 tell you to do?

22 A They told me to do compressions and to blow into his
23 mouth.

24 Q And what did you tell 911? What was happening at
25 that point?

1 A I told 911 that every time I blew into his mouth, it
2 sounded as if I was blowing bubbles, as if -- like
3 children do when they blow into a straw into like milk.
4 It sounded as if he was full of fluid.

5 Q What did E.M.S. tell you to do about it? Did you
6 tell that to E.M.S.?

7 A I did.

8 Q What did they tell you to do about it?

9 A They told me to turn him onto his side and let the
10 fluid run out of his mouth.

11 Q Did you do that?

12 A Yes, ma'am.

13 Q What, if any, response were you getting from Zachary?

14 A I wasn't getting any response.

15 Q Ms. Person, how did you -- how do you feel about
16 Zachary? What is Zachary to you?

17 A I...

18 Zachary, I treated him like he was one of my own. I
19 loved him like he was one of my own. He was a wonderful,
20 wonderful child, and I loved him and treated him like he
21 was my own.

22 Q At some point, does E.M.S. arrive?

23 A Yes, ma'am.

24 Q And who gets there first?

25 A A lady gets there first. I have no idea how she got

1 into the house.

2 Q Let me stop you. Do you -- during the State's case,
3 presentation of their case, did you -- Mandy Fortson came
4 in and testified. Did you see that?

5 A Yes, ma'am.

6 Q And when you saw her, did you remember her?

7 A I did.

8 Q Was -- was she the -- was she the first person to
9 arrive?

10 A Yes, ma'am.

11 Q And I think you just answered, but do you remember
12 how she got in?

13 A No, ma'am; I don't.

14 Q And she asked you some preliminary questions about
15 what had happened, and what did you tell her?

16 A She asked me -- she asked me had he been sick, how
17 was he that morning. I told him -- I told her, I'm sorry,
18 that he was sick. He had had pneumonia, and I told her
19 what went on during the day: I fed him his bottle. He
20 was uncomfortable. He was fussy, gave him a second
21 bottle. He begin to settle down. I laid him down for a
22 nap.

23 Q Why -- you told her he had had -- he had pneumonia?

24 A Yes, ma'am.

25 Q And did you tell her he had pneumonia in April, or

1 when did you tell her he had pneumonia?

2 A I told her he had pneumonia recently.

3 Q And was that your understanding?

4 A It was my understanding.

5 Q Where does that come from? Where did -- where did
6 that come from?

7 A Gina told me he had pneumonia.

8 Q Do you remember when you learned that?

9 A I'm not --

10 Q That he had -- that he pneumonia?

11 A Well, a few weeks before.

12 Q So when Mandy Fortson came that morning, you told her
13 that -- you did tell her that?

14 A Yes, ma'am.

15 Q Does the ambulance arrive?

16 A Yes, ma'am.

17 Q And what is happening? Does -- does Zachary leave?

18 A Yes, he does.

19 Q What happens next?

20 A Ms. Mandy is helping me make phone calls to other
21 parents to get the children picked up. I called my
22 husband to have him come home.

23 Q Why did you call Rodney to come home?

24 A Because I needed him to be with me, and we wanted --
25 needed to go to the hospital with Gina and Pete.

1 Q And what did you do? Where did you and Rodney go?

2 A We went to the hospital.

3 Q And what happened?

4 A I saw Pete, and Pete gave me a hug, and he held me,
5 and we cried, and he said it was not my fault, "You loved
6 him like he was your own." He said, "Don't blame
7 yourself. It's not your fault."

8 Q Where were you when this happened?

9 A I'm not for sure. I believe we're outside of the
10 hospital.

11 Q But at the hospital?

12 A But we were at the hospital, yes, ma'am.

13 Q Did you learn from the parents at some point what the
14 cause of death was?

15 A Yes, ma'am, I did.

16 Q And what did you learn?

17 A I was told by Pete that he had walking pneumonia and
18 his lungs collapsed.

19 Q Did the Department of Social Services come to see you
20 the next day?

21 A Yes, ma'am.

22 Q Did you report to them what had been reported to you
23 as far as cause of death?

24 A Yes, ma'am.

25 Q And that was on December 3rd?

1 A Yes, ma'am.

2 Q All right. What -- what happened after Zachary
3 passed? I'm talking about just after Zachary passed, the
4 days after he passed. What happened next?

5 A I -- we went to the funeral. We sat under the
6 umbrella with the family. We stayed close. We continued
7 to talk. I continued to watch Shawnie. We remained
8 close. They told me they were going to get pregnant
9 again, and they wanted me to keep their child.

10 Q Andrea, I want you to tell this jury, you described
11 your relationship with Gina and Pete, your relationship
12 with Zachary. How did losing Zachary, the child of Gina,
13 and who you loved very much, and Zachary, who you loved,
14 how did that affect you?

15 A They were -- outside of my family, they were the
16 closest people that I had as friends. They trusted me
17 with -- with Zachary, and he was with me when he passed,
18 and it breaks my heart.

19 I loved them so much, and it breaks my heart to let
20 them down that way. I felt responsible because he was in
21 my care when he passed.

22 Q Did you feel responsibility because anything you did
23 to him?

24 A No, ma'am. I loved him. I loved him.

25 Q We're going to get to that in a moment. I want to

1 move you now to 2007, okay.

2 A Yes, ma'am.

3 Q 2007, you're still living -- you are still -- are you
4 still in Columbia?

5 A Yes, ma'am.

6 Q And are you married still to Rodney?

7 A Yes, ma'am.

8 Q The children, Tyler and Coco --

9 A Yes, ma'am.

10 Q -- are still living with you?

11 A Yes, ma'am.

12 Q On April 2nd, 2007, you heard testimony from
13 Investigator Isenhoward that the office--- he came to your
14 home on April 2nd?

15 A He came.

16 Q Do you remember that?

17 A Yes, ma'am.

18 Q And you talked to them?

19 A Yes, ma'am.

20 Q On April 11th of 2007, did you on that day actually
21 go down to the Richland County Sheriff's Department to
22 talk to them?

23 A Yes, ma'am.

24 Q Prior to going -- did you consider saying no?

25 A No, ma'am.

- 1 Q Did you call an attorney?
- 2 A No, ma'am.
- 3 Q Did you hire an attorney?
- 4 A No, ma'am.
- 5 Q Did you go alone?
- 6 A Yes.
- 7 Q Or who were you with?
- 8 A I was -- I was alone.
- 9 Q Moving on to April 17th of 2007, up until April 17th,
- 10 2007, Andrea, had you ever been to jail?
- 11 A No, ma'am.
- 12 Q Had you ever been arrested for anything?
- 13 A No, ma'am.
- 14 Q Had you ever been -- prior to April of 2007, had you
- 15 ever been interrogated by law enforcement?
- 16 A No, ma'am.
- 17 Q On April 11th, had Investigator Isenhoward asked you
- 18 to come back -- or at some point, had you been asked to
- 19 come back on April 17th?
- 20 A Yes, ma'am.
- 21 Q And again, did you go?
- 22 A Yes, ma'am.
- 23 Q Did you call a lawyer ahead of time?
- 24 A No, ma'am.
- 25 Q Did you hire a lawyer?

1 A I did not.

2 Q Did you think about not going?

3 A No, ma'am.

4 Q Did you intend -- why didn't -- why didn't you just
5 not go down there?

6 A Why didn't I just not go down there?

7 Q Uh-huh. Why didn't you hire a lawyer and just not go
8 down there?

9 A I didn't think I had anything to hide. I wanted to
10 help. They said if I came, it would be helpful, and I
11 wanted to help.

12 Q On that day, you went down there. You heard
13 testimony about how you were dressed on that day.

14 A Yes, ma'am.

15 Q Do you recall anything in particular about making a
16 decision on how to dress that morning?

17 A No, ma'am. I just got up and got dressed.

18 Q And what were you wearing?

19 A A T-shirt, a pair of black pants.

20 Q Andrea, do you wear T-shirts in your day-to-day life?

21 A Yes, ma'am, of course.

22 Q Do you ever wear T-shirts to appointments?

23 A Some -- at times; yes, ma'am.

24 Q Did you get dressed up to go down to the sheriff's
25 department?

1 A No, ma'am.

2 Q Do you -- do you dress up every day like you're

3 dressed today? Is that your typical --

4 A No, ma'am.

5 Q Is that you're typical dress?

6 A No, ma'am.

7 Q How many -- how much -- about how many dress up

8 clothes do you have?

9 A I'm not a clotheshorse. I actually had to borrow

10 some things for this week. I -- we go to church. We

11 don't -- we go to the movies. I don't have occasion to

12 dress up all of the time.

13 Q What you're wearing today, does all of that belong to

14 you?

15 A No, ma'am.

16 Q Who did you borrow that from?

17 A I borrowed this from my sister.

18 Q Before going to the sheriff's department on

19 April 17th, did you see anybody?

20 A I saw my mom.

21 Q And did you tell her where you were going?

22 A Yes, ma'am.

23 Q Did you tell Rodney?

24 A No, I didn't.

25 Q How long did you tell your mother you would be gone?

1 A An hour to an hour-and-a-half.

2 Q Did you eat anything that morning before you went?

3 A I can't recall. I can't recall.

4 Q How did you get to the Richland County Sheriff's
5 Department?

6 A I drove myself.

7 Q When you get there, you go into the lobby?

8 A Yes, ma'am.

9 Q And what do you put -- what happens next?

10 A I informed the receptionist, the officer there, that
11 I was there to see Officer Isenhoward.

12 Q And then what happens next?

13 A He comes down to get me and takes me through the
14 metal detector. We get on the elevator, and we go
15 upstairs.

16 Q Let me stop you. Do you remember there being -- do
17 you remember a metal detector?

18 A Yes, ma'am.

19 Q All right. Go ahead.

20 A He takes me through the metal defector. We get on an
21 elevator and go upstairs, and I'm taken to a waiting area.

22 Q Who do you see next?

23 A Officer White.

24 Q You've seen Officer White testify this week. Is that
25 the same Officer White --

1 A Yes.

2 Q -- who is here not here now?

3 A Yes.

4 Q Had you ever met -- before that moment when you meet

5 him, had you ever met him before?

6 A No, ma'am.

7 Q Do you know him at all?

8 A No, ma'am.

9 Q Where does he take you?

10 A He took me to his office.

11 Q Does the conversation with him at first start out

12 friendly?

13 A Yes, ma'am, very friendly. He asked me questions

14 about my background, about my family. It was -- it was

15 just very friendly.

16 Q At some point, does he then ask you if you had hurt,

17 contributed in some way, to killing Zachary?

18 A Yes, he does.

19 Q What was your answer?

20 A "No, sir; I did not."

21 Q Did you answer "no" one time?

22 A No, ma'am.

23 Q Did you answer "no" twice?

24 A No, ma'am. I answered that question over and over

25 again: "No, I did not hurt Zachary."

1 Q So the testimony from the officers has been that
2 question was only asked once. You said no and that you
3 didn't deny it again. Did you -- did you -- did you
4 continue to deny it?

5 A Yes, I did, but he wouldn't accept "no" as an answer.

6 Q And when you say that he wouldn't accept no as an
7 answer, what is he saying to you at that point?

8 A He's saying, "This just doesn't make sense. It
9 doesn't make sense. You had to have done something to
10 him. You had to have -- something had to have happened."

11 Q At that point, did you tell him how you felt about
12 Zachary?

13 A I did.

14 Q What did you say to him?

15 A I told him, I said, "He was like my son. He was like
16 my son. I loved him with everything in me. I had him for
17 12 hours a day, five days a week. I loved this child like
18 he was my son. I would not hurt him."

19 Q Does the tone of the conversation with Investigator
20 White change at some point?

21 A Yes, ma'am.

22 Q And describe that for the jury.

23 A He becomes aggressive, accusatory, and he begins to
24 rub his hands over his head. He turns red. He's getting
25 louder. He's getting forceful. He's -- he's leaning

1 towards me. He's even putting his hands on his desk.

2 Q What did you just -- what was he doing with his arms?

3 A He was -- he would rub his hands through his head,
4 "Something had to have happened. Something had to have
5 happened. This is just not making sense. Something had
6 to have happened."

7 Q For the record, Andrea, you're banging your
8 forearms --

9 A Yes.

10 Q -- on the table in front of you?

11 A Yes, ma'am.

12 Q How are you feeling at that point?

13 A I'm scared to death. I'm confused. I came there to
14 help. I came there to help, and now I'm being accused of
15 trying to -- have killed this baby. I'm scared to death.
16 I'm intimidated. I'm crying.

17 Q Why?

18 A I want to go home.

19 Q You wanted to what?

20 A I wanted to go. I wanted to go home.

21 Q Well, why didn't you get up and just walk out after
22 that point and leave?

23 A I don't know. God knows. I wish I did, but I was
24 told, 'If you just help us, if you just help us bring
25 closure to this family, you can go. You can go. If you

1 just help us, you can go."

2 Q Okay. And while he's saying that to you, does he
3 tell you any stories?

4 A Yeah; yes, ma'am.

5 Q Describe that for the jury, what he said to you.

6 A He described -- he said, "Accidents happen.
7 Accidents happen. I had a friend who had a child, and he
8 couldn't -- he couldn't make that child hush. So he put
9 his hand over her mouth. He put his hand over her mouth.
10 That could have happened. That could have happened."

11 He even said that he had a friend that couldn't
12 control his child, and he actually --

13 MR. GIESE: Your Honor, I hate to object. Could we
14 approach?

15 THE COURT: Yes.

16 (WHEREUPON, a bench conference was held in the
17 presence but not within the hearing of the jury).

18 MR. GIESE: Thank you.

19 BY MS. PRINGLE

20 Q Andrea, I believe the last thing you testified to is
21 he had given an example of a friend --

22 A Yes, ma'am.

23 Q -- who had an accident?

24 A Yes, ma'am.

25 Q And what was the accident that he described to you?

1 A He -- he described the fact that he had a friend that
2 had a child that he could not console, and he actually hit
3 the back of that child and that was the accident, "But
4 accidents happen. Couldn't something like that have
5 happened?"

6 Q And was there another accident that was described to
7 you?

8 A The other accident was that the child was crying and
9 his -- the father couldn't console it, and he put his hand
10 over the child's face.

11 Q As this is happening, he's saying these things to
12 you, he's asking you -- is he asking you specifically
13 about Zachary, about what you did to Zachary?

14 A He's asking -- he's telling me -- he's presenting
15 these scenarios, and constantly saying, "Couldn't it have
16 happened like this? Couldn't that -- couldn't something
17 like this have happened?"

18 Q What do you initially say in response?

19 A "It could have, but it didn't."

20 Q At some point, do you stop saying, "It could have but
21 it didn't"?

22 A Yes, I do.

23 Q What do you start doing?

24 A I start going along with the story. I start going
25 along with the story.

1 Q You start saying some of those things yourself?

2 A Yes.

3 Q Do you remember exactly when that shifted and you...

4 A I don't remember exactly the timeframe, but I know it
5 did.

6 Q And that you did start saying these things?

7 A Yes, ma'am.

8 Q Why?

9 A I was told if I just help, if I just give them
10 something that could give closure to this family, I would
11 be helping, and I could go home. I was desperate to go
12 home.

13 Q After your time with White, what happened next? When
14 you come into contact -- do you come into contact with
15 Investigator Isenhoward?

16 A Yes, I did.

17 Q What happens? Where is that?

18 A Investigator White takes me to Investigator
19 Isenhoward's cubical.

20 Q Okay. Did you hear the testimony of Investigator
21 Isenhoward that he came in to White's office?

22 A Yes.

23 Q Do you recall that happening?

24 A I do not recall that at all, no.

25 Q Did Investigator Isenhoward -- do you recall for

1 certain whether or not Investigator Isenhoward came in and
2 knelt down before you?

3 A No, ma'am, that did not happen.

4 Q So you're taken back to, you said, Investigator
5 Isenhoward's cubical?

6 A Yes, ma'am.

7 Q Is there -- there's a bathroom break in here
8 somewhere. Where does that happen?

9 A I believe it happened during that time when I'm taken
10 back to Isenhoward's cubical.

11 Q In between?

12 A I think so.

13 Q Do -- when you asked to go to the bathroom, do you go
14 by yourself?

15 A No, ma'am.

16 Q What happens?

17 A They followed me. He escorted me, followed me, stood
18 outside the door.

19 Q Who?

20 A Isenhoward.

21 Q Where does Investigator -- after the bathroom, where
22 does Investigator Isenhoward take you?

23 A He took me back to his cubical.

24 Q Do you see -- is there any exchange between
25 Investigator Isenhoward and Investigator White that you

1 observed?

2 A Yes, ma'am.

3 Q What? Describe that.

4 A When Investigator White took me to Investigator
5 Isenhoward, I sat in the cubical and Isenhoward stepped
6 aside and talked with Investigator White.

7 Q Could you hear what was being said?

8 A No, ma'am.

9 Q What happens next?

10 A I'm in Investigator Isenhoward's cubical, and he
11 wants me to tell him what happened, the story that
12 happened in White's office.

13 Q At that point, what do you say?

14 A "I didn't hurt Zachary."

15 Q You said --

16 A "I didn't hurt him."

17 Q You said that to Isenhoward?

18 A Yes, ma'am.

19 Q In his cubical?

20 A Yes, ma'am.

21 Q Does he ask you questions?

22 A Yes.

23 Q And what happens next?

24 A He asks me questions concerning the story, and I
25 began to tell him what I told him, what I told White in

1 his office.

2 Q Did you tell him at some point prior to that what you
3 felt like it was they were --

4 A Yes, ma'am. I -- I told him several times, "I feel
5 like you guys are -- are trying to make me make something
6 up, make something that makes sense. You're making me
7 feel like I have to make something up for you."

8 Q In response to that, does he take you somewhere?

9 A Yes, ma'am. He takes me to his boss' office, Officer
10 Wilson.

11 Q And what does he say when you say, "I feel like you
12 want me to make up a story"? What did he say you need to
13 do then?

14 A "We need to take this to my boss because this doesn't
15 make sense. We need to take this to my boss."

16 Q Do you then go to Wilson's office?

17 A Yes, ma'am.

18 Q Had you met, ever met, Investigator Wilson before?

19 A No, ma'am.

20 Q Had you ever seen him?

21 A Had I ever...

22 Q Had you ever seen him?

23 A No, ma'am.

24 Q What was his office like compared to Isenhoward's?

25 A Compared to Isenhoward's cubical, his office was much

1 bigger. You walk in the door. He's got a big, beautiful
2 desk. There are two chairs seated in front of his desk.
3 I believe there were windows.

4 Q And what was your impression as to who Wilson was in
5 relation to Insenhoward, I mean, based on your impressions
6 of the office and based on what you had been told?

7 A I believed he was his supervisor, his superior.

8 Q What happens when you get into Wilson's office?

9 A I get into Mr. Wilson's office and was seated, and
10 they began talking almost to each other trying to find out
11 why -- why I would let something like that happen, why I
12 would use this, and they were coming up with scenarios and
13 reasons.

14 Q Was anything asked of you regarding your marriage?

15 A Yes. They begin to ask me questions like, "Were you
16 having problems with your husband at that time, with your
17 children at that time? Were you -- were you sick? Were
18 you in pain?"

19 Q Okay.

20 A They were asking me all kinds of questions.

21 Q When you're in Wilson's office, do you start denying
22 again and saying, "Stop. Stop. This didn't happen"?

23 A I'm going along with it now.

24 Q At that point you're what?

25 A I'm going along with it.

1 Q Why?

2 A Because I want to go home. I want to go home.
3 That's what I'm led to believe would happen. If I just
4 help, give them something I could give -- they could give
5 the family.

6 Q What, if anything -- does Mr. Wilson leave the room
7 at any time?

8 A He does.

9 Q What does he leave the room -- what does he say when
10 he leaves the room?

11 A He leaves the room to make a phone call, and he comes
12 back in and tells me, "Well, my coroner friend said this
13 doesn't make sense. So we need to figure out what makes
14 sense."

15 Q Prior to leaving, does he tell you why he needs to
16 leave the office?

17 A I don't -- I don't recall. I'm not sure.

18 Q And when he comes -- I'm sorry. When he came back
19 in, he reported to you what his coroner friends had said?

20 A Yes.

21 Q Do you then -- do you then offer an explanation as to
22 why you did this?

23 A They began to ask me -- they began to ask me all
24 kinds of things, and I began to try to come up with
25 something.

1 Q What did you say that was going on that had just
2 happened?

3 A I told them that I had had a hysterectomy.

4 Q Was that your idea?

5 A Yes, ma'am.

6 Q Was that your -- you offered that?

7 A Yes, ma'am.

8 Q That didn't come from their suggestions?

9 A No, ma'am.

10 Q At that point, that was your words?

11 A Yes, ma'am.

12 Q Did they say anything to you -- are they talking to
13 you about the details about placing your hand over the
14 baby's mouth?

15 A Yes, ma'am. Mr. Wilson -- Mr. Wilson was in front of
16 the desk now standing between me and the desk, sort of
17 leaning back with his backside against the desk, and he
18 would say things like, "Did you hurt him? How -- how hard
19 did you -- how hard did you put your hand over his mouth?"

20 He shoved his fist at me. He said, "Show me, how
21 hard did you -- how much pressure did you put on him?" It
22 scared me to death.

23 Q What did you do?

24 A I grabbed his hand. I grabbed his fist.

25 Q You did that?

- 1 A Yes, ma'am.
- 2 Q How are you feeling at that point?
- 3 A Trapped, scared, confused, ready to go, ready to go.
- 4 Q Did either of them say anything to you about how
- 5 long -- did they ask you how long your hand was over the
- 6 mouth?
- 7 A Yes, ma'am.
- 8 Q What was said?
- 9 A Mr. Wilson said, "How long did you keep this -- keep
- 10 your hand over his mouth, two, three minutes?"
- 11 And I said, "No, sir; no, sir."
- 12 "How long did you keep your hand over his mouth?"
- 13 I said, "15 to 20 seconds."
- 14 Q After Wilson's office, where do you go?
- 15 A We go back to Isenhoward's cubical.
- 16 Q What is the purpose of going back there, as you
- 17 understand it, at that point?
- 18 A They were going to take a statement.
- 19 Q And what are you planning to do at that point?
- 20 A I'm going to give them a statement.
- 21 Q And you -- you've seen -- and I forgot to ask you
- 22 this, State's Exhibit No. 10. When you went down to the
- 23 sheriff's department on April 11th, you were -- we've
- 24 heard testimony, seen testimony about this. There was an
- 25 Advice of Rights administered to you. Do you recall that?

1 A Yes, ma'am.

2 Q Is that your signature at the bottom?

3 A It is.

4 Q Did -- were you forced to sign that?

5 A No, ma'am.

6 Q I show you that's marked as State's Exhibit No. 5.

7 What is that?

8 A That's the interrogation, Advice of Rights again.

9 Q And what day was that on again?

10 A The 17th of April.

11 Q Is that your signature at the bottom?

12 A Yes, ma'am.

13 Q Were you forced to sign that?

14 A No, ma'am.

15 Q Did you -- Andrea, did you understand your rights?

16 A Yes, ma'am.

17 Q Or did you understand when they read this to you and

18 you signed it, did you understand it?

19 A Yes, ma'am.

20 Q I show you what's been marked as State's Exhibit No.

21 9. You testified that you went back to Investigator

22 Isenhoward's cubical. Your understanding is you were

23 going back there to do a statement.

24 A Yes, ma'am.

25 Q When you sat down, did they ask you to write the

1 statement out?

2 A No, ma'am.

3 Q Who is writing the statement down?

4 A Isenhoward.

5 Q How is he writing it down?

6 A He was typing it.

7 Q State's Exhibit No. 9, the statement of Andrea

8 Marnette Person, April 17th, 2007. Do you recognize that?

9 A Yes, ma'am.

10 Q I show you all three pages. Is that your statement?

11 A Yes, ma'am.

12 Q Did you sign this?

13 A I did.

14 Q Is that your signature at the bottom?

15 A Yes, ma'am.

16 Q When you get back to this cubical, who is coming up

17 with the questions that are being asked?

18 A He is.

19 Q And at this point, you're answering? Are you

20 answering?

21 A Yes, ma'am.

22 Q Are you denying anything anymore?

23 A No, ma'am.

24 Q We've also heard testimony about this letter written

25 to Gina and Pete, State's Exhibit No. 8. Is that your

1 handwriting?

2 A Yes, ma'am, it is.

3 Q Did you write that?

4 A Yes, ma'am, I did.

5 Q Where were you when you wrote that?

6 A I was in Isenhoward's cubical.

7 Q Was this written with Isenhoward -- where was
8 Isenhoward when you wrote it?

9 A Sitting at his desk.

10 Q Whose legal pad did you write it on?

11 A His.

12 Q Whose pen did you use to write it?

13 A His.

14 Q Did you take this with you after you left?

15 A No, I did not.

16 Q Who kept it?

17 A Isenhoward.

18 Q Was this ever something you sent in the mail?

19 A No, ma'am.

20 Q And where was this written?

21 A In Isenhoward's cubical.

22 Q At what point, the taking of the statement, was that
23 letter written?

24 A After taking the statement.

25 Q After you signed the statement?

- 1 A Yes, ma'am.
- 2 Q What, if anything -- was this your idea?
- 3 A No, ma'am.
- 4 Q Whose idea was this?
- 5 A This was Isenhoward's idea.
- 6 Q Are these -- did you write it, though?
- 7 A I wrote it, yes.
- 8 Q Are those your words?
- 9 A Yes, ma'am.
- 10 Q Were all of these your ideas?
- 11 A No, ma'am.
- 12 Q Describe what you mean.
- 13 A Isenhoward told me, he said, "You know, I'm going to
14 have to go to your friends and -- and tell them what has
15 happened today. It would be -- it would look better for
16 you if you were to write a letter to them apologizing, and
17 it would just look better for you if you wrote that
18 letter."
- 19 Q Andrea, do you feel bad about what happened to
20 Zachary?
- 21 A I feel horrible. I feel horrible.
- 22 Q December 2, 1998, look at this jury and tell them,
23 did you place your hands over Zachary Ulengchong's mouth?
- 24 A No, I didn't.
- 25 Q Did you suffocate Zachary Ulengchong?

1 A No, ma'am.

2 Q Did you hold your hands over his nose and mouth until
3 he stopped breathing?

4 A No, I didn't.

5 Q Did you do anything to hurt him?

6 A No, ma'am, I did not.

7 Q Why do you feel bad?

8 A Because I loved him, and I loved Gina and Pete. They
9 were my friends. He was my boy, too. I had him since he
10 was two months old. I had him all day. They worked hard.
11 I kept him all day.

12 I treated him like he was my child. I loved him with
13 every fiber I have -- and I would never, never hurt him,
14 but he was in my care when this happened -- and he died in
15 my care and because of that, I felt responsible.

16 Q In this letter -- you say, "My heart is sick, and I
17 hate myself for all that I've put you through." Is that
18 true?

19 A Yes, ma'am.

20 Q You say, "I didn't want to hurt him but I did."

21 A Yes, ma'am; I said that.

22 Q Well, is that true? Did you hurt him?

23 A I did not hurt him.

24 Q Why did you put that in there?

25 A Because Isenhoward told me, "Don't forget, just put

1 in there you wish you had done something different, maybe
2 stepped back; that you didn't mean to kill him. You
3 didn't mean to hurt him, but you did."

4 Q Why on earth would you go along with this?

5 A Because I'm desperate. I want -- I want -- I want to
6 be away from this. I want to go home. I want to go home,
7 and I'm following through. I'm following through.

8 Q Did you say you're following through?

9 A Yes, ma'am.

10 Q All right. And I asked you if you placed your hand
11 over Zachary's mouth for 15 to 20 seconds. Did you?

12 A No, ma'am.

13 Q Did you place your hand over his mouth, his nose and
14 mouth, and hold it for two minutes?

15 A No, ma'am.

16 Q Did you hold it for three minutes?

17 A No, ma'am.

18 Q Did you -- did you hold -- suffocate him until his
19 body went limp in your arms?

20 A No, ma'am.

21 Q Is that true at all?

22 A No, it's not true.

23 Q In your statement, you say -- I'm sorry. Beg the
24 Court's indulgence.

25 (Pause).

1 You say, "It was nap time, and I still couldn't
2 pacify him. I picked him up and held him in my arms. I
3 tried to pacify him and rock him to sleep. He was not
4 responding to it. He was still crying very loudly. He
5 was wining, and I didn't want the other children to wake
6 up."

7 Did you -- you -- that's in your statement, right?

8 A Yes, ma'am.

9 Q Did you say that?

10 A Yes, ma'am.

11 Q Andrea, in your --

12 MR. GIESE: I apologize. What was that answer?

13 THE WITNESS: Yes.

14 BY MS. PRINGLE

15 Q Yes.

16 In your house, if you had a fussy baby that would --
17 that could wake up the other children in that room, what
18 would you do?

19 A I have plenty of other spaces in my home I could have
20 taken that child. I could have gone upstairs with him. I
21 could have gone into any of the three bedrooms I had
22 upstairs.

23 Q Well, so were there places in your house where you
24 could have gone with a crying baby that would not have
25 distressed the other children?

1 A Yes, ma'am.

2 Q How did the other children in your -- in your -- how
3 were the other children, sleepers? Were those good
4 sleepers?

5 A They were -- they were fine. Children -- babies
6 sleep through thunderstorms. They sleep through craziness
7 going on in the house. Another crying -- a crying child
8 is not going to necessarily wake up a sleeping baby.

9 Q The story that you -- what you have told the jury
10 today happened on that date in December, did you, in
11 December of 1998, tell that to the coroner?

12 A Yes, ma'am.

13 Q Did you, on December 3rd, 1998, tell that to the
14 Department of Social Services?

15 A Yes, ma'am, I did.

16 Q Did you on February 8th, 1999, write a letter to the
17 Department of Social Services?

18 A Yes, ma'am.

19 Q Did you tell them what happened on that date?

20 A Yes, ma'am.

21 Q Andrea, I'm going to show you what's been marked
22 Defendant's Exhibit No. 1. What is that?

23 A That's the letter that I wrote to the Department
24 of -- to D.S.S.

25 Q You actually wrote that?

1 A Yes, ma'am.

2 Q And is that your signature at the bottom?

3 A Yes, ma'am.

4 Q Does it fairly and accurately represent -- that is
5 the letter that you wrote, a copy of it?

6 A Yes, ma'am.

7 MS. PRINGLE: We'd offer Defendant's Exhibit No. 1
8 into evidence.

9 MR. GIESE: No objection.

10 THE COURT: It's admitted.

11 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
12 into evidence.)

13 MS. PRINGLE: Your Honor, we'd request permission to
14 publish to the jury.

15 THE COURT: Yes, ma'am.

16 THE WITNESS: "To whom it may concern: I,
17 Mrs. Andrea M. Person, received a certified letter from
18 your office on February 2nd, 1999, regarding a deficiency
19 within my home day care facility.

20 "This is my written report of what happened on
21 December 2nd, 1998. Baby Zachary Ulongchong was dropped
22 off at approximately eight a.m. by his mother.

23 "We played for a while the other parents brought the
24 other children. He then wanted his first bottle, a milk
25 bottle. He drank that immediately, and then it was time

1 for his nap.

2 "I placed him in his crib. He became fussy. He
3 acted as if he was still hungry, so I gave him a second
4 bottle, a juice bottle. He drank that immediately, laid
5 down and began his morning nap at around 9:10, 9:15 a.m.

6 "I then began my morning ritual of straightening up
7 and working on the computer. When I finished, I made a
8 couple of phone calls, washed my hands, went to the
9 bathroom and started straightening up my living room area.

10 "The infants usually nap until approximately ten a.m.
11 However, I check on them periodically. I went to in check
12 at approximately 9:30, and it was then that I found him
13 unconscious and laying in a pool of fluid.

14 "I immediately called 911 and began C.P.R. The man
15 on the other end of the phone told -- told me to continue
16 administering C.P.R.

17 "I then told him that every time I breathed in for
18 Zachary, I could hear a lot of fluid in his lungs. It
19 sounded as if I was blowing into a straw, into a carton of
20 milk.

21 "He told me to tip him over and to let the fluid
22 drain from his mouth. I had never seen anything like
23 that. The fluid seemed to pour forever.

24 "He then told me to resume C.P.R. and compressions
25 and reassured me that help was on the way. When help

1 finally arrived, they continued rescue efforts and soon
2 took him to Palmetto Richland Memorial Hospital emergency.

3 "Later that morning, I received a call that Zachary
4 did not make it. I hope this letter corrects the
5 deficiency for my day care facility. If further
6 information is needed, please feel free to call me and
7 contact me at any time. Sincerely, Andrea Person."

8 Q What was the date of that letter?

9 A February the 8th, 1998 --

10 Q And why did you --

11 A 1999.

12 Q I'm sorry. Why did you have to write that, or why
13 did you write that letter?

14 A Because I -- as a day care facility, you have to
15 report any injuries that occur in your day care.

16 Q So you sent that letter to D.S.S.?

17 A Yeah.

18 Q One last question for you, Andrea. What was the date
19 of your hysterectomy?

20 A The date of my hysterectomy is August the 18th, 1999.

21 Q What year did you just say?

22 A 1999.

23 Q And Andrea, are you positive about that?

24 A I am.

25 Q Do you need to see your record to refresh your

1 recollection?

2 A I have -- I have it.

3 Q Are you certain? What was that date?

4 A August the 18th, 1999.

5 MS. PRINGLE: Thank you, Ms. Person. Please answer
6 any questions Mr. Giese has.

7 THE COURT: At this time, would be a good time to
8 take a break.

9 Ladies and gentlemen, I'm going to remind you of the
10 instructions I have given you. That is not to begin to
11 discuss this matter among yourselves, as you still have
12 not heard all the evidence that has to be presented.

13 Let's take a break, and then we'll continue on with
14 the trial of this matter.

15 Thank you.

16 (WHEREUPON, the jury left open court at approximately
17 12:15 p.m.)

18 THE COURT: Mr. Giese, there was something that you
19 wanted to place on the record?

20 MR. GIESE: Yes, ma'am, but something came up even
21 after that that I'd like to place on, I guess, first.

22 Your Honor, under direct questioning from
23 Ms. Pringle, she was asked about the written statement
24 that she gave to Isenhoward, and at which point I believe
25 the question was something to the effect, "Did you go

1 along with everything from that point on?" And she
2 answered, "I went along with everything that they said."

3 Now, Your Honor, clearly that's incorrect, and if you
4 need the court reporter to find it back, the actual
5 phrase, I'd love for her to do that, but clearly, that is
6 incorrect because in it, the written statement, she denies
7 the other two deaths.

8 So at this point, I don't see how it's possible for
9 the State to cross-examine her fairly without being able
10 to go into the fact that she denied killing the two other
11 children in the same statement she did not -- that she
12 said she killed baby Ulengchong.

13 THE COURT: Any response?

14 MS. PRINGLE: My response to that would be twofold:
15 The first is -- and I think they'll elicit this from her
16 on cross -- the first is, "I start talking about going on
17 with what they're saying about Zachary."

18 They're only talking about Zachary at that point. I
19 mean, that -- we didn't even have to navigate around
20 during that part of -- during her direct.

21 Once I got past the polygraph, all of that up until
22 she signs that statement, was about Zachary Ulengchong.
23 That's what she is talking about. If he crosses her on
24 it, she's going to say that's what I'm talking about.

25 On -- and secondly, just again, you know, Your Honor,

1 she completely goes along with what they say, for what
2 it's worth. I mean, I don't think we should go into the
3 other babies at all, but on Elijah Brown, she totally goes
4 along with what they say to the point of signing an
5 absolutely absurd statement.

6 So to say that she, you know, locked down and
7 completely started resisting at that point would impeach
8 all this, is just not completely true.

9 She does not ever say anything about Walker. I do
10 not know how there would be any way for that testimony to
11 be provided in any other way. What she testified about
12 was solely about their questioning about Zachary.

13 I led her through the part about the polygraph and
14 got her past the only part that we contend was about
15 Walker, and the rest is all about Zachary.

16 MR. GIESE: Your Honor, how can she say that, the
17 only part about Walker? She -- I mean, in this statement
18 that she is saying she was coerced into making this
19 made-up story. She is asked about the other two children
20 that she is down there on, and she -- she denies having
21 anything to do with their deaths.

22 I don't -- I don't think it's fair. How is that
23 fair? How is not opening the door? She specifically said
24 on direct testimony and the answer was, "I went along with
25 them from that point on, on every question."

1 MS. PRINGLE: Your Honor, I don't remember she said
2 specifically -- I mean, it was -- I'm just asking, was it
3 on -- did she say specifically on every question?

4 MR. GIESE: I believe your question was on every
5 question, and at that point she said, "Yes, I went along
6 with that." I'd love to find it. Can we do that, Your
7 Honor?

8 MS. PRINGLE: I don't -- I don't recall. I don't --
9 I don't recall that, Your Honor.

10 I mean, obviously, what I'm asking her about is the
11 only thing that's in evidence. The only thing that we've
12 been talking about the entire time is the questions that
13 she would be asked about Zachary. That's the only thing
14 that's in evidence. That's what I'm asking her about.

15 MR. GIESE: And, Your Honor, it's just not the truth.
16 It's simply not the truth.

17 (The court reporter read back testimony).

18 THE COURT: Did you all hear that?

19 (Mr. Giese nods in the affirmative).

20 THE COURT: What's your argument?

21 MR. GIESE: Same one I've made, Your Honor. My
22 argument is as to the specific question. She said she
23 denied nothing after that. She clearly denied killing the
24 two other children, and the question that's redacted right
25 before the last question. The State's position is she

1 opened the door.

2 THE COURT: I think I'm going to rule that it's --
3 that they haven't opened the door. I think, clearly, it
4 is understood based upon our conversations before she
5 testified that the -- what she was going to testify about
6 was what occurred with respect to the questioning about
7 this particular incident; that it was always the
8 discussion that information relating to questioning of --
9 involving the other children would not be part of the
10 discussion.

11 I think that the questions were asked clearly with
12 that -- with those parameters outlined, and that the
13 answers were given in connection with those parameters.

14 So I don't think that's an opening of the door given
15 the parameters of the discussion that we had and have been
16 consistent throughout the course of this trial.

17 MR. MEADORS: Your Honor.

18 THE COURT: Yes, sir.

19 MR. MEADORS: Clearly, they would not be able to
20 argue that in closing, I assume, that she didn't deny
21 anything. Anyway.

22 THE COURT: I think that she would only be able to
23 say that she denied stating anything about this particular
24 child and in that context, and that it should not be --
25 that she denied everything all day long. I think it has

1 to be very specific and to be consistent.

2 MR. MEADORS: And again, I think the Solicitor's
3 point of --

4 MR. GIESE: And just for the record, Your Honor, it's
5 the State's position that -- that that testimony, that
6 testimony, is a lie and we're allowing -- we're not
7 allowed to go into it. That's our position.

8 THE COURT: Which testimony is a lie? The fact
9 that --

10 MR. GIESE: That she denied everything; that she did
11 not deny that she -- at that point, did not deny anything
12 that the officer said. That is an untruth. That is what
13 she just said.

14 THE COURT: And I understand that that's the State's
15 position, and you certainly understand the ruling that
16 I've made consistently is that only as to this particular
17 child.

18 I understand that your position is that it's a lie as
19 it relates to the other children, but the other children
20 are not what's at issue in this particular trial and never
21 had been in the parameters of -- the entire discussion
22 we've had has been about this particular trial. So your
23 objection is noted for the record.

24 Was there another, another incident, that you wanted
25 to raise, Mr. Giese?

1 MR. GIESE: Your Honor, if that's not going to be
2 enough, the other issue, we withdraw.

3 THE COURT: Okay. Anything else we need to take up
4 before we take a break?

5 MR. MEADORS: Thank you.

6 THE COURT: Thank you.

7 Yes, ma'am.

8 MS. PRINGLE: Just maybe tell her that we can't talk.

9 THE COURT: Yeah, I will.

10 Ms. Person, during this break, you may certainly step
11 off the witness stand and take a break, but you may not
12 discuss your testimony with anyone, including your
13 attorneys, because you have not completed your testimony.
14 So it would be inappropriate for you to discuss it with
15 anyone at this time.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Let's take a break.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Even though Mr. Strickler is not back,
22 are you ready to proceed?

23 MS. PRINGLE: Yes, ma'am.

24 THE COURT: Are you ready, Mr. Giese?

25 (Mr. Giese nods in the affirmative).

1 THE COURT: You may ask the jury to come in, please.
2 (WHEREUPON, the jury came into open court at
3 approximately 12:39 p.m.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Mr. Giese, you may proceed with your
6 cross.

7 MR. GIESE: May it please the Court, Your Honor.

8 CROSS-EXAMINATION:

9 BY MR. GIESE

10 Q Good morning.

11 A Good morning.

12 Q Ms. Persons, I first want to start with Defendant's
13 Exhibit No. 1 which is the Little Persons Home Day Care
14 letter that you sent to D.S.S.

15 A Yes, sir.

16 Q You testified to that earlier, correct?

17 A Yes, sir.

18 Q I hand it to you again. Is that the letter?

19 A Yes, sir.

20 Q And I think on direct examination, you testified
21 that -- I apologize for turning around.

22 On direct examination, you testified that everyone in
23 D.S.S. when there's been a death in a day care, you have
24 to report it to D.S.S., correct?

25 A Yes, sir.

1 Q All right. And, in fact, you failed to report it to
2 D.S.S. in this case; is that right?

3 A Yes, sir.

4 Q And, in fact, so you wrote that letter, not just
5 because you're following up D.S.S. procedure, but you did
6 it because they sent you a letter dated December 11th,
7 1998, saying that you had been delinquent in reply for
8 even telling them that there had been a death at your day
9 care; is that correct?

10 A Yes, sir.

11 Q So this is not really something that you just
12 generated because you knew that you were supposed to
13 generate it. This was generated because they told you to
14 generate a letter and report it, correct?

15 A Yes, sir.

16 Q Okay. I want you to take a look at State's -- or
17 Defendant's Exhibit No. 1. When you talk, or you wrote
18 it, you said, "Zachary was dropped off at approximately
19 eight a.m. by his mother while the other parents brought
20 the other children.

21 "He then wanted his bottle, milk bottle. He drank
22 that immediately, and then it was time for his nap." Do
23 you remember writing that?

24 A Yes, sir.

25 Q Okay. "I placed him in his crib, and he became

1 fussy"?

2 A Yes, sir.

3 Q "He acted as if he was a little hungry, so I gave him
4 a second bottle, a juice bottle. He drank that
5 immediately, laid down, began his morning nap about nine,
6 9:15"?

7 A Yes, sir.

8 Q Where in there does it mention he had cold-like
9 symptoms?

10 A It doesn't.

11 Q So you left that part out, or it just didn't happen?

12 A I guess I left that part out.

13 Q And you didn't think that was important that he was
14 having cold-like symptoms?

15 A Yes, it's important.

16 Q Now, earlier you said that he was having cold-like
17 symptoms, correct, on direct?

18 A Yes, ma'am.

19 Q And that you were worried about him, correct?

20 A Yes, sir.

21 Q Because he was fussy. You picked him up, you rocked
22 him, and he was still fussy; is that right?

23 A Yes, sir.

24 Q Because he had these cold-like symptoms, and you've
25 seen a lot of children with cold-like symptoms before,

1 right?

2 A Yes, sir.

3 Q Well, if he was having such trouble that morning, why
4 didn't you call his mother?

5 A Because I had asked her -- when she dropped him off
6 that morning, I told her, "He needs to go to the doctor."

7 Q Now, did you -- did you testify to that on direct?

8 A No, sir.

9 Q So it's now your testimony that you told
10 Mrs. Ulengchong that he should go to the doctor?

11 A Yes, sir.

12 Q Well, if you thought he should have gone to the
13 doctor, why did you accept him?

14 A Because I had taken care of him when he was sick
15 before.

16 Q And when you take care of him, you're taking care of
17 him. You're the sole provider at that point; isn't that
18 correct?

19 A Yes, sir.

20 Q And shouldn't you, as the sole provider, if he was
21 that sick, have called the doctor?

22 A I guess.

23 Q All right. So it's your testimony now that -- would
24 you say that you neglected him --

25 A No.

1 Q -- in that regard?

2 A No, sir. I took care of him.

3 Q But he was sick enough to where you told your friend
4 that he needed to go to the doctor but not sick enough for
5 you not to take him or not to call the doctor?

6 A Yes, sir.

7 Q And then two hours later, he's dead?

8 A (There was no response).

9 Q Now, let me ask you this: You testified earlier
10 about what you said happened on December 2nd, 1998,
11 involving Zack, and nowhere in there, I don't think, did
12 you testify that you spoke with someone from the emergency
13 room or a doctor or anyone in there. Did you talk to
14 someone?

15 A From the emergency room?

16 Q Or a doctor at the hospital?

17 A I can't recall.

18 Q You can't recall. Do you remember telling anyone
19 there that he had no symptoms of anything that morning,
20 no -- no signs of toxin, no cough, no cold, nothing?

21 A No, sir.

22 Q I want to draw your attention now to February the
23 11th of 2007, okay. It's the first time you went down to
24 the sheriff's department, and they read you your rights.

25 MS. PRINGLE: Your Honor, I'm sorry. I think you

1 meant April.

2 MR. GIESE: I'm sorry. Did I say December?

3 MS. PRINGLE: You said February.

4 MR. GIESE: I'm sorry.

5 MS. PRINGLE: April.

6 BY MR. GIESE

7 Q April 11th, 2007. Do you remember that day?

8 A Yes, sir.

9 Q Okay. In fact, you signed an Advice of Rights form
10 at that time?

11 A Yes, sir.

12 Q All right. And that's marked State's Exhibit No. 10?

13 A (Nods in the affirmative).

14 Q And was I under the impression it was not entered?

15 THE COURT: It's been.

16 THE COURT REPORTER: What number?

17 THE COURT: It's been admitted, I believe.

18 MR. GIESE: Number 10.

19 THE COURT REPORTER: Number 10. According to the
20 records I was given, I have marked up to number nine.

21 MR. GIESE: We'd offer it at this time.

22 MS. PRINGLE: No objection, Your Honor.

23 (WHEREUPON, State's Exhibit No. 10 was admitted into
24 evidence.)

25

1 MR. GIESE: May I approach?

2 THE COURT: Yes.

3 BY MR. GIESE

4 Q And that's State's Exhibit No. 10. That's the Advice
5 of Rights form that you signed on the 11th; is that right?

6 A Yes.

7 Q Okay. And at that time, you knew you had the right
8 to remain silent?

9 A Yes, sir.

10 Q You knew anything you say could be used against you
11 in court?

12 A Yes, sir.

13 Q You had a right to talk to a lawyer for advice before
14 we ask you any questions and have a lawyer with you during
15 any questioning?

16 A Yes, sir.

17 Q If you cannot afford a lawyer, one will be appointed
18 for you before any questioning, if you wish. If you
19 decide to answer questions now without a lawyer present,
20 you still have the right to stop answering at any time.

21 A Yes, sir.

22 Q You also have the right to stop answering at any time
23 until you talk to a lawyer. Do you remember that?

24 A Yes, sir.

25 Q And, in fact, at some point, your interview on that

1 day ended; is that right?

2 A Yes, sir.

3 Q And you left?

4 A Yes, sir.

5 Q Now, I then want to draw your attention to the 17th,
6 because that's when you then came back; is that right?

7 A Yes, sir.

8 Q And, in fact, State's Exhibit No. 5, would you take a
9 look at that?

10 A Uh-huh.

11 Q Does that like -- look like your signature on there?

12 A Yes, sir.

13 Q This is the Advice of Rights form that you were given
14 at that time; is that right?

15 A Yes, sir.

16 Q And you knew on the 17th, just like you knew on the
17 11th, that you could leave at any time?

18 A Yes, sir.

19 Q And that you didn't have to talk, and you knew your
20 rights?

21 A Yes, sir.

22 Q Because they had been read to you on the 11th and
23 read to you on the 17th, and at that point after those
24 rights were read to you, you voluntarily had come down,
25 you knew that at any time you could stop answering

1 questions.

2 A Yes, sir.

3 Q And you knew at any time that you could have gotten
4 up and left up until you basically said that you had
5 suffocated Zachary; is that correct?

6 A Yes, sir.

7 Q So anything prior to that, any questioning that
8 happened prior to that, you knew you could get up and
9 leave because they told you that, didn't they?

10 A Again, yes, sir.

11 Q So when you're saying that your will was overborne --

12 MS. PRINGLE: Well, Your Honor, I would object to the
13 characterization. She certainly didn't use that
14 characterization.

15 BY MR. GIESE

16 Q Well, when Officer White, as you have testified
17 earlier, started beating his hands on the table, you knew
18 that you still could have gotten up and left, correct?

19 A Yes, sir.

20 Q So at any time during this conversation that you had
21 with Sergeant White, prior to you saying that you placed
22 your hand over Zachary's mouth and nose, you could have
23 left?

24 A Yes, sir.

25 Q Yet you stayed, right?

1 A I did.

2 Q And at some point during this conversation, you said
3 that he said he wouldn't accept no for an answer about
4 Zachary?

5 A Yes, sir.

6 Q And, in fact, you kept saying no?

7 A Yes, sir.

8 Q Yet, knowing that you were able to leave at any time
9 and knowing that on the 11th, just six days before, you
10 had gotten up and left, even though he wouldn't take no
11 for an answer, you're now saying that you couldn't get up
12 and leave or you could? Why didn't you just leave?

13 A I don't know.

14 Q Because you knew you had left before, correct?

15 A Yes, sir.

16 Q And you knew you could up until to that point?

17 A Yes.

18 Q Now, I want to ask you a couple of questions about
19 what Sergeant White says, or has testified to, that you
20 told him. He says that you said that you put your hand
21 over Zachary Ulenchong's nose and mouth for about 15
22 seconds because you could not get him to quit crying. Did
23 you say that?

24 A Can you repeat the question?

25 Q Sure. He says that it came out of your mouth that

1 you put your hand over Zachary Ulengchong's nose and mouth
2 for about 15 seconds because you could not get him to quit
3 crying?

4 A Yes, sir.

5 Q You -- you said that?

6 A Yes, sir.

7 Q Came out -- came out of your mouth?

8 A (Nods in the affirmative).

9 Q He also said that you had your hand -- that you told
10 him that you had your hand over his nose and mouth until
11 Zachary became motionless. Did you say that?

12 A Yes, sir.

13 Q I'm sorry, motionless and quiet. So you laid him in
14 the crib. You then stated to him, he says, that you
15 panicked. Did you tell him that?

16 A I can't recall.

17 Q And that later on, you came back 15 minutes later,
18 and Zachary was lifeless. Do you remember telling him
19 that?

20 A Yes, sir.

21 Q He further asked -- you further told him that you
22 were scared to tell the authorities the truth about
23 Zachary because you were afraid that you would go to jail.
24 Do you remember telling them that?

25 A I can't recall.

1 Q Now, I think it was your testimony that after --
2 after you had said this to Sergeant White, he got up, left
3 the room, and you didn't see him for a while, and then you
4 saw Sergeant Isenhoward at some point, correct?

5 A Yes, sir.

6 Q But you're saying -- you don't remember Sergeant
7 Isenhoward coming into the office and hearing you say the
8 exact same thing that you had told -- apparently, that you
9 had told Sergeant White inside of that -- that room?

10 A No.

11 Q So it's your testimony that you only made one
12 statement or -- one statement about Zachary Ulengchong and
13 you putting your hand over his nose and mouth just once in
14 that room?

15 A Yes, sir.

16 Q So the thing with Isenhoward never happened, in your
17 memory?

18 A With him coming and kneeling down in front of me --

19 Q Yes, ma'am.

20 A -- putting his hand, no; no, sir.

21 Q Now, once Sergeant White turns you over to Sergeant
22 Isenhoward, it's your testimony that up to this point, you
23 never told Sergeant Isenhoward anything about what
24 happened, correct?

25 A Correct.

1 Q Because he wasn't in the room when you told Sergeant
2 White.

3 A Yes, sir.

4 Q So he knows nothing, at that point, that you told
5 him, correct?

6 A Correct.

7 Q And it's your testimony that you then walked into
8 Sergeant Wilson's office, right? The big office -- I'm
9 sorry, not Sergeant Wilson, Chief Wilson, the big office
10 with the nice table you talked about, nice desk.

11 A Yes, sir.

12 Q All right. And in there, you had an opportunity to
13 look at chief, the Chief Deputy -- he's the number two or
14 three person in the sheriff's department, okay. You're in
15 the same room with the Chief Deputy and Sergeant
16 Isenhoward and not Sergeant White, correct?

17 A Correct.

18 Q At that point, did you look at the Chief Deputy of
19 Richland County and say, "Look, Sergeant White made me say
20 that. He beat his hands on the desk. He scared me." Did
21 you tell him that?

22 A No, sir, I didn't.

23 Q All right. In fact, they started to talk to you
24 about the case, right?

25 A Yes, sir.

1 Q And at that time, you told them just about the same
2 thing you told Sergeant White, correct?

3 A Yes, sir.

4 Q So Sergeant White is totally -- he's not even there,
5 and you, at that point, look at the Chief Deputy and the
6 Sergeant of Investigations and you tell them that you
7 placed your hand over Zachary Ulengchong's nose and mouth
8 and held it there until he went limp, correct?

9 A Yes, sir.

10 Q Your words, you said that?

11 A I said that.

12 Q Now, also at that point, you are -- you testified
13 that the Chief Deputy of Richland County stuck his fist
14 out towards you to threaten you?

15 A He thrust his fist out to me.

16 Q And you were scared?

17 A I was -- yes, and he asked me how much -- "Show me
18 how much pressure you put on. Show me how much pressure."

19 Q And you showed him?

20 A Yes, sir. I put my hand over his fist.

21 Q And grabbed it?

22 A I put my hand over his fist.

23 Q But did you think it was in a threatening manner or
24 just...

25 A Yes.

1 Q So the Chief Deputy, in a threatening manner, did it
2 to you.

3 Do you remember telling them that in that room that
4 after you put the pressure on his nose and mouth, that
5 Zachary then got quiet. Do you remember that?

6 A Yes.

7 Q And that when you removed your hand, Zachary took a
8 deep breath and was still. Do you remember telling him
9 that?

10 A Yes, sir.

11 Q And that you laid him down, left him for 15 to 20
12 minutes. Do you remember saying that?

13 A Yes, sir.

14 Q And that you then discovered that he was not
15 breathing 15 or 20 minutes later. So you did say all of
16 that to Sergeant Isenhoward and to Chief Wilson?

17 A Yes, sir.

18 Q Now, you're then taken for a written statement by
19 Sergeant Isenhoward, correct?

20 A Yes, sir.

21 Q And you go to his cubical, right?

22 A Yes, sir.

23 Q And at that time, you give a written statement, and
24 it's your testimony he would ask you questions, and then
25 you would -- you would talk, right?

1 A Yes, sir.

2 Q So I've kind of lost count here, but out of -- you
3 have testified that you admitted to placing your hand over
4 Zachary Ulengchong's face to Sergeant White, correct?

5 A Yes, sir.

6 Q Sergeant Isenhoward?

7 A Yes, sir.

8 Q And the Chief Deputy?

9 A Yes, sir.

10 Q Okay. So three separate times you said that, minimum
11 three times?

12 A Yes, sir.

13 Q Now, and I -- I don't know if you want to look at
14 this. I'll hand you State's Exhibit No. 9. Can you
15 identify that?

16 A Yes, sir. This is the statement.

17 Q And that's the statement that you gave?

18 A Yes, sir.

19 Q And that statement, you signed each one of the pages;
20 is that right?

21 A Yes, sir.

22 Q So down at the bottom here where I'm pointing on this
23 board where it says "Andrea Person", that's your
24 signature?

25 A Yes, sir.

1 Q And specifically, it gives the -- where you live,
2 your date of birth, when the statement is made, and who is
3 there.

4 It says, "I" -- and follow along with me, if you
5 would. "I, Andrea Person, understand that I have the
6 right to remain silent. Anything I say can be used
7 against me in court.

8 "I have the right to talk to a lawyer for advice
9 before you ask me any questions and to have a lawyer with
10 me during any questioning.

11 "If I cannot afford a lawyer, one will be appointed
12 for me before any questioning if I wish. If I decide to
13 answer questions now without a lawyer, I still have the
14 right to stop answering at any time. I also have the
15 right to stop answering at any time until I talk to a
16 lawyer. I do make the following statement."

17 Do you remember them reading that?

18 A Yes, sir.

19 Q All right. So you knew at that time you didn't have
20 to talk to them, correct?

21 A Yes, sir.

22 Q And -- and just briefly, you -- you are an educated
23 person, correct?

24 A Yes, sir.

25 Q I mean, you got -- you were in psychology at U.N.C.

1 Chapel Hill?

2 A Yes, sir.

3 Q You got within two classes of graduating in
4 psychology from Chapel Hill?

5 A Yes, sir.

6 Q So you're -- you're a bright person, correct?

7 A Yes, sir.

8 Q So you understood all of that, and you knew that
9 you -- that you didn't have to talk to them at that point.
10 You didn't have to sign statements. You didn't have to do
11 anything, correct?

12 A Yes, sir.

13 Q Now, let me ask you one, one thing before we get to
14 the meat of this statement, and that is when you were
15 talking to Sergeant Isenhoward and Chief Wilson, did you
16 tell them that you were glad you had finally told somebody
17 about this and that you were relieved?

18 A They mentioned -- they mentioned that I would be -- I
19 would be glad that I told someone and be relieved.

20 Q So you never said that?

21 A And I said -- I agreed afterwards.

22 Q So did you say it, or did you just agree? Did you
23 say, "I am relieved," or did you just say, "I agree"?

24 A I can't recall.

25 Q "During our conversation today, you revealed

1 something about the death of Zachary Ulengchong on
2 12/2/98. What was that?"

3 Now: "On that day, Zachary's mother, Gina, dropped
4 him off at my house at 108 Durham Creek Court. He arrived
5 there at around eight a.m. He was sick with a cold and
6 was very fussy. I fed him when he arrived that morning
7 and laid him down for a nap." Your words?

8 A Yes, sir.

9 Q Okay. I got him up at around nine to 9:30 a.m. and
10 changed his diaper. He was still fussy, and I couldn't
11 pacify him. He was sick and full of cold." Your words?

12 A Yes, sir.

13 Q "I went on about dealing with all the other children,
14 and he was crying the whole time. It was nap time, and I
15 still couldn't pacify him. I picked him up and held him
16 in my arms.

17 "I tried to pacify him and rock him to sleep. He was
18 not responding to it. He was still crying very loudly."
19 Your words, correct?

20 A Yes, sir.

21 Q "He was wining, and I didn't want the other children
22 to wake up. I put my hand over his nose and mouth and
23 held it there for 15 to 20 seconds." You told Sergeant
24 Isenhoward that day that exact thing, didn't you?

25 A Yes, sir.

1 Q "Zachary got quiet." You told him that?

2 A Yes, sir.

3 Q "When I took my hand off, he took a deep breath and
4 appeared to me that he fell asleep." Your words?

5 A Yes, sir.

6 Q He wasn't moving, and I carried him into the day care
7 room. I put him in his crib. I went and cleaned up the
8 house and straightened up the kitchen and living room.
9 That took about 15 to 20 minutes.

10 "I got worried because he had been crying all day,
11 and now he wasn't crying anymore."

12 Let me ask you this: You said he had fallen asleep,
13 right? You thought he had fallen asleep?

14 A Yes, sir.

15 Q Well, if he had gone to sleep and he hadn't cried for
16 15, 20 minutes, I mean, you would expect him not to cry if
17 he was asleep, right?

18 A Correct.

19 Q So really, there was another reason you went back to
20 look at him 15 or 20 minutes later, wasn't there?

21 A I check on the kids.

22 Q But you knew, because you had placed his hand on,
23 your hand on his face and mouth, that he wasn't breathing,
24 didn't you?

25 A No, sir.

1 Q "I got worried because he had been crying all day,
2 and now he wasn't crying anymore." You said he was
3 asleep, right?

4 A Yes, sir.

5 Q "So I went to the day care room and checked on
6 Zachary and picked him up, and he wasn't breathing. I
7 immediately gave him mouth-to-mouth recitation. He wasn't
8 responding to it. I called 911. The ambulance arrived
9 and took him to the hospital."

10 So these are all -- this statement are all things
11 that you told Sergeant Isenhoward, right?

12 A Yes, sir.

13 Q Your words. Then on page two, "In your experience,
14 is it normal for a child to stop crying and moving after
15 having been ill and upset for that amount of time?"

16 Answer: "No, but I thought he had just become
17 exhausted."

18 "Did you use force or pressure when you held your
19 hand over Zachary's nose and mouth?"

20 Answer: "I guess that I put a little pressure behind
21 it."

22 "Just to clarify, was it your bare hand that you used
23 to cover his nose and mouth?"

24 Answer: "Yes."

25 "Was there anything unusual or different in your life

1 that day Zachary died?"

2 "I was dealing with a lot of physical pain at the
3 time. I was distracted by that, I believe. I had a
4 hysterectomy around that time." Your words.

5 A Yes, sir.

6 Q You told them that?

7 A Yes, sir.

8 Q You told them you had a hysterectomy, correct?

9 A Yes, sir.

10 Q Which wasn't true, correct?

11 A I did have a hysterectomy.

12 Q But not at that time?

13 A Not at that time.

14 Q "Do you feel the action -- and do you feel as if your
15 actions on 12/2/98 led to Zachary's death?"

16 Did you say, "Yes"? Did you say that?

17 A Yes, I did.

18 Q And you said, "I should have chosen a different way
19 to handle him. I should not have put my hand over his
20 face. It was not my intent to kill him. I just wanted
21 him to go to sleep. I am so sorry."

22 So when asked back in February -- I'm sorry, in April
23 of 2007 about your actions on December 2nd, 1998 about
24 Zachary's death, did your actions lead to his death, you
25 said yes.

1 A Yes, sir.

2 Q "Were there any other adults present in the home when
3 Zachary died?"

4 Answer: "No, sir."

5 A No, sir.

6 Q Let me ask you this: You heard the testimony of
7 Mandy Fortson who said there was another person in the
8 house when she got there.

9 A Yes, sir.

10 Q Who was that?

11 A I have no idea.

12 Q You don't know who the other person was?

13 A There was no other adult there at my home.

14 Q All right. So Mandy Fortson didn't see another
15 person in the home?

16 A There was no other adult there.

17 Q "Have you ever told anyone else about this before
18 today?"

19 Answer: "No, sir, not to this extent. I told some
20 of my other clients about the death but not my
21 involvement," your words.

22 A Yes, sir.

23 Q And when you say not -- "But not my involvement", in
24 that you're talking about knowing that the child had cold,
25 some type of cold or was stuffy, as you said, and knowing

1 that the child would not go to sleep, you put your hand
2 over his face until he went limp. That's the involvement
3 that you're talking about, correct?

4 A Yes, sir.

5 Q "How many children were you keeping in your home when
6 Zachary died?"

7 "I had six children that day. They were all around
8 Zachary's age. I think that I felt a little overwhelmed
9 by all of the children and their care."

10 Question: "Do you have anything else to add to this
11 statement?"

12 Answer: "I cannot convey how sorry I am. I should
13 have taken a step back." You said that, correct?

14 A Yes, sir.

15 Q "If I could change things, I would." And when you
16 said, "I should have taken a step back, you're saying I
17 should have taken a step back before I put my hand over
18 his mouth," correct?

19 A Yes, sir.

20 Q "I'm tired of holding onto this. It feels good to
21 say it to someone. I know this is going to change things
22 in my life with my friends, but it's the right thing to
23 do. I was wrong for what I did." So you knew at that
24 time it was wrong.

25 A Yes, sir.

1 Q "I want to ask for forgiveness and move on with my
2 life," correct?

3 A Yes, sir.

4 Q And you signed that?

5 A (Nods in the affirmative).

6 Q Thank you.

7 A Do you need that one?

8 Q Yeah, thanks.

9 Beg the Court's indulgence.

10 (Pause).

11 Now, to get back to the statement one more time and
12 the advice of rights, I mean you signed the advice of
13 rights, and it was witnessed. You had them read to you,
14 and you signed them --

15 A Yes, sir.

16 Q -- right? Okay. And, in fact, the statements, all
17 three pages, you signed the bottoms of that, correct?

18 A Yes, sir.

19 Q All right. And do you remember Officer -- Sergeant
20 Isenhoward swearing you in saying, "Is this the truth, the
21 whole truth, nothing but the truth"?

22 A I -- yes, sir.

23 Q Okay. And then you signed it?

24 A Yes, sir.

25 Q All right. I hand you State's Exhibit No. 8. Can

1 you identify that?

2 A This is a letter that I wrote Pete and Gina.

3 Q Now, this letter that you wrote, it's -- that's your
4 handwriting?

5 A It is.

6 Q And it's your signature, right?

7 A Yes, sir.

8 Q And these are your words?

9 A Yes, sir.

10 Q And when I say they're your words, Sergeant
11 Isenhoward didn't tell you to write, "I should have
12 stopped and walked away," did he?

13 A Sergeant Isenhoward suggested these things to me.

14 Q Okay. So your testimony is that you sat there, and
15 in your own handwriting, you wrote, "I can't believe this
16 is my life and where we are right now," and Sergeant
17 Isenhoward told you to write that?

18 A No. He didn't tell me to write that.

19 Q Okay. And, "My heart is sick, and I hate myself for
20 all that I put you through," and you're saying Sergeant
21 Isenhoward told you to write that?

22 A He told me to write that.

23 Q "I love you like my brother and sister, and I
24 understand that I have lost you as friends and family"?

25 A I wrote that.

1 Q "Please forgive me and know it was not my intention
2 to cause you such loss"?

3 A Yes, sir.

4 Q "I didn't want to hurt him." Your words?

5 A Isenhoward, Isenhoward is instructing me, "Don't
6 forget to tell -- don't forget to them you didn't mean to
7 hurt him. You should -- maybe I should step back. Just,
8 you know, just let them know that you're sorry."

9 Q So up to that point right there, "You know it's not
10 my intention to cause you such loss." At that point -- "I
11 didn't want to hurt him." At that point, you're saying
12 those are Isenhoward's words or your words?

13 A I -- I'm not sure. Those are my words. I didn't
14 write -- I didn't mean to cause anybody any hurt..

15 Q "I didn't want to hurt him but I did. I should have
16 stopped and walked anyway," and those are all written in
17 your -- your handwriting?

18 A Yes, sir.

19 Q And now, are those your words or Sergeant
20 Isenhoward's words?

21 A These are suggestions from Isenhoward. I'm writing
22 the letter.

23 Q To your best friends?

24 A To my best friends, yes.

25 Q Who you're admitting that you killed their child?

- 1 A Yes, sir.
- 2 Q "What I did was wrong, and I'm so sorry"?
- 3 A Yes, sir.
- 4 Q Isenhoward's suggestions?
- 5 A They are Isenhoward's ' suggestions. I'm writing a
- 6 letter, yes, sir.
- 7 Q "I thought he fell asleep in my arms." Your words or
- 8 Isenhoward's?
- 9 A Mine.
- 10 Q Okay. So draw a line there. "God help me. I'm
- 11 sorry." Yours?
- 12 A Yes, sir.
- 13 Q "Please forgive me. Please find some comfort in
- 14 knowing that I loved him like he was my own. I'm sorry.
- 15 I'm so sorry. Please forgive me. Love you forever,
- 16 Andrea"?
- 17 A Yes, sir.
- 18 Q And those last words are yours?
- 19 A Yes, sir.
- 20 Q So the only words that aren't yours are the ones in
- 21 the middle, pretty much? Those are the ones that
- 22 Isenhoward made you write or told you to write?
- 23 A Suggested, yes, sir.
- 24 Q But yet, in your own handwriting, you wrote them?
- 25 A I did.

1 Q And if -- and you're saying -- and I think on direct
2 examination, you said that you said all of this so that
3 you could leave?

4 A Yes, sir.

5 Q You wanted out of there.

6 A Yes, sir.

7 Q So you would say this, that you killed your best
8 friend's child, put them through the horror of reliving
9 it, the horror of court, and break your friendship that
10 you had with these people because you wanted to leave?

11 A I was desperate, and I wanted to leave.

12 Q So this hurt you created to them is all because you
13 wanted to leave?

14 A I was desperate, and I wanted to leave.

15 Q And you were desperate and you wanted to leave, and
16 on December 2nd, 1998 you were desperate, weren't you, for
17 Zachary Ulungchong to go to sleep and not wake the rest of
18 those kids up, weren't you?

19 A No, sir.

20 Q So, correct me if I'm wrong, but this whole
21 confession, these whole statements, everything in here,
22 you say where it talks about you putting the hand over his
23 face, him going limp, all of that is a creation of law
24 enforcement?

25 A Yes, sir.

1 Q All those -- all those officers that testified did
2 not get up there and tell the truth?

3 A That is correct.

4 MS. PRINGLE: Objection, Your Honor, pitting, move to
5 strike.

6 MR. GIESE: I'll withdraw it.

7 THE COURT: The jury shall disregard the last
8 question and answer.

9 BY MR. GIESE

10 Q After these officers threatened you, smashing down on
11 the table, sticking their fists out to you, making you --
12 coercing you into making a statement, these statements
13 that you made, after all of that happened, who did you
14 report that abuse to, the sheriff?

15 MS. PRINGLE: Ob---

16 THE WITNESS: I'm sorry, could you repeat that?

17 BY MR. GIESE

18 Q Well, this is the first time we've heard that they
19 did this to you; is that correct? I mean, you never told
20 anyone in law enforcement they had done this to you,
21 right?

22 A They were law enforcement.

23 Q But you didn't talk to any of his superiors?

24 A No, sir.

25 MR. GIESE: That's all I have.

1 THE COURT: Any redirect?

2 MS. PRINGLE: Just a couple.

3 REDIRECT EXAMINATION:

4 BY MS. PRINGLE

5 Q Andrea, just specifically with respect to a couple of
6 Mr. Giese's questions, he asked you about writing the
7 letter to D.S.S. and notifying them. Do you recall
8 whether or not D.S.S. came to your home on December 3rd,
9 1998?

10 A Yes, they did.

11 Q Do you remember the person's name that you met with?

12 A Nam, I believe her name was.

13 Q Say that louder.

14 A Nam Viravan, I think.

15 Q Viravan?

16 A Yes, ma'am.

17 Q And that was on what date?

18 A December 3rd.

19 Q One thing that may have gotten confusing, when --
20 after you were in Investigator White's office, Mr. Giese
21 asked you -- I believe the nature of his questioning was
22 that you went from Investigator White's office to
23 Investigator Wilson's office. Was there somewhere that
24 you went before that?

25 A Yes, ma'am.

1 Q Where?

2 A I went to Isenhoward's office, cubical.

3 Q Did you speak with Isenhoward?

4 A I did.

5 Q And did you observe Investigator Isenhoward talking

6 to anyone?

7 A Yes, I did.

8 Q Who was he talking to?

9 A He was talking to Mr. White.

10 Q In the letter, you said that Zachary was fussy.

11 A Yes, ma'am.

12 Q Why was he fussy?

13 A Because he was sick. He had a cold. He was fussy,

14 congested.

15 Q And Mr. Giese asked you if this was the first time

16 you had ever said this. Did you have occasion to speak

17 with your mother on the telephone prior to the week that

18 Zachary died?

19 A Yes, ma'am.

20 Q Were you -- who were you holding?

21 A I was holding Zachary at the time.

22 Q And what was Zachary's condition at that time?

23 A He was sick, coughing, congested.

24 Q And did you tell your mother who you were holding?

25 A Yes, ma'am.

1 Q And just the last question, to be clear, is your
2 hysterectomy before or after December 2nd, 1998?

3 A It was after.

4 Q In August of '99?

5 A August of '99.

6 MS. PRINGLE: I have no further questions.

7 THE COURT: You may step down.

8 Ladies and gentlemen, at this time, we're going to
9 take lunch break. I'm going to remind you of the
10 instructions I've given you; that is not to discuss this
11 matter among yourselves, as you have not heard all the
12 evidence.

13 As you come and go from the courthouse, please do not
14 listen to conversations that you may overhear in the
15 hallways, again, for the reasons that you will have to
16 make the decisions based upon the evidence that you've
17 heard inside this courtroom and not based upon
18 conversations that you may overhear.

19 Please remember not to allow anyone to approach you
20 to discuss this case. Again, if someone attempts to do
21 that, please tell them you are a juror, and you can not
22 discuss it. I ask that you report it as soon as possible.

23 Also, during this lunch break, I ask that you
24 continue not to do any investigation, and not to read, or
25 watch, or listen to any media reports that may exist.

1 I'm going to ask that you report back to the same
2 jury room at 2:30. When you report back at 2:30, then we
3 will be ready to continue on with the trial of this case.
4 Have a good lunch. We'll see you then.

5 THE BAILIFF: Everyone else remain seated.

6 (WHEREUPON, the jury left open court at approximately
7 1:23 p.m.)

8 THE COURT: Anything we need to take up before the
9 lunch break?

10 MR. MEADORS: No, ma'am.

11 MR. STRICKLER: My apologies for being late. I was
12 meeting with a witness who was arriving then.

13 THE COURT: That's fine. We'll take a lunch break.
14 I'll see you then.

15 (WHEREUPON, a lunch break was taken.)

16 THE COURT: Before we get started, there are a couple
17 of housekeeping issues we need to kind of briefly discuss,
18 so I kind of need to take up and tell the jury.

19 I understand assuming that -- assuming that we get to
20 the other witnesses today, there will be an expert witness
21 that the defense will provide tomorrow morning; is that
22 correct?

23 MR. STRICKLER: Yes, Your Honor.

24 THE COURT: And I believe what you told me is that
25 person is flying into Charlotte and, what, being driven

1 from the Charlotte airport to Columbia. Chances are, we
2 may not be able to start until ten.

3 MR. STRICKLER: Probably 10:30 at the earliest. The
4 flight is in at 8:05, if I remember.

5 MS. PRINGLE: 8:15, and we're going to have -- our
6 paralegal is going to spend the night there tonight, so
7 there's no flat tire or anything. So she will be there
8 waiting for the plane to land, but he will get in by 8:15.

9 THE COURT: Okay. And then by the time he gets here,
10 we'll say we'll start at 10:30, and you're anticipating
11 that will probably be the last witness for the defense
12 assuming we get everybody else today?

13 MR. STRICKLER: Yes. I see no reason we shouldn't
14 get through everyone else today, and in my -- unless
15 Ms. Pringle is hiding something from me, I don't know of
16 any others.

17 THE COURT: And the defense may or may not -- I'm
18 sorry. The State may or may not have any rebuttal
19 witnesses?

20 MR. MEADORS: That's correct. Of course, we need to
21 have a hearing for the witness we think is going to
22 testify before he actually testifies.

23 THE COURT: I -- my thought is that no matter what
24 time it is tomorrow, the case will go to the jury.

25 I have received a note -- I received a note this

1 morning before we started from a juror who indicates that
2 there are vacation plans on Monday.

3 So I would like to at least be able to tell the jury,
4 you know, when we end today, that we anticipate that the
5 case will go to them tomorrow. It may not be until late
6 in the afternoon.

7 They need to make arrangements, and, you know, my
8 intention is to stay here as long as they want to stay
9 here, and then at some point they will have to decide when
10 to return; and you know, that they'll have to discuss that
11 among themselves.

12 I'll be happy to come in on Saturday. I'll be happy
13 to come in on Monday. The problem I have is that the
14 juror who has the vacation problem is not one of the
15 alternates. So you know, I'm sure that juror will express
16 plans to them, but I just wanted to make sure that I can
17 at least discuss that with them at the appropriate time.

18 I would prefer to do it this afternoon before they
19 leave for the day so that they can make arrangements and
20 be ready for tomorrow.

21 MR. STRICKLER: Your Honor, if I could, everything is
22 set as far as our schedule is, correct, okay.

23 The State evidently feels there may be some issues
24 that need to be taken up regarding the expert we're going
25 to present.

1 I could be wrong, but I see no reason we can't take
2 those up in the -- assuming we go all afternoon today, you
3 know, nine o'clock tomorrow morning and resolve those
4 without the presence of that witness.

5 THE COURT: Is the -- is the -- Mr. Meadors, is the
6 issue about the expert --

7 MR. MEADORS: It's --

8 THE COURT: -- or is an issue about the rebuttal
9 witness?

10 MR. MEADORS: The rebuttal witness will be very
11 short, even if we have one. No, it's the expert.

12 THE COURT: Okay. You know, we'll --

13 MR. STRICKLER: And so the only other thing I was
14 going to say is find out what the estimate is on the
15 length of time for rebuttal, and you have already answered
16 that.

17 MR. MEADORS: I don't think it will be lengthy at
18 all.

19 MR. STRICKLER: So, you know, I think we'll be
20 handling everything during the course of the morning, Your
21 Honor.

22 THE COURT: That's fine.

23 MR. MEADORS: But I guess my one question is,
24 obviously, we might need the expert here to testify. I
25 know we'll need him here for some of the questions that we

1 want to ask him as far as the -- I believe, the
2 background, the alleged science he's attempting to offer
3 to the Court in that field.

4 I think we need him here to get his responses before
5 Your Honor can rule. So --

6 THE COURT: So you --

7 MR. MEADORS: -- other than that, I don't mind coming
8 in early, but I don't think we need it.

9 THE COURT: Are you anticipating a 702 issue?

10 MR. MEADORS: Yes, ma'am.

11 THE COURT: 702, is it?

12 MR. MEADORS: Yes, ma'am. I think you have to.

13 THE COURT: 703, 702.

14 MR. MEADORS: Your Honor, I think it --

15 THE COURT: 702.

16 MR. MEADORS: 702, and I think we'll need to have a
17 hearing, respectfully. I'm not saying it will take that
18 long, but we're going to need to have it when he's here.

19 MS. PRINGLE: Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. PRINGLE: I'm not sure exactly what he's getting
22 at. I guess they're going to object to the admissibility
23 of the false confession testimony.

24 I'm not sure what kind of hearing would be needed for
25 Dr. Kassin to testify. We have case law saying that

1 Council and Jones are not applicable to social science
2 type testimony.

3 We have actually, I think; three: State vs. Cope,
4 State vs. Myers, Supreme Court cases where this testimony
5 has been admitted, upheld.

6 So I don't know why we would need Dr. Kassin. There
7 is no Daubert, Council, Jones type of issue out there with
8 a social science type test.

9 And I -- that's from State vs. Whaley, I believe, as
10 the beginning of the -- or beginning to articulate that
11 the social science type of testimony is not subject to
12 that sort of analysis, peer review, and Daubert, Council,
13 and Jones.

14 Oh, I'm sorry. I have it right here: State vs.
15 Shumpert, State vs. Hill, State vs. Whaley, admissibility
16 of social science testimony: Rape, trauma, battered
17 woman, eyewitness I.D. So I can't say how his testimony
18 would be needed on any issue as far as admissibility.

19 MR. MEADORS: Your Honor, I don't know. We are under
20 the belief that none of those cases was objectionable
21 under a scientific basis. I think we'll need to explore
22 more. we'll do some research today. We just think we'll
23 need it. If we resolve it, then fine.

24 THE COURT: It would have been nice to have known
25 about all of this before we got started this week. No

1 problem. We will figure that out and go -- go with it.

2 Anything else we need to take up at this point?

3 MR. STRICKLER: Nothing from the defense.

4 MR. MEADORS: Nothing from the State, Your Honor.

5 THE COURT: You can ask the jury to come in, please.

6 THE BAILIFF: I'll be glad to, Your Honor.

7 (WHEREUPON, the jury came into open court at
8 approximately 2:56 p.m.)

9 THE BAILIFF: The jury is all present, Your Honor.

10 THE COURT: You may call your next witness.

11 MR. STRICKLER: Thank you, Your Honor. May it please
12 the Court. The defense calls Dr. Kim Collins.

13 KIMBERLY COLLINS, after being duly
14 sworn, testified as follows:

15 THE CLERK: Please have a seat. State your full name
16 for the record.

17 THE BAILIFF: Watch your step for me, please, and
18 speak into the microphone.

19 THE WITNESS: Dr. Kim A. Collins, C-O-L-L-I-N-S.

20 DIRECT EXAMINATION:

21 BY MR. STRICKLER

22 Q Good afternoon, Doctor.

23 A Good afternoon.

24 Q If you could, please, I would like to have you tell
25 us a little bit about yourself. Could you start, please,

1 with your education, beginning with college, and moving
2 forward?

3 A Yes. I went to college at the University of Georgia,
4 and I received my bachelor's degree there in microbiology.
5 Following college, I went to medical school at the Medical
6 College of Georgia in Augusta and received my M.D.

7 After medical school, I completed a five-year
8 combined anatomic pathology and clinical pathology
9 residency at Wake Forest University School of Medicine,
10 Bowman Gray Hospital. Following my residency, I then
11 completed a forensic pathology fellowship at the Medical
12 University of South Carolina in Charleston.

13 Q And still on your education, if I could, did you
14 receive any honors as far as graduating from college? You
15 graduated magna cum laude?

16 A Yes; yes, I did.

17 Q Were you also elected to the Phi Beta Kappa Society?

18 A Yes; that's correct.

19 Q Subsequent to, and I guess current with, some of your
20 education, you held possessions in the area of pathology?

21 A Yes, I have.

22 Q Could you briefly describe these positions for us?

23 A Well, at the Medical University of South Carolina, I
24 was director of autopsy and forensic pathology. I was a
25 Professor of Pathology and Laboratory Medicine, and when

1 Charleston County had a medical examiner system in place,
2 I was Chief Medical Examiner.

3 On a national level, I have been Chair, and am
4 immediate Past Chair, of the College of American
5 Pathologists Autopsy Committee, and I've been active with
6 the National Association of Medical Examiners and the
7 American Academy of Forensic Sciences.

8 I've been the director of the Pediatric Forensic
9 Pathology Conference which makes place annually, and I am
10 the speaker at the Armed Forces Institute of Pathology
11 speaking on pediatric forensic pathology.

12 Q Thank you, Doctor. You are currently licensed to
13 practice medicine?

14 A Yes, I am.

15 Q In North Carolina?

16 A Yes.

17 Q South Carolina?

18 A Yes.

19 Q And Georgia?

20 A Yes.

21 Q And are you currently certified in any areas in
22 pathology?

23 A Yes, I am, anatomic and clinical pathology, and
24 forensic pathology.

25 MR. STRICKLER: And at this point, Your Honor, we

1 would offer Dr. Collins as an expert in the area of
2 forensic pathology?

3 THE COURT: Any voir dire?

4 MR. MEADORS: No questions, no objection.

5 THE COURT: I'll find her qualified as an expert in
6 the field of forensic pathology.

7 MR. STRICKLER: Thank you.

8 BY MR. STRICKLER

9 Q Now, Doctor, are you acquainted with issues
10 surrounding the death of Zachary Ulengchong on December 2,
11 1998?

12 A Yes, I am.

13 Q Have you been retained by the defense in this regard?

14 A Yes, I have been.

15 Q And you been paid, what, \$5,000?

16 A \$5,000, yes, sir.

17 Q Okay. And do you remember when it was we first
18 retained you?

19 A No. I'm not sure of the exact date. I know it's
20 been awhile.

21 Q Okay. In that regard, you've had -- have you had the
22 opportunity to review materials regarding the case?

23 A Yes.

24 Q Have you had the opportunity to consult on multiple
25 occasions with both myself and Ms. Pringle regarding the

1 case?

2 A Yes, sir.

3 Q Okay. And you are now here to testify in that
4 regard, correct?

5 A Yes, sir.

6 Q If you could, please -- if you could, please briefly
7 describe for the jury what is pathology.

8 A Pathology is a branch of medicine, and probably
9 everyone here has been treated by a pathologist in the
10 past. Anytime you have ever had your blood drawn, you've
11 given a urine specimen, you had a pap smear, all of that
12 went to a pathologist.

13 A pathologist is a physician who diagnoses diseases,
14 diseases such as cancer, strep throat, H.I.V., infections,
15 and works with other clinicians in treating patients.

16 There are several laboratories that fall under
17 pathology. There's the hematology laboratory where your
18 blood would go for analysis; there's microbiology, and
19 there's also the autopsy pathology laboratory.

20 Q And you been qualified as an expert in the area of
21 forensic pathology. How does that differ, or can you
22 describe, please, what forensic pathology is?

23 A Forensic pathology is a branch of anatomic pathology
24 where we use the laboratory when we investigate unnatural
25 trauma or deaths, looking at cause of death and manner of

1 death.

2 We use the autopsy as our main investigative
3 pathology tool, but we also use the other laboratories,
4 putting the pieces together looking at cause of death and
5 trauma.

6 Q And in relation to the death of Zachary Ulengchong on
7 December 2nd, 1998, have you had an opportunity to review
8 his birth records?

9 A Yes.

10 Q Have you had an opportunity to review his records
11 from Moncrief Army Hospital, emergency room pediatrics?

12 A Yes, I have.

13 Q Have you had an opportunity to review not only his
14 birth records from Richland Memorial Hospital but also
15 records regarding his being brought there on December 2nd,
16 1998?

17 A Yes.

18 Q And his treatment there on November 23rd, 1998?

19 A Yes.

20 Q Okay. Have you had an opportunity to review the
21 E.M.S. run sheet for December 2nd, 1998?

22 A Yes.

23 Q And you had an opportunity to review the autopsy that
24 was conducted --

25 A Yes, I did.

1 Q -- initially in this case? Have you had an
2 opportunity to review the histology in this case?

3 A Yes, I have.

4 Q All right. Could you please tell the jury what
5 histology is?

6 A When we perform an autopsy or a biopsy on an
7 individual, we will take the tissue section and will
8 dissect an organ or tissue a particular way, and then
9 we'll submit the tissue to the laboratory, the histology
10 laboratory.

11 In that laboratory, they'll prepare a glass slide
12 that we can look at under a microscope. So the materials
13 that I received for 15 glass slides that were taken from
14 tissues at the time of the autopsy.

15 Q Okay. So you had an opportunity to review all the
16 slides associated with this particular autopsy?

17 A Yes, I have.

18 Q And you have had an opportunity to review statements
19 on the part of Ms. Person that were made in 2007?

20 A Yes.

21 Q Okay. Now, what was the conclusion of the autopsy
22 conducted in 1998, before it had been -- February, I
23 believe, of '99, final autopsy in February of '99.

24 A The conclusion as the cause of death was lobular
25 pneumonia, and that was designated as a natural death.

1 Q Okay. And I want to ask you about that, and what I'd
2 like to do first is this: As a forensic pathologist,
3 should you consider information external to the actual
4 autopsy in arriving at a conclusion as to cause or manner
5 of death?

6 A Yes.

7 Q To include statements such as you have been provided
8 in this particular case?

9 A Statements, scene investigation, medical records,
10 yes.

11 Q Okay. And what I would -- let me just ask you this:
12 Considering statements in addition to the findings of the
13 autopsy, and your review of the autopsy, would you have a
14 conclusion as to cause and manner of death in this
15 particular case?

16 A Yes.

17 Q And what would that be?

18 A If I included the statement --

19 Q Yes.

20 A -- besides the autopsy?

21 Q Yes.

22 A Of the smothering.

23 Q Now, understanding that the question of whether the
24 statements are to be believed or not is an issue at trial
25 here.

1 A That's correct.

2 Q I'd ask you to exclude the statements, okay. In
3 essence, turn the -- turn the hands of time back to 1998
4 with the information that was available at that point in
5 time.

6 A Yes, sir.

7 Q Okay. So that we can consider the conclusions of the
8 autopsy that was conducted at that point in time, right?

9 A Okay.

10 Q And you've already indicated that the -- that the
11 cause of death was lobular pneumonia. Do you concur in
12 that analysis?

13 A Yes, I do.

14 Q And can you tell me why?

15 A Yes. Looking at the gross autopsy findings, there
16 were no signs of trauma. The main findings -- and gross
17 meaning with the naked eye.

18 The main findings were that the lungs were heavy, and
19 also looking at the spleen and the spleen is like a filter
20 in your body, there were certain areas of the spleen they
21 were prominent. These areas become prominent at times of
22 infection.

23 So those were the two findings that were noted at
24 autopsy, but in particular, looking under a microscope at
25 the tissue samples that were taken at autopsy, it was

1 significant for pneumonia in many of the sections of the
2 lung.

3 And we diagnosed pneumonia under the microscope
4 looking at the air spaces where you breathe, and we see
5 blood within those air spaces. We see edema, and we see
6 the cells that make up pus, and these are neutrophil. And
7 within many sections of the lungs that I looked at under a
8 microscope, there was pus, edema, red blood cells, and
9 those were indicative of the pneumonia.

10 Also, the larger airways that branch off from the
11 trachea, the bronchi and the bronchiales, were also very
12 inflamed. They had the findings of inflammation and
13 infection in those areas also.

14 That is why you call it bronchopneumonia, so this was
15 very impressive in several of the sections that were
16 submitted for microscopic study.

17 Q Now, are you drawing on -- the statements that you
18 made, are those consistent with the conclusions of the
19 autopsy conducted in 1998; recorded February 4th, 1999?

20 A Yes, they are.

21 Q Okay. Are they that autopsy's conclusions, or are
22 they your conclusions?

23 A Both.

24 Q Both, okay. So you did an independent evaluation of
25 the evidence from the autopsy?

1 A Yes.

2 Q Okay. Now, having -- having had an opportunity to
3 review the medical records of Zachary Ulengchong, is it
4 surprising to you that you could find pneumonia in that --
5 in the child?

6 A No.

7 Q Why would that be?

8 A It's not surprising in that age group. It's not
9 surprising in that age group when a child is exposed to
10 other children and in day care.

11 Also, with the medical records, he had been to the
12 energy room before for respiratory infections, including
13 pneumonia, and recently before death he had been taking
14 Dimetapp, which is a cold medication for upper respiratory
15 or lower respiratory infection.

16 Q Do you remember how close to the time of death he was
17 taking Dimetapp?

18 A I want to say it was approximately a week before the
19 time of death.

20 Q November 23rd, when he was treated for the cut to his
21 head?

22 A Yes.

23 Q Okay. That's noted in the medical records from the
24 visit to the hospital at that point in time?

25 A Yes, it is.

1 Q Okay. So Dimetapp, is it on over-the-counter
2 medication, or is it a prescribed medication?

3 A It is over the counter.

4 Q Over the counter, but it's used to treat what?

5 A It's for cough and colds, so a child that has a cold,
6 cough, runny nose.

7 Q Respiratory infection?

8 A Yes.

9 Q What is pneumonia?

10 A Pneumonia is also a respiratory infection. Pneumonia
11 means that we've got an infection and inflammation down in
12 the lower aspect of your lungs, so it's past the trachea,
13 past the bronchi into the areas that are responsible for
14 gas exchange and for breathing.

15 In this case, though, we did have infection of the
16 bronchi, as well as the other airways leading down to the
17 lung tissue itself. So there was inflammation at multiple
18 levels or infection at multiple levels.

19 Q Okay. In reviewing the medical records for Zachary
20 Ulenchong, in addition to Dimetapp on November 23rd, did
21 you find treatment of him with Augmentin in the spring of
22 2000 -- or 1998?

23 A Yes, I did.

24 Q And what is that medication used for?

25 A Augmentin is a combination of Amoxicillin and

1 Clavulanic acid, and they put them together to treat a
2 bacterial infection. In this situation, it was to treat
3 pneumonia, so he was given Augmentin for pneumonia.

4 Q And, additionally, in the late summer of 1998, did
5 you find reference in the records to treatment with
6 Zithromax?

7 A Yes, I did.

8 Q And can you tell us what that is?

9 A Zithromax is also known as Z-Pack, and it's an
10 antibiotic that is given most commonly for respiratory
11 infection.

12 Q Now -- thank you. Let me ask you just -- I'm going
13 to jump around a little bit, and I apologize. I'm trying
14 to cover everything. Skin temperature as indicative of
15 time of death, is that or is that not a reliable tool for
16 assessing time of death?

17 A Actually, there are a few tools for time of death,
18 and the least reliable is the skin or body temperature.
19 So no, that is not a reliable tool.

20 Q Specifically, why is it not a reliable tool?

21 A Too many variables come into play. First of all, we
22 don't know the individual's normal body temperature.

23 Depending upon the size of the individual, we've got
24 a different surface area, such as children have a large
25 surface area.

1 We don't -- we have to take into account the
2 clothing. We take into account the time of year, the
3 temperature of the room, the circulation of the room.

4 And so too many factors come into play to be able to
5 use any type of body temperature in relating that to cause
6 of death. That's even when you're using a thermometer.

7 If you're going to be even more crude and use what
8 someone feels as a body temperature, or "I feel something
9 is cool or something is warm," that is even less reliable
10 than using body temperature with a thermometer.

11 Q Spitz and Fisher's Medicolegal Investigation of
12 Death, are you acquainted with this volume?

13 A Yes. I own that volume. That's the most current
14 volume --

15 Q Okay.

16 A -- or edition.

17 Q Can you characterize its status in the forensic
18 pathology community?

19 A I'm sure that every forensic pathologist has a copy
20 of Spitz and Fisher. It's a reference text that we use
21 daily. All the residents or trainees are encouraged to
22 read it cover to cover.

23 Q Well --

24 A Which, the ones of us practicing have done many
25 times.

1 Q If you know, fine. Can you think of another
2 reference text regarding a medical legal investigation of
3 death that is more widely used than Spitz and Fisher?

4 A No.

5 Q Okay. Would you agree or not with the statement in
6 Spitz and Fisher that the larger surface -- body surface
7 ratio to body mass, such as in children, will increase
8 relative heat loss, and therefore, increase the rate of
9 cooling?

10 A Yes, I do; that's true.

11 Q And you just testified to that effect, in essence,
12 correct?

13 A Yes.

14 Q So that's one of many factors that you have been
15 outlining that affect cooling rate and the validity of
16 assessing of body temperature by feeling the skin?

17 A Yes.

18 Q Okay. Now, there has been testimony before this
19 Court regarding -- I want to show you State's Exhibit No.
20 2, Zachary Ulengchong being found by Ms. Person face down
21 in this Pack N Play in a pool of milk vomit, as reflected
22 in this photograph, the stain.

23 A Yes.

24 Q There has been testimony regarding copious amounts of
25 milk coming from the child when he was turned face down

1 during C.P.R.

2 There is testimony regarding when blowing into the
3 child's chest, hearing gurgling sounds. Can you tell us,
4 is -- is vomiting associated with pneumonia in the first
5 place?

6 A Yes, especially in children, infants.

7 Q Okay. And is vomiting associated with asphyxiation
8 by placing a hand over the mouth and nose?

9 A No. I've never heard of that.

10 Q Have you ever?

11 A No. I've never heard of that, or read that, or had
12 that in one of my cases.

13 Q Can you rule out, and I understand the cause of
14 death, but what's the possibility of asphyxiation in this
15 particular case on vomiting?

16 A It could be -- it could have happened. You would
17 usually notice that with the first responders, individuals
18 that are performing C.P.R., that are analyzing or
19 investigating the scene, you'd see vomitus at the scene.
20 You'd see vomitus in the airway during the recitation.

21 Q Okay.

22 A You could also see it at the time of autopsy.

23 Q Okay. Would you expect to see it at the time -- at
24 the time of autopsy?

25 A Depending on how much was relieved of the airway

1 during recitation.

2 Q Is that also contingent on the quality and
3 extensiveness of the autopsy that was performed?

4 A Definitely.

5 Q Okay. In this particular case, was there a height
6 estimated for Zachary Ulungchong in the autopsy?

7 A No. There was never a height, nor a body weight,
8 that was given.

9 Q Is assessing height and weight a common procedure in
10 conducting an autopsy?

11 A Yes, in every autopsy.

12 Q Is there any indication as to whether there were any
13 teeth present on the young man?

14 A No. There was no notation of the teeth, and there
15 was no notation of the inside of the cheeks or the lips or
16 the gums either within the mouth.

17 Q Why would that be significant?

18 A That's significant in cases of any trauma to the
19 face, including smothering. If there are teeth present
20 and you have the hand over the mouth, you can often see
21 tearing of the inner lips secondary to the pressure of the
22 hand and the teeth.

23 Q Okay. I take it, Doctor, that you would agree with
24 the statement that in asphyxia in small children, often
25 you see no signs; is that correct?

1 A Yes. The younger the child, the fewer instances
2 you'll see any signs of asphyxiation or smothering.

3 Q Is that or is that not the same as saying you will
4 never see signs of asphyxiation a small child?

5 A No.

6 Q What are signs that can be seen of asphyxiation --

7 A Which --

8 Q -- or can be encountered?

9 A If asphyxiation is by smothering with the hand over
10 the mouth, you can see abrasions, or scraping, or maybe
11 some bruising on the outside of the nose or the lips.

12 You can see tearing on the outside of the mouth
13 secondary to the teeth. You can also see tearing of the
14 frenulum, which is that small piece of tissue that
15 connects your upper lip to your gum and your lower lip to
16 your gum. Right in front of your teeth, there's an upper
17 and lower frenulum. You can see tearing in that area.
18 You can see bruising within the inside of the mouth.

19 Q Okay. Now, back again to the autopsy as conducted in
20 the finding of lobular pneumonia, can you describe, again,
21 please, your observations upon reviewing the slides of the
22 relevant sections involved in this case as to the amount
23 of pneumonia, the degree of pneumonia, in this particular
24 matter?

25 A The several sections were taken from the lungs that I

1 examined, and throughout the sections, there was
2 pneumonia. I would classify it as moderate pneumonia.

3 Q Moderate pneumonia?

4 A Several areas. The air spaces where you would be
5 breathing were totally filled by pus and inflammation.
6 There were airways, the larger airways that were filled
7 with pus and inflammation, and that was in several
8 sections. It wasn't an isolated finding.

9 Q It wasn't an isolated finding?

10 A No.

11 Q How is that significant to you if it wasn't an
12 isolated finding?

13 A It's significance in that the person who is doing the
14 autopsy is taking representative pieces of the lungs, and
15 to find the same inflammation in several different areas
16 is representative of what's going on throughout the entire
17 organ of the left and right lungs.

18 Q Let me just ask you this, please, because there was a
19 term that was tossed. We heard from some doctors
20 yesterday. There was a term that was tossed around a
21 little bit, which I'm not sure was explained. In a -- in
22 the context of pathology, what does a nonspecific finding
23 mean?

24 A When we're looking with the naked eye and under the
25 microscope, we're looking for pathology or diseases or

1 abnormalities that point to a certain condition.

2 There are certain findings, for instance, that are
3 diagnostic of diabetes or diagnostic or specific for a
4 heart attack. Then there are other findings that you see
5 in so many autopsies regardless of the cause of death that
6 we call them nonspecific.

7 They really don't help us point to any disease
8 entity, or classification, or cause of death, or illness.
9 So we'll note what these findings are, but they're
10 nonspecific. They don't really classify or pigeonhole you
11 into a definite diagnosis.

12 Q All right. So yesterday, we heard from Dr. Armstrong
13 as reflected in -- in his autopsy, early swelling of the
14 brain. That's a nonspecific finding; is that correct?

15 A Yes. We see early swelling of the brain and anything
16 from having acute heart attack, having a drowning death,
17 having cancer, having epilepsy, having trauma to the head.
18 It's very nonspecific.

19 Q So is there any basis for implying that it's useful
20 in assessing whether or not asphyxiation occurred?

21 A Absolutely not.

22 Q Do you find it in cases of asphyxiation?

23 A I find it in cases of asphyxiation. I also do not
24 find it in certain cases of asphyxiation. I mean, it's
25 nonspecific. It doesn't mean anything as far as

1 classifying the cause of death.

2 Q And you also find it among many other things in that
3 list you just started to --

4 A Hundreds, thousands of other entities.

5 Q Additionally, there's a finding in the autopsy of
6 alveolar hemorrhaging, which is nonspecific but which was
7 indicated yesterday could be found in drowning and
8 suffocation. Can it be found in drowning and suffocation?

9 A Yes.

10 Q Can it be found in anything else?

11 A It can be found in almost any type of death. If
12 we're talking about hemorrhaging, which is the alveolar
13 spaces, the lung space is full of blood. That's not what
14 we had here.

15 Q Okay.

16 A We did not have that here. There are certain
17 pulmonary hemorrhagic syndromes that do have frank
18 bleeding into the lungs.

19 You can have red blood cells in the lungs for other
20 reasons. It could be congestion from a heart attack, or
21 in this case, pneumonia.

22 When you have damage to the lungs, you can have
23 leakage of the red blood cells into the air spaces mixed
24 in with the pus, and that's what we have.

25 Q All right. Is there any support for finding alveolar

1 hemorrhaging here as -- as being a Hallmark of suffocation
2 or asphyxiation?

3 A No. And, in fact, there is no Hallmark for
4 suffocation or asphyxiation by smothering. There is no
5 Hallmark.

6 Q During his testimony yesterday, Dr. Armstrong
7 indicated that he -- in 1998, 1999 -- returned a finding
8 of lobular pneumonia because he had a lack -- he had a
9 lack of any other specific findings. Should one do that?
10 Find lobular pneumonia when you don't have any other
11 specific findings?

12 A Well, what you're looking for is any diseases or
13 abnormalities, and there were no other specific findings,
14 no other diseases, no other birth defects, et cetera,
15 except for the pathology in the lungs, and there was
16 lobular pneumonia; therefore, that's your cause of death.

17 Q Dr. Armstrong also testified that because -- I need
18 to inform you. As of yesterday, he changed his opinion on
19 cause of death to suffocation.

20 I've asked him to describe the reasons why, and I'd
21 like to run through them for you and ask you for your
22 comments in that regard.

23 A Okay.

24 Q First of all, the severity of the pneumonia was not
25 great enough to cause death. He would like to have seen

1 it more extensive before it would be called pneumonia as
2 the cause of death. Can you comment on that, please?

3 A I disagree with that. There was moderate pneumonia.
4 There was actually necrosis and death of some of the lung
5 tissue.

6 We had pneumonia, not only in different sections of
7 lungs -- we had it at different levels the respiratory
8 tree, the bronchi, the bronchial, the alveolar spaces.

9 Also, what you're looking at with pneumonia is not
10 just the inflammation and the pus, but they are markers
11 that bacteria are there. We don't even see the bacteria
12 with the naked eye, but there are markers that they are
13 there, as well as the toxins and poisons that can go
14 throughout the body with the pneumonia.

15 Q Okay. Did you have any opportunity to go ahead and
16 observe what bacteria were present there?

17 A No. Unfortunately, there were no blood cultures or
18 lung cultures taken at the time, so we don't know the
19 agent that caused the pneumonia.

20 Q There are various different agents that can cause
21 pneumonia?

22 A Yes. There are -- the most common in children is the
23 viral pneumonia, which can be followed, and it's usually
24 followed in severe cases by a bacteria pneumonia.

25 The most common one is respiratory syncytial virus.

1 It accounts for hundreds of thousands of hospitalizations
2 and deaths every year, and then we have -- so that's a
3 type of various.

4 We have bacterial pneumonias. We have parasites. We
5 have fungal pneumonias. There are many, many causes of
6 pneumonia.

7 Q Is there any assistance, or would there have been any
8 assistance, in assessing and culturing the lungs to
9 determine what the bacteria was that was involved?

10 A It would be nice to know what bacteria was involved,
11 what caused the pneumonia. You need to -- for
12 epidemiology, for taking care of other children that had
13 been around the boy. It would have helped us to classify
14 the type of pneumonia.

15 Q Are different bacteria -- or do different bacteria
16 have different levels of toxicity?

17 A Yes, they do. Different levels of toxicity,
18 different clinical presentations, timeframe, severity,
19 complications.

20 Q Okay. So how easy is it to assess how widespread
21 pneumonia is in the course of an autopsy?

22 A With naked eye?

23 Q Well, between naked eye and the histology, I mean,
24 how easy is it to assess that?

25 A Sometimes you can see the pneumonia with the naked

1 eye. You can even see frank pus within the air spaces.
2 Depending on the size of the individual -- with children,
3 the air spaces are so small that it's more common not to
4 see it evidenced with the naked eye but to see it instead
5 when you look at the tissue under the microscope.

6 Q Okay. If you have different levels -- different
7 bacteria being had in different levels of toxicity, could
8 a -- could a pneumonia be more toxic a pneumonia that
9 affects "X" percentage of the lung, okay, be more toxic,
10 depending on what the actual agent was that was causing
11 it? I don't know if I'm being clear or not.

12 A Yeah. It's not only a factor of how much of the lung
13 is involved, left lung, right lung, part of the lung, but
14 it's also the toxins or the chemical changes that the
15 bacteria can cause throughout the body that results in,
16 for instance, septic shock.

17 Q Okay. And we have no idea of what those were in this
18 particular case?

19 A That's right.

20 Q Because there were no cultures done.

21 A There was no culture performed. There were no blood
22 tests that would be analyzed by the microbiology
23 laboratory related to the cause of the pneumonia.

24 Q Okay. And if I understand you correctly, some
25 bacteria involved in causing pneumonia can be highly

1 toxic, indeed.

2 A Yes. It can be highly toxic, especially in different
3 age groups, yes.

4 Q In returning to reasons for Dr. Armstrong changing
5 his opinion from lobular pneumonia to asphyxiation,
6 suffocation, he ended up testifying -- and as reflected in
7 the autopsy -- that the nails were slightly blue, and the
8 glans penis was very blue. I believe he indicated that's
9 always seen in suffocation. Can you comment on that,
10 please?

11 A The nail beds, all that means is that there's
12 under-oxygenated blood. Most commonly, we see this in
13 heart disease and lung disease.

14 In children, it's most commonly seen with congenital
15 heart disease and with pneumonia infection. We also see
16 it with some cystic fibrosis patients.

17 Q You see nails, slightly blue nails, associated with
18 pneumonia?

19 A Yes. Anything that could cause a poor -- you've got
20 to have time to get the level of oxygen in the hemoglobin
21 down to a normal level to cause the blue coloring of the
22 lips or the nail beds.

23 Q And extremities?

24 A Yes, but it has no association specifically with
25 smothering.

1 Q Okay. But it does have an association with
2 pneumonia?

3 A Yes.

4 Q All right. And as to the glans penis being very
5 blue?

6 A That has no association with any entity whatsoever
7 aside from a type of defect in the penis itself. It has
8 nothing to do with smothering or asphyxiation. It has
9 nothing to do with pneumonia.

10 Q And are you aware of any, any literature associating
11 with that condition with suffocating or asphyxiation?

12 A No, none whatsoever.

13 Q Have you looked?

14 A Well, I -- I lecture on pediatric forensics,
15 including asphyxiation, and I've never heard of that
16 association.

17 Q Okay. I'd like now to turn briefly to the second
18 doctor we heard from yesterday, Dr. Nichols.

19 And again, Dr. Nichols indicates and he finds his
20 conclusion after reviewing the autopsy and much of what
21 you reviewed. He finds asphyxiation, suffocation.

22 The first reason he listed was there was an
23 insufficient degree of pneumonia to cause death. Comment
24 on that, please.

25 A Well, first of all, I disagree that there was

1 insufficient pneumonia because it was present in many of
2 the areas looking in the microscope, and some areas, as I
3 mentioned, totally occluded or filled up the air spaces at
4 the different levels of the respiration system,
5 respiratory system.

6 Q Let me ask you this: Dr. Nichols also said that, you
7 know, "Poor children don't put up much of a fight when
8 they're suffocated." Can you comment on that, please?

9 A Yes, I can. That is an old fashioned, antiquated
10 myth. They put up a great deal of fighting. I've seen it
11 on videotapes, on nanny cams, on hidden cameras where
12 someone will intentionally occlude with their hand the
13 mouth of the child.

14 These children, as small as they are, they put up as
15 much of a fight as they can. Their arms are waiving back
16 and forth. They're kicking. It's not what used to be
17 called in old times "a gentle death", none whatsoever.

18 You may not have findings of smothering on these
19 little children because they don't have the teeth, and
20 they don't have much of the strength, but it's definitely
21 -- a suffering is definitely a violent death, and they do
22 put up as much of a struggle as their little bodies can
23 put up.

24 Q Thank you. Now, I'd like to turn, just for a second,
25 to a couple of portions of -- of Ms. Person's statement

1 relating to the death of Zachary Ulangchong. Are you
2 acquainted with the fact that she indicated that she kept
3 her hand over his mouth and nose for 15 to 20 seconds?

4 A Yes.

5 Q That's contained in her statement?

6 A Yes.

7 Q Will obstructing breathing for 15 to 20 seconds kill
8 someone?

9 A No.

10 Q Are you relatively confident in making that
11 statement?

12 A Yes. You'd need much more, a longer duration of
13 hypoxia or not -- inability to breathe than 15 to 20
14 seconds.

15 Q What's the literature usually speak about, two to
16 three minutes?

17 A Yes. That's probably the most common timeframe
18 given.

19 Q Two to three minutes is usually the most common
20 timeframe. And if someone is suffocated, hand over mouth
21 and nose, and the hand is taken away, does the per--- does
22 the child, the innocent child, does the child take a deep
23 breath at that point in time?

24 A They take a deep breath, and then they scream --

25 Q They scream?

1 A -- according to -- to the videos that I've seen, yes.

2 Q Okay. And if they take a deep breath, have they been
3 suffocated?

4 A No.

5 Q Successfully suffocated?

6 A No.

7 Q Okay. And if they take a dead breath and scream,
8 certainly, they are still alive. They are not dead?

9 A Their airway is patent, correct.

10 Q Okay. Now, Dr. Nichols termed the bronchitis -- that
11 was also the finding in the autopsy, correct, bronchitis?

12 A Yes.

13 Q Dr. Nichols termed the bronchitis he reviewed as
14 minimal. Can you comment on that? What was your
15 observation?

16 A I will say not all the areas of the larger airways,
17 the bronchi, were inflamed, but many of them were. They
18 had chronic, meaning some viral inflammation, as well as
19 the pus, the acute inflammation, within the wall.

20 Q Can you -- can you give us a characterization as to
21 minimum, medium, maximum, how inflamed? Or how would you
22 term "bronchitis"?

23 A Looking at all the sections as a group, I would say
24 it was a moderate bronchitis with areas of marked
25 inflammation throughout the -- from the outside to the

1 inside of the bronchus, so all the way through the walls
2 of the bronchus.

3 Q And Dr. Nichols termed the pneumonia in this case
4 after review of the slides in the autopsy as "minimum".
5 Do you concur or disagree with that?

6 A No, I disagree. Again, looking over all the
7 sections, I would say it's moderate, and in some areas,
8 it's marked with total occlusion of the air spaces and
9 death of the tissue.

10 Q Dr. Nichols indicated that prior to death, he had
11 seen a lengthy and well-known course of illness. If I
12 could, referencing again Spitz and Fisher, I'm going to
13 ask to read a statement to you and ask whether you agree
14 or not.

15 "The observer is impressed with the striking
16 discrepancy between the classical textbook description of
17 the clinical manifestations demonstrated by the patient
18 with grave pneumonia; that is to say shock, frustration,
19 marked dyspnea, and the like, and the fact that many
20 persons with extensive pneumonia are able to be up and
21 about and to carry on in some fashion up to the moment of
22 collapse and death." Did you agree with that statement?

23 A Yes. It's true.

24 Q Okay. Is that statement consistent or not with
25 someone having to have a lengthy and known course of

1 illness prior to succumbing?

2 A No. And the more that we learned through the
3 autopsy, the more we realized that yeah, there are some
4 cases where there's a prolonged and lengthy illness.

5 There are many cases that the term is shorter, and we
6 see this especially in children. And, again, especially
7 with children who have had a viral infection, and on top
8 of that, they get a bacterial pneumonia.

9 Q Okay. Dr. Nichols also stated that no matter what,
10 the amount of pneumonia present could not have caused
11 death. Is there any way to make such a statement?

12 A No.

13 Q Why not?

14 A Well, first of all, in children, as far as the cause
15 of death, natural deaths are the most common, and
16 pneumonia is number two, with Sudden Infant Death Syndrome
17 being number one.

18 So we know that pneumonia can cause death. Even in
19 all ages, it's in the top two to three as a cause of death
20 in this country; heart disease being number one.

21 So I don't know what he was referring to or why he
22 would say that no matter to what degree pneumonia could
23 not be the cause of death.

24 Q Okay. Is it easy to determine how long someone has
25 had a pneumonia infection?

1 A No, it's not.

2 Q Let me ask you, again, I'm turning to Spitz and
3 Fisher, would you agree with the following statement:
4 "Accurate aging of acute bronchopneumonia is difficult,
5 and evaluation should cautiously consider the following
6 factors: Acute bronchopneumonia may develop within a
7 short period of time, within four to six hours, and the
8 earliest we've seen is two hours."

9 MR. MEADORS: Your Honor, was that question related
10 to adults or children? I couldn't hear. I don't know.

11 MR. STRICKLER: It's not age specific.

12 MR. MEADORS: Thank you.

13 BY MR. STRICKLER

14 Q Would you agree with that statement?

15 A Yes, I would.

16 Q First of all, it uses the term "bronchopneumonia" as
17 opposed to lobular pneumonia. Would you agree with that
18 statement as it relates to -- in relation to lobular
19 pneumonia as opposed to bronchopneumonia, or does it make
20 any difference?

21 A It doesn't make a difference. Bronchopneumonia means
22 that the infection begins in the bronchus or the bronchia,
23 which lead out to the lobules. So lobular pneumonia,
24 bronchopneumonia, they are used interchangeably.

25 Q Okay. So acute bronchopneumonia may develop in a

1 very short period of time?

2 A Yes.

3 Q You agree with that.

4 Just a few more questions, if I could, please,
5 Doctor.

6 We heard from Dr. Gratin Smith, who is a
7 pediatrician, yesterday -- who reviewed some of the
8 documents available -- reviewed the autopsy, not the
9 slides, and indicates that in his opinion, the child had,
10 in his words, "a small amount of pneumonia".

11 First of all, can you assess the extent of the
12 pneumonia without evaluating the slides?

13 A No.

14 Q Why not?

15 A Because in children and in adults, especially in
16 children, often the gross or the naked-eye examination
17 does not convey what is present under the microscope. So
18 you don't actually see the pneumonia at the time of
19 autopsy.

20 Q Okay. He indicated in that regard that finding that
21 it was a small amount of pneumonia was drawn from --
22 however, two places in the autopsy report; however, the
23 right lower and upper lobes have a darkened appearance
24 over the pleural surface; whereas, the left is completely
25 pink.

1 This is from the gross description. And from the
2 microscopic description associated with the bronchitis as
3 an acute lobular pneumonia, it is patchy. That's the sum
4 total of what he indicated he relied on in saying the
5 child had a small amount of pneumonia.

6 Is there any basis for arriving at that conclusion by
7 relying on those two statements by themselves?

8 A No. Those two statements cannot help you medically
9 or scientifically quantitate a pneumonia.

10 Q All right. I'll just ask to go back to the beginning
11 again. Again, we're assessing this from the -- without
12 going to the statements because you -- upfront you
13 indicate what your opinion is if you consider the
14 statements, all right.

15 A Yes.

16 Q Someone else gets to consider those. Without
17 considering those, what is your opinion as to the cause of
18 death of Zachary Ulengchong?

19 A Lobular pneumonia.

20 Q Is there any basis contained in the autopsy,
21 contained in the slides or changing an opinion rendered in
22 1998 of lobular pneumonia to one of asphyxiation or
23 suffocation?

24 A No.

25 Q No?

1 A No.

2 MR. STRICKLER: Doctor, thank you very much. Please
3 answer any questions the prosecutors may have for you.

4 THE COURT: I tell me you what, let's take a brief
5 break.

6 Ladies and gentlemen, we'll take a short break for
7 the purposes of stretching and using the restroom
8 facilities.

9 I remind you not to discuss this matter among
10 yourselves, s you still haven't heard all the testimony
11 that has to be presented. Let's take a very brief break,
12 and we'll come back and continue on.

13 (WHEREUPON, the jury left open court at approximately
14 3:49 p.m.)

15 THE COURT: Dr. Collins, you may be excused during
16 this break. I ask that you not discuss your testimony
17 with anyone. You have not completed it, so it would be
18 inappropriate to discuss it during the break.

19 THE WITNESS: Okay. Thank you.

20 THE COURT: Let's take a brief break, and we'll come
21 back.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Is there anything we need to take up
24 before we bring the jury out?

25 MR. MEADORS: No.

1 MR. STRICKLER: No, ma'am.

2 THE COURT: Ask the jury to come out.

3 THE BAILIFF: I'll be glad to, Your Honor.

4 (WHEREUPON, the jury came into open court at
5 approximately four o'clock p.m.)

6 THE BAILIFF: The jury is all present, Your Honor.

7 THE COURT: Mr. Meadors?

8 MR. MEADORS: If it, pleases Your Honor.

9 CROSS-EXAMINATION:

10 BY MR. MEADORS

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q How -- how hard did Andrea Person press Chief
14 Wilson's hand?

15 A Press whose hand?

16 Q Chief Wilson.

17 A I don't -- I don't know.

18 Q I mean, do you know who Chief Wilson is?

19 A I beg your pardon?

20 Q Do you know Chief Wilson's involvement in this case?

21 A No. I'm not -- if you could tell me who it is. I
22 don't remember names but...

23 Q Are you aware that Andrea Person demonstrated to
24 Chief Wilson how she put the hand over Zachary
25 Ulengchong's nose and mouth?

1 A I don't remember her -- I remember the statement that
2 she did it. I don't remember her describing a force.

3 Q Okay. Or Chief Wilson's statement saying that she
4 did that? Did you not review that?

5 A I reviewed the statements that she did put her hand
6 over the child's mouth.

7 Q Yeah, and I'm not fussing at you. I'm just trying to
8 say --

9 A Yeah.

10 Q Did you review Chief Wilson's -- a summary of where
11 he said that Andrea told her (sic), "I put my hand over
12 her nose and mouth," and he asked for -- she showed him
13 how -- well, like this. Do you mind if I touch you?

14 She just showed him, "How hard you do it?" I mean,
15 did you know that was in this case, that information case?

16 A I don't recall her demonstrating it to Wilson, but I
17 -- it could be. I just don't remember his name.

18 Q Well, that would further, I guess, today strengthen
19 your opinion of smothering, I guess? It wouldn't take
20 away from it.

21 A It would -- I'm sorry? Would what -- I'm not trying
22 to be difficult.

23 Q That would still be consistent with your opinion
24 today of smothering? After reviewing all -- this is even
25 additional evidence you didn't know about.

1 A That she put --

2 Q That she showed him how hard she --

3 A Oh, yeah. That she demonstrated it?

4 Q Right; yes, ma'am. That's a better word.

5 A Okay. Yes. I just know that that's what she gave in
6 2007, I believe.

7 Q All right. Okay. Yes, ma'am. I didn't...

8 Mr. Strickler asked you at the outset what
9 materials -- they had you look at the materials. Please
10 tell me what materials you did review.

11 A Okay. I brought them all with me.

12 Q Okay.

13 A I reviewed the autopsy which was contained in the
14 coroner's file, so there's information in the coroner's
15 file, handwritten notes, medical records from Richland, as
16 well as Moncrief. There is the autopsy report,
17 toxicology. There's some news reports and 15 histologic
18 slides from the autopsy, and there were some Xerox
19 photographs.

20 Q Did you -- did he ask you -- I couldn't see back
21 there. Did you review the statements from the defendant?

22 A Yes.

23 Q I mean, just specifically these statements right
24 here? Did you see this handwritten statement?

25 A No. I knew there existed a handwritten note, but I

1 don't remember getting a Xerox of that.

2 Q And as a forensic pathologist -- and you have been
3 around, and I don't mean that bad. I mean, you've got an
4 extensive career -- and you said when Mr. Strickler asked
5 you all of these factors, in addition to the body, you
6 like to consider, and actually did consider in rendering
7 your opinion, right at direct, correct?

8 A Yes.

9 Q So I mean, it would be important to know not only
10 there was a letter but what was in the letter, correct?

11 A As far as the smothering?

12 Q Yes.

13 A Yes, because you'd want to take in the history and
14 scene findings or events surrounding the death.

15 Q And I guess, I mean, you knew of the letter, but you
16 didn't actually see it.

17 A I don't recall ever seeing the letter.

18 Q That's kind of just what I was trying to --

19 A Okay.

20 Q And the statement of April 17th, 2007, did you have
21 this and review it?

22 A I don't believe that was part of the coroner file. I
23 could be mistaken, but I don't remember reviewing that.

24 Q Okay. That's fine. That's her statement to Kevin
25 Isenhoward on April 17th, so that didn't even go into your

1 opinion?

2 A It went into my opinion as far as the -- I know she
3 made that statement.

4 Q And what did she tell James White?

5 A I know that she had reported that she put her hand
6 over the child's mouth and then for -- I think she said 15
7 seconds, 15, 20 seconds, and then removed her hand. The
8 child took a breath and died.

9 Q She told -- who else -- how many people did she tell
10 that to?

11 A I don't know.

12 Q And did it go into your opinion that she told Kevin
13 Isenhoward that the child went limp after she did that?

14 A Yes.

15 Q I mean, that -- "and the child went quiet after I did
16 that"?

17 A Yes.

18 Q And as a forensic pathologist, I mean that's
19 important about cause of death, isn't it?

20 A Yes.

21 Q I mean, something happens after you put your hand
22 over a nose and mouth of somebody, right?

23 A Yes.

24 Q I mean, that is, isn't it?

25 A Yes.

1 Q Clearly, in your career, you come to an opinion, and
2 after getting additional evidence or researching, you
3 change that opinion, I'm sure. Everybody has, correct?

4 A Yes.

5 Q As a part of all of this, too, did you talk with
6 Ms. Andrea Person?

7 A No. No, I did not.

8 Q I don't have that many questions for you, Doctor.

9 Let me just ask you a few -- I say common sense,
10 maybe I'm wrong. If you're two-and-a-half hours away from
11 death from pneumonia versus mild or moderate pneumonia,
12 isn't your body going to exhibit different symptoms?

13 A It can.

14 Q And most often it does, doesn't it?

15 A I don't know most often, but I know there are cases
16 where it does, and other cases where you're surprised that
17 at the time of the autopsy that there was pneumonia.

18 Q And in this case, in reviewing the materials you had,
19 there were no symptoms consistent with that real bad
20 pneumonia that you were two-and-a-half hours away from,
21 correct?

22 A That's correct. There wasn't a prodrome that was
23 identified.

24 Q And that kind of goes into your opinion, too, of
25 smothering, doesn't it?

1 A No. The only way you can diagnose smothering is by
2 confession.

3 Q The only way you can diagnose smothering is by
4 confession?

5 A Right. When you have no other -- as the findings I
6 mentioned before, but that's not asphyxia. That would be
7 the smothering.

8 Q Did you see any other evidence or anything else
9 provided to you that anybody else did anything to the
10 mouth and nose of Zachary Ulangchong except the defendant,
11 Andrea Person?

12 Were you provided any -- that's the only information
13 you were provided, correct?

14 A Yes, that and C.P.R.

15 Q And there was no evidence of vomit in the lungs, was
16 there?

17 A That's correct.

18 Q As a matter of fact, how many people said that the
19 child did vomit?

20 A How many people said the child did vomit?

21 Q Yes, ma'am.

22 A I'm not sure. I only know at the scene there was a
23 wet Pack N Play and the -- I forgot the name, but the --
24 one of the first or probably the first individual that did
25 the C.P.R. said that there was vomitus coming up from the

1 mouth.

2 Q That there was vomitus coming up from the mouth?

3 A Yes.

4 Q Did she say she saw a little bit of milk on the lip?

5 A I don't remember how she phrased it.

6 Q Would you dispute it was milk and not vomit?

7 A Stomach contents. Maybe we can put it that way.

8 Q Would it surprise you to know that the only person
9 that said "vomit" was the defendant?

10 A No.

11 Q But there was no vomit in the lungs of little Zachary
12 Ulangchong.

13 A None that I saw in the autopsy report, no.

14 Q And what were the slides of?

15 A The slides were -- I can give you the exact listing
16 but...

17 Q Just list --

18 A Lungs, heart, spleen, liver, brain, kidneys, thymus.

19 Q Would you have seen any vomit in there?

20 A Not if the only -- what was described in the stomach
21 was a milky form, and you would not see that under the
22 microscope.

23 Q And you didn't see any of that under the microscope?

24 A That type of material you would not see. You could
25 see food substances, vegetable matter, meat, et cetera,

1 but I did not expect to see that under the microscope.

2 Q Was there a bottle? I mean, did you -- and how many
3 bottles did Andrea give Zachary that morning when he got
4 there?

5 A What I read was two.

6 Q If he drank one or two of those, that would be
7 inconsistent with being two-and-a-half hours away from
8 your death, wouldn't it?

9 A No. No, I don't follow that connection.

10 Q Okay. If you were really that sick, and you could
11 down two bottles of liquid? I mean, just common sense. I
12 know not all the doctors are not --

13 A It would be hard to make a generalization like that.

14 Q And I think you had me start off the question about
15 David Wilson. You -- when Mr. Strickler asked you with
16 young children, you're not likely to see signs of
17 smothering, right?

18 A Right.

19 Q I think he said that you hardly ever see it, and you
20 agreed?

21 A Yes.

22 Q He then he said you could see under certain
23 circumstances, but most of the time, you wouldn't see it,
24 correct?

25 A That's correct. If you saw something, what would it

1 be, or what could it be?

2 Q Right. Thank you. Now, this pneumonia is patchy,
3 isn't it? I mean, you wouldn't disagree with the autopsy
4 that just says "patchy"?

5 A No, and that's another way you see lobular.

6 Q And lobular is a geographical location?

7 A Yes.

8 Q He's asking about what the doctor says. We have a
9 doctor that says "small" or "minimal", and you're saying
10 moderate, correct?

11 A Yes.

12 Q Would that still mean there's 50 percent plus air
13 capacity in the lungs with moderate?

14 A No. It doesn't -- you don't quantitate it as the
15 amount of air space that's open.

16 Q If you had this type of pneumonia, in which I know
17 you're not saying it was there, but if you have this type
18 of pneumonia where you're going to be dead in
19 two-and-a-half hours, wouldn't that affect your organs?

20 A You mean organs besides the lungs?

21 Q Sure, any; yes, ma'am.

22 A It could, depending on how hypoxic you became.

23 Q Most likely it would, wouldn't it?

24 A About --

25 Q Toward the end of the death -- what would it affect?

1 What could it affect?

2 A Well, if you just had the pneumonia, it could affect
3 your lungs, and you could have a cardiovascular collapse,
4 which is the same as shock.

5 It could cause swelling of the brain if it's
6 prolonged long enough. It just depends on how -- if the
7 bacteria escapes from the lungs and gets in the blood
8 stream or what toxins. Again, it comes back to what's the
9 cause of the pneumonia.

10 Q And there wasn't any evidence of that in Zachary, was
11 there?

12 A Any evidence of what?

13 Q Of those organs just exploding, organ damage or
14 anything like that in Zachary's body?

15 A Multiple organ failure?

16 Q Yes, ma'am.

17 A The only finding of significance was the lungs.

18 Q What about respiratory failure? Wouldn't you expect
19 some of that, really bad coughing and all of this stuff,
20 right before somebody is fixing to die? I mean, if you're
21 really that bad with pneumonia, would be just it be
22 obvious the child is having trouble and hurting, having
23 trouble breathing? I mean, wouldn't that -- just real --
24 and is that right?

25 A It could be, yes.

1 Q Just, I think Mr. Strickler asked you, in one of the
2 -- I think it's April 98 when Zachary went to one of
3 the -- the doctor -- I think they thought pneumonia, but
4 the slide or x-ray showed it wasn't pneumonia, actually.
5 Do you agree with that?

6 A I know one time there was a pneumonia, and another
7 time they treated him for a respiratory infection. I
8 don't remember the date.

9 Q And the first pneumonia actually turned out it
10 wasn't, shown on the x-ray if you -- if you've got that
11 file here.

12 A I don't --

13 Q Do you have those files with you? You said you had
14 them, right?

15 A Which one? Where? Is there -- can you give me the
16 Bates number?

17 Q Right now I can. Yes, ma'am.

18 (Pause).

19 Can I approach the doctor?

20 Can I just hand you this, Doctor?

21 A The date?

22 Q Can't see. Hold on one second.

23 A There you go. That's transportation date but go
24 ahead.

25 Q That would be the 29th. So I think the -- I think

1 the visit was the 28th?

2 A The exam date was April 28th, 1998.

3 Q And what does that show as far as the lungs, was
4 clear?

5 A It says, "Compared to previous films from
6 February 2nd, the lungs are clear."

7 Q Okay. Thank you. Did you -- did you say you
8 reviewed the E.R. record? I think you did.

9 A Yes.

10 Q And there was no indication there that the day care
11 worker had reported any odd behavior on behalf of Zachary,
12 correct?

13 A That's correct.

14 Q I'm about through.

15 (Pause).

16 Just so I'm clear, looking at -- oh by the way, I've
17 got to ask you about the slides. When did you get the
18 slides?

19 A I don't remember when I received them. It was -- I
20 believe it was with the other material but at one time.
21 They came from Columbia.

22 Q I really don't know when you received them either.
23 Can you give me an idea?

24 A Say a year ago.

25 Q Okay. Thank you. And when did you send the slides

1 back to us or to Dr. Armstrong or somebody?

2 A I received a phone call from Dr. Nichols last
3 Thursday, and he said he would like to look at them. So I
4 overnighted them to his practice.

5 Q So they actually came back in this county Friday?

6 A Yes.

7 Q And -- and where did you have them? I'm just
8 curious.

9 A In my office.

10 Q Did you have them in your attic or something like
11 that?

12 A Well, my office is on the second floor.

13 Q Okay. I apologize.

14 A I told Dr. Nichols -- I couldn't remember if I had
15 mailed them back already. I told him I would check, and I
16 had them still so I gave him a phone call and said, "Here
17 they are. I'll overnight them to you."

18 Q That's fine, but going back to the autopsy of
19 Dr. Armstrong, at that time, your diagnosis or your
20 opinion, based on this, would be young Zachary
21 Ulungchong's cause of death was what?

22 A Lobular pneumonia.

23 Q And, Doctor, with all due respect, I know you're a
24 working doctor. You're getting paid. You got paid 5,000
25 already?

1 A Yes.

2 Q All right. And you're going to be getting paid for
3 today.

4 A Yes.

5 Q Okay. And how much is your time here today?

6 A 5,000.

7 Q 5,000 for today?

8 A Yes.

9 Q So that's a total of 10,000. Is there going to be
10 anymore?

11 A No.

12 Q That's it? 5,000, and 5,000. There's no extra for
13 court time?

14 A This is court time.

15 Q Okay. All right. I'm going to hurry up and finish.

16 Your Honor -- Doctor, after reviewing the autopsy,
17 the emergency and all the stuff you reviewed, including
18 being given a summary of the statements made by the
19 defendant reviewing the time line -- you're familiar with
20 the time line, correct? I mean, the time he got there,
21 and the time he died?

22 A That day?

23 Q Right.

24 A Yes.

25 Q And you're familiar with the time line from the time

1 she gave him the bottles, and then the time she said she
2 came back and just found him motionless?

3 A Yes. I know that there is -- around nine, 9:15,
4 there's a bottle, and I think the call was received at
5 10:05, I believe.

6 Q And as a forensic pathologist, as you stated, reviews
7 all the evidence, the body and anything else pertinent to
8 try to get a cause of death for everybody. I mean, that's
9 what y'all do, correct?

10 A Yes.

11 Q And, Doctor, on today's date, November 19th, 2009, do
12 you have an opinion to a reasonable degree of medical
13 certainty of the cause of death of Zachary Ulangchong?

14 A If I was -- if this was my autopsy and I was giving
15 the statement by the defendant?

16 Q I'm just asking you your opinion. You stated, I
17 think, on direct to a reasonable degree of medical
18 certainty on today's date, based on everything you have
19 reviewed, your opinion as to the cause of death of Zachary
20 Ulangchong is what?

21 A Yes. If I had received the confession --

22 Q Would you say what your opinion is --

23 A -- and then --

24 Q -- and then you can explain it. I mean, what was
25 your --

1 A Well, I had told --

2 Q What was your --

3 A Well, you had said that earlier --

4 MR. STRICKLER: I object, Your Honor. I object.

5 THE COURT: Ask her the question and let her answer
6 the question.

7 BY MR. MEADORS

8 Q Do you have a reasonable -- do you have an opinion to
9 a reasonable degree of medical certainty on the cause of
10 death of Zachary Ulengchong?

11 A The only reason I want to make clear, because I will
12 answer you, but you said that I stated earlier the cause
13 of death. And I did state earlier, as I was asked by
14 Mr. Strickland (sic) the cause of death based on the
15 autopsy was lobular pneumonia.

16 Q Yes, ma'am. I --

17 A But when you're given the same findings, but you're
18 given a statement that a person claims they put their hand
19 over a child and smothered them, then it would change the
20 cause of death to asphyxia due to smothering.

21 Q Okay. And that's what, I think he asked you, and
22 what I'm asking you now. Based on your review of all the
23 records, the statements that you were provided, I think is
24 what you told him, your opinion today of the cause of
25 death of Zachary Ulengchong on 12/02/1998 is that he was

1 smothered?

2 A Yes.

3 Q Asphyxiated?

4 A Yes.

5 Q And that's the same conclusion Dr. Nichols came up
6 with.

7 A (Indicating).

8 MR. MEADORS: That's all. Thank you.

9 MR. STRICKLER: Just a couple of questions, Your
10 Honor, if I may.

11 REDIRECT EXAMINATION:

12 BY MR. STRICKLER:

13 Q Spring of 1998, the records reflect that Zachary
14 Ulungchong was diagnosed with pneumonia, correct?

15 A I know it was one of those months in 1998. I would
16 have to go back to the exact medical record.

17 Q Oh, you have -- you have the file in front of you.
18 Our Bates Stamp number 2185, the E.R. visit on April 28th.

19 A Okay. I have 2185.

20 Q Right.

21 A This is where he received Tylenol. We might have to
22 get my glasses, actually. This is when he was given the
23 Augmentin.

24 Q Yes, ma'am.

25 A Okay.

1 Q April 28th, on the left side of the page, halfway
2 down, it says "assessment, diagnosis"?

3 A Yes. On the left column, it's typed in "assessment".
4 Diagnosis is the form, and then handwritten is the
5 pneumonia.

6 Q Okay. And, indeed, he did improve, as the records
7 reflect, over time from that diagnosis, correct?

8 A Yes.

9 Q All right. Now, running around a moment ago, you
10 indicated at the very beginning of my questioning of you,
11 you take into consideration the statements of 2007, your
12 diagnosis, your opinion would be suffocation, right?

13 A Yes.

14 Q Okay. So after cross, that's still your statement?

15 A Ye--- yes.

16 Q On direct I asked you to exclude that information and
17 evaluate the medical information available in the case,
18 the autopsy and the slides that have been done and to ask
19 for your opinion in that regard, and your opinion was
20 lobular pneumonia.

21 A That's correct. The child definitely had lobular
22 pneumonia.

23 Q Okay. And that would be an appropriate finding as to
24 cause of death if you exclude the statement?

25 A Correct.

1 Q No change in your opinion at that time?

2 A Correct.

3 Q Okay. Any basis for anyone to say that the pneumonia
4 that was present could not have killed the child?

5 A No.

6 MR. STRICKLER: All right. Thank you very much.

7 THE COURT: Yes, sir.

8 RECROSS-EXAMINATION:

9 BY MR. MEADORS

10 Q As a forensic pathologist, you're taught you can't
11 exclude these statements, can you?

12 A Right. We say in light of the historical scene and
13 autopsy information, the cause of death is "blank".

14 MR. MEADORS: Thank you.

15 THE COURT: You may step down.

16 MR. STRICKLER: Permission to be excused, Your Honor,
17 please?

18 THE COURT: Any objection to her being excused?

19 MR. MEADORS: No doctor.

20 THE COURT: You may be excused. Thank you. You may
21 call your next witness.

22 MR. STRICKLER: The defense calls name Nam Viravan.

23 THE BAILIFF: Place your left hand on the Bible,
24 raise your right hand and approach.

25 NAM VIRAVAN, after being duly sworn,

1 testified as follows:

2 THE BAILIFF: Have a seat, and state your full name,
3 and speak into the microphone.

4 MS. McDUFFIE: Your Honor, may we approach?

5 (WHEREUPON, a bench conference was held in the
6 presence but not within the hearing of the jury).

7 THE COURT: Counsel, if I can see you just one
8 moment, please.

9 (WHEREUPON, a bench conference was held in the
10 presence but not within the hearing of the jury).

11 THE COURT: If you would please state your name, and
12 spell your last name, please?

13 THE WITNESS: Nam Viravan, V-I-R-A-V-A-N.

14 THE COURT: Thank you.

15 DIRECT EXAMINATION:

16 BY MR. STRICKLER

17 Q Good afternoon, Ms. Viravan.

18 A Hi.

19 Q My name is Doug Strickler. You reside here in
20 Columbia, ma'am?

21 A Yes.

22 Q And are you working anywhere now?

23 A Yes. I am working retail now.

24 Q In retail?

25 A Uh-huh.

1 Q In December of 1998, by whom were you employed?

2 A With the Department of Social Services with the
3 division of Day Care Licensing.

4 Q And in what capacity did you work, or what was your
5 job?

6 A I was the regional supervisor.

7 Q And in the capacity of your job, did you have
8 occasion to come into contact with Andrea Person?

9 A Yes.

10 Q In 1998?

11 A Yes.

12 Q And let me ask you this -- that's almost 11 years
13 ago -- do you have an independent memory of the events in
14 December of 1998?

15 A Yes.

16 Q You do. Have you had an opportunity to review some
17 records to help you refresh your memory?

18 A Yes.

19 Q Okay. When did you have contact with Mrs. Person?

20 A I went over to her house on December 3rd --

21 Q Okay.

22 A -- after receiving a complaint that a child had died
23 in her home.

24 Q Okay. And at that point in time, did you have an
25 opportunity to speak with Ms. Person?

1 A Yes, I did.

2 Q And did she have an opportunity to convey to you what
3 she had to say about the events of the preceding day?

4 A Yes, she did.

5 Q Okay. Can you tell us, please, and if you need to
6 refer to your notes, please do so. Can you tell us,
7 please, what was conveyed to you by Andrea Person at that
8 point in time?

9 A Mrs. Person indicated to me that the baby was 13
10 months old, and he died of a collapsed left lung and
11 walking pneumonia.

12 She indicated that she gave the baby a bottle of
13 eight-ounce whole milk at eight o'clock -- or wait, I'm
14 sorry 8:30, for eight ounces, and he was still fussy. So
15 she gave him another eight ounces of juice because he
16 appeared to be hungry still.

17 She put the baby down at 9:10 a.m., and about 15
18 minutes later, she indicated she saw the baby in a pool of
19 fluid in the crib that he was sleeping in, and she then
20 called 911 and administered C.P.R. to the baby.

21 Q Okay. Now, Mrs. Person -- and this is
22 December 3rd -- this is 1998, correct?

23 A Correct.

24 Q Okay. And Mrs. Person indicated to you what caused
25 the death. What was the cause of death of the child?

- 1 A She said it was walking pneumonia.
- 2 Q Okay.
- 3 A And a collapsed left lung.
- 4 Q A collapsed left lung?
- 5 A Yes, sir. That's what she said.
- 6 Q Did she indicate to you where she got that
- 7 information herself?
- 8 A She indicated that it was from the coroner and from
- 9 the child's parents.
- 10 Q Okay. And I believe you indicate that she told you
- 11 she had a couple of bottles that morning --
- 12 A Yes, sir.
- 13 Q -- the morning of the 2nd?
- 14 A Yes, sir.
- 15 Q Put him down about 9:10 in the morning?
- 16 A Yes, sir.
- 17 Q Is that right? And found him in a pool of liquid
- 18 about 15 minutes later?
- 19 A Yes, sir.
- 20 Q Okay. He was unconscious, was he not?
- 21 A She indicated that the baby was unconscious, and then
- 22 she -- after calling 911 and administering C.P.R., she
- 23 indicated to me that when she tried to blow the air into
- 24 the baby's mouth, that it would be kind of like a bubbling
- 25 sound, almost like you're blowing bubbles into a straw of

1 milk -- I mean a glass of milk.

2 Q Did she indicate where the bubbling sound was coming
3 from?

4 A From -- as she was blowing air into the child's
5 mouth.

6 Q Coming from the child's lungs?

7 A Yes.

8 Q Okay. Did she indicate whether any fluid would come
9 out or not?

10 A Yes, she did. She said whenever she would blow the
11 air in, the fluids would come out.

12 Q Okay. Did she indicate when she thought E.M.S.
13 arrived?

14 A She indicated the E.M.S. arrived approximately around
15 ten o'clock.

16 Q Okay.

17 A And the baby was taken to Richland Memorial.

18 Q All right. Did you, at that point in time, indicate
19 to Mrs. Person that she needed to do anything?

20 A Yes. I went over to -- when I went to arrive at her
21 house, I also walked around and looked around her house,
22 make sure everything is in compliance with, regulatory
23 wise, with the Day Care Licensing, and also through the
24 layout of the -- her house and indicate where the baby --
25 where the crib was and everything.

1 The deficiencies that I found -- the only
2 deficiencies that I found is that she did not report
3 any -- the regulation states that if there is any child
4 injuries that require medical attention or the death of
5 the child, that the providers are required to notify us in
6 our office, and she failed to do that.

7 Q Okay. So you found -- the deficiency that you found
8 was the day after the incident, she had not yet reported
9 it to D.S.S.; is that correct?

10 A Yes.

11 Q Okay. Did you have any further involvement in this
12 1998 with this situation?

13 A No.

14 MR. STRICKLER: Okay. Thank you very much, ma'am.
15 Answer any questions the prosecutor may have.

16 MS. McDUFFIE: Just briefly, Your Honor.

17 THE COURT: Yes.

18 CROSS-EXAMINATION:

19 BY MS. McDUFFIE

20 Q Ms. Viravan, she did not report this deficiency to
21 D.S.S.?

22 A No, she did not.

23 Q Okay. Do you recall who reported it to D.S.S.?

24 A It was investigator for D.S.S. that contacted me and
25 reported that.

1 Q And you responded to Mrs. Person's home on
2 December 3rd, 1998?

3 A Yes.

4 Q And what did she tell you the baby's cause of death
5 was?

6 A Walking pneumonia, and a collapsed left lung.

7 Q And on December 3rd, 1998, did she tell you that the
8 day the baby died, the baby was sick?

9 A Yes. She did indicate the baby was sick.

10 Q And where is that in your report, Ms. Viravan?

11 A Well, what I had written on there that the baby had
12 the walking pneumonia and all of that, that pretty much
13 kind of indicated there that the baby was sick.

14 Q So she never actually told you the baby was sick?
15 You just assumed that from the cause of death she gave
16 you?

17 A She indicated to me the baby was fussy and had a cold
18 and stuff so....

19 Q And where was that in your report, Ms. Viravan?

20 A I did not document that. It was part of the report
21 there.

22 Q You wrote that where? I'm sorry.

23 A No. I didn't write it anywhere. I just kind of --
24 you know, with me writing that the baby had died from
25 walking pneumonia, that that would be sufficient to

1 indicate the baby was sick.

2 Q So did she actually tell you that, or did you assume
3 it from the cause of death?

4 A I just assumed that from the cause of death.

5 MS. MCDUFFIE: Thank you. No further questions.

6 MR. STRICKLER: Nothing further, Your Honor. Thank
7 you. May she be excused?

8 THE COURT: Any objection?

9 MS. MCDUFFIE: No, Your Honor.

10 THE COURT: You may be excused. Thank you very much.

11 THE BAILIFF: Watch your step.

12 MR. STRICKLER: May we approach, Your Honor?

13 THE COURT: Yes, sir.

14 (WHEREUPON, a bench conference was held in the
15 presence but not within the hearing of the jury).

16 THE COURT: Ladies and gentlemen, we have reached a
17 point where we can take a break and conclude for the
18 evening.

19 I'm going to tell you that because of scheduling,
20 there is an additional witness who is flying in tomorrow
21 morning and will not be able to testify until tomorrow
22 morning. So we have concluded all the other witnesses at
23 this particular point, with the exception of that witness.

24 Because of the time of the flight, that witness comes
25 in, we will not be able to start before 10:30 tomorrow

1 morning.

2 I will tell you, ladies and gentlemen, that based
3 upon my conversations with the attorneys in this case, I
4 fully anticipate that we will be able to conclude all of
5 the testimony tomorrow, go to closing arguments, including
6 my instructions to you on the law, so that you will be in
7 a position to begin your deliberations tomorrow.

8 At what point that occurs, I do not yet know and will
9 not know until we get through things tomorrow, but I would
10 ask that this evening -- that when you go home and as you
11 prepare for tomorrow, that you -- it most likely will be
12 later in the afternoon.

13 I will tell you, as I tell all of the juries that I
14 deal with, that when the case is submitted to you all to
15 begin your deliberations, you can deliberate for as long
16 or as short a period of time as you wish to do so before
17 you decide to take a break.

18 In other words, no matter what time we get started,
19 you all get started with deliberations tomorrow. I will
20 leave it up to you and your foreperson to tell me what
21 time you all wish to break for the evening.

22 So I would ask that you prepare; that you may have to
23 go past five o'clock. How much past five o'clock, I can't
24 tell you. That's up to you all.

25 I understand that there is at least one juror that

1 has some conflicts next week beginning on Monday, and so
2 to the extent that you all wish to take a break tomorrow
3 evening, you have to decide whether or not you wish to
4 return on Saturday, or whether you wish to return on
5 Sunday, or whether you wish to return on Monday.

6 That choice is up to you, but I would appreciate if
7 at some point you all have a discussion about that. And
8 it could be the discussion doesn't take place until after
9 you begin your deliberations, so I'm asking that you not
10 jump to any conclusions about how long or how short it may
11 take to deliberate. You may still have to deliberate in
12 this matter.

13 If you could provide me some information so that I
14 could prepare court personnel to know when that will
15 occur, whether or not you intend to come back on Saturday,
16 or Sunday, or wait until Monday. That will also give you
17 an opportunity to have discussions about conflicts that
18 may exist.

19 I tell you all of this at this particular point,
20 ladies and gentlemen, so that you can determine what would
21 be in your best interest for being able to continue with
22 deliberations in the event that you decide to take a break
23 tomorrow evening at some point and to come back.

24 Of course, there's no requirement that you take a
25 break. You can continue to deliberate as long as you

1 wish. I take my cues from you, because you are the ones
2 that have to make the decision in this case.

3 I need for you all to be comfortable in the decisions
4 and the time that you all spend deliberating this
5 particular matter.

6 I just simply give that information to you for you to
7 consider those things for how things will progress and
8 what your -- your desires may be with continuing past
9 tomorrow.

10 In the interim, I'm going to, of course, remind you
11 all of the instructions that I've given to you previously.
12 They have not changed at all. That is not to begin to
13 discuss this matter among yourselves.

14 You still have not heard all the evidence that has to
15 be presented in this particular case, and I want to make
16 sure that you continue to keep an open mind and listen to
17 all the evidence before you begin to make any decisions.

18 And, of course, until you have heard my instructions
19 to you on the law, you are not in a position to begin any
20 deliberations. So I ask that you not engage in any
21 conversations among yourselves.

22 Also, as you come and go from the courthouse, again,
23 remember not to listen to conversations as you come and
24 go, again for the reasons that I've given to you; that
25 you've got to make decisions based upon the evidence

1 that's been presented here.

2 Please do not allow anyone to approach you to discuss
3 this matter with you.. That would include your family
4 members and friends. Please continue to tell them that I
5 have asked you not to discuss it with them until such
6 point as you have reached a verdict in this particular
7 case.

8 Again, that's so that you would not be influenced by
9 anything that they may have to say or comments they may
10 make to you or discusses you may have about the testimony.

11 I ask that you specifically not discuss any of the
12 testimony or evidence that you have heard. Please also
13 remember not to engage in any independent research or
14 investigation, as I've advised you throughout the course
15 of this trial. That would include any conversations with
16 friends, or others on social networking sites. It
17 includes any investigation on Google, Twitter, My Face --
18 my Facebook, whatever is out there.

19 I ask that you not listen to or read any media
20 reports, not to have conversations with anyone about what
21 they may have seen or they may have heard throughout the
22 course of this trial, or what's reflected in those
23 writings or media reports.

24 Because, again, that's someone else's recitation of
25 what they heard and what they saw, and again, you have to

1 be -- make the decision based upon what you have heard and
2 what you saw throughout the course of this trial and not
3 someone else's recitation of what they've seen or heard.

4 Ladies and gentlemen, I'm going to ask that you
5 report to the jury room at 10:30 tomorrow morning. I will
6 tell you that in all likelihood, I will most lightly order
7 lunch. So those menus will be given to you so that you
8 can place a lunch order. That's in an effort to try to
9 move things along so that we can get to the point where we
10 can begin deliberations -- so you can begin
11 deliberations -- earlier in the afternoon rather than
12 later.

13 I hope that you have a pleasant evening, and we'll
14 see you tomorrow morning at 10:30. Thank you.

15 (WHEREUPON, the jury left open court at approximately
16 4:53 p.m.)

17 THE COURT: Counsel, I think what we discussed at
18 sidebar was to determine whether there were any issues
19 that we -- legal issues that we could resolve at this
20 particular point, and then perhaps speed up our time
21 tomorrow.

22 I understand that the defense has some case citations
23 that will be shared with us relating to the testimony of
24 the witness.

25 I don't know, Mr. Meadors, whether you want to

1 briefly just state on the record what your position is --
2 and then, at least, the initial reasons why you would
3 object. Then we can flush those out tomorrow, because at
4 this point, I think we're all assuming what your objection
5 is going to be.

6 MR. MEADORS: Right. I don't know what the basis of
7 his testimony is going to be, number one; and
8 scientific -- that's not recognized scientifically. I
9 don't know if it was challenged that way in these other
10 cases that I think Ms. Fielding referring to. I guess
11 we'll all review that tonight.

12 Again, it's going to lead to some other issues. You
13 know, what we relied -- if we get that far, if Your Honor
14 even allows it, what he based his opinion on. There's
15 some other issues, I guess.

16 But I feel we will have to go over it before he gets
17 up. I certainly would like to. I don't want anything to
18 happen at this stage of the trial, but I mean, it might be
19 good if they could proffer it now, let us think about it,
20 and then read the cases. Then that might make us -- help
21 us all think about it tonight.

22 MS. PRINGLE: Your Honor, may it please the Court.

23 If I understand Mr. Meadors' objection, it is to the
24 scientific basis for false confession type testimony.

25 The individual that we're all discussing, of course,

1 is Dr. Saul, S-A-U-L, Kassin, K-A-S-S-I-N, who will be
2 testifying tomorrow. He is a well-known, nationally
3 renown, expert psychologist in the area of, among other
4 things, false confessions.

5 Your Honor, this is social science type testimony.
6 Our courts have found that social science testimony is not
7 subject to the analysis of Jones -- State vs. Jones, and
8 State vs. Council.

9 As you and opposing counsel are well aware, we do not
10 adhere to the Daubert standard but rather the
11 interpretation of that, I guess, would be the best way to
12 put it that has been articulated in State vs. Jones, and
13 State vs. Council, C-O-U-N-C-I-L.

14 In State vs. Whaley, Your Honor, 406 S.E.2d 369
15 (1991) -- that's Whaley, W-H-A-L-E-Y. In that case,
16 specifically at issue, a professor of psychology was
17 testifying, and our Court held specifically, "Social
18 science is distinguishable from scientific evidence, such
19 as D.N.A. test results, and blood spatter interpretation,
20 and bite mark comparisons.

21 "An eyewitness identification gives ex--- witness
22 gives expert opinion as those given by doctors or
23 psychiatrists where the witness is a qualified
24 psychologist who simply explains how certain aspects of
25 every day experience shall know the record, can affect

1 human perception and memory, and through them, the
2 accuracy of eyewitness identification can see no greater
3 foundation.

4 Again, that's specifically taking up the issue of
5 whether or not such testimony is subject to Jones,
6 Council, scientific standard.

7 I would further note, Your Honor, that in State vs.
8 Schumpert, and I believe it's S-C-H-U-M-P-E-R-T, 435 S.E.
9 2d, 859 in 1993. The issue of Rape Trauma Syndrome was
10 taken up in that case. Same thing, Your Honor, social
11 science.

12 State vs. Hill, which I think is really when this
13 first started coming about, dealt with Battered Women's
14 Syndrome, and that was in 1986, and that type of testimony
15 was admitted.

16 Your Honor, I would also note specifically that
17 Dr. Kassin's testimony has been offered in South Carolina
18 on more than one occasion.

19 There are two reported cases specifically in which he
20 testified and in which he testified extensively. I
21 actually have a transcript from one of them, State vs.
22 Cope, opinion number 4526. That one just came out. I
23 think that's Court of Appeals, April 2nd, 2009.

24 Secondly, State vs. Myers, Dr. Kassin testified
25 extensively. 596 S.E.2d 488 in the year 2004.

1 It would be my position that there's no question that
2 this is admissible. It is the sole issue in this case.
3 Mrs. Person has testified that she said things that were
4 not true in order to escape an interrogation. That is the
5 single issue in this case.

6 I think we would be per se useless as her counsel
7 were we not to present this testimony. I think it has to
8 go up.

9 MR. MEADORS: Your Honor, obviously, we are familiar
10 with all of those. We weren't involved in the
11 admissibility of those other cases. We'll read those.

12 Judge, one of the bigger issues is -- not bigger
13 issue, but is he going to testify just generally about
14 false confessions, or is he going to relate it to this
15 specific case? And if so, that brings up the extra issues
16 that I think we need to discuss, if get to -- Your Honor
17 decides to get there in the morning.

18 MS. PRINGLE: He is prepared to testify to both
19 specifically with regard to his opinion as to the risk
20 factors that he assessed and sees in this case.

21 We have discussed this. We are going to discuss it
22 again tonight. I may not have him do that. He is
23 prepared to do that.

24 Given how far we've gotten in this case and how this
25 issue opening the door keeps coming up, I think that

1 Mr. Strickler and I need to revisit our thinking on that
2 and consider whether or not to just put him up to
3 generally speak about that kind of body of science, but I
4 would like to have him go into the risk factors present in
5 this case.

6 I am wary and will proceed with caution, and I just
7 can't tell you right now. We're going to have to talk
8 about that again tonight.

9 MR. MEADORS: Thank you.

10 THE COURT: Regarding requests to charge, I have
11 received a request to charge -- I think there have been
12 three of them I have received from the defense.

13 I have not received any from the State. There were
14 three request to charges from the defense. One is
15 unlawful conduct towards a child, which is now codified at
16 63-5-70, previously section 20-7-50.

17 I've also received a request to charge for
18 involuntary manslaughter, and then there is -- the first
19 request to charge is relating to the circumstances
20 surrounding the giving of the confession.

21 I'm sure that the defense has shared those with you,
22 and we can talk about them at some particular point. I
23 just didn't -- I've heard through the grapevine that there
24 is an objection to the request to charge regarding the
25 confession. I have not heard anything with regard to the

1 voluntary manslaughter or the unlawful conduct towards a
2 child charge.

3 MR. MEADORS: Your Honor, we definitely have an
4 objection to the -- their request to charge number one.
5 We can argue tomorrow, but clearly, it's a charge on the
6 facts.

7 We would just like Your Honor's voluntariness charge,
8 which is -- I mean, that's the law. I think this goes
9 into -- he's trying to get a charge on that, respectfully.

10 THE COURT: And I haven't -- I haven't read it.

11 MR. MEADORS: Okay.

12 THE COURT: But I just -- I just wanted to at least
13 talk about what was out there.

14 MR. MEADORS: Yes, ma'am.

15 The other -- as far as the involuntary, I just don't
16 think it's a lesser included. I guess that would be our
17 argument.

18 THE COURT: Any specific request to charge that the
19 State wants considered?

20 MR. MEADORS: Your Honor, your -- your standard
21 charges -- I don't know if you -- just the obvious ones we
22 think and Your Honor knows. I mean, clearly beyond a
23 reasonable doubt, experts, the voluntariness.

24 THE COURT: And I do charge Victor vs. Nebraska.

25 MR. MEADORS: Victor vs. Nebraska.

1 THE COURT: The reasonable doubt charge.

2 MR. MEADORS: Circumstantial evidence, clearly, we
3 would ask for.

4 THE COURT: All right. Anything else?

5 MR. MEADORS: As far as the number three, can we
6 think about that overnight, Your Honor?

7 THE COURT: The unlawful conduct towards a child?

8 MR. MEADORS: Yes, ma'am.

9 THE COURT: I believe that was discussed at some
10 point before the trial began.

11 MR. MEADORS: It was. And we may -- we just -- the
12 Solicitor, we could just talk tonight and just first thing
13 in the morning, please.

14 THE COURT: Yes, ma'am.

15 MS. PRINGLE: I have an argument regarding why I
16 think involuntary ought to be charged.

17 THE COURT: You can briefly say it, and then we can
18 discuss it in the courtroom tomorrow.

19 MS. PRINGLE: Yeah, I think that post Gentry,
20 everyone is familiar with State vs. Gentry. State vs.
21 Gentry held that indictments are simply notice documents.
22 They are no longer deemed to confer subject matter
23 jurisdiction.

24 Therefore, Your Honor, it would be our position that
25 it is appropriate post Gentry to charge whatever the facts

1 support in a case, and that the Court is not only not
2 restricted to lesser includeds but ought to charge any
3 offense which meets the facts that have been presented at
4 trial.

5 This issue, Your Honor, is, I believe, currently on
6 appeal. There are some cases where this has been raised,
7 but this is I think a new -- I think we're in a new era
8 post Gentry.

9 We would be entitled, it is our position, to a charge
10 on involuntary for that reason, and also because if the
11 jury believes only her statement, then I think that's
12 involuntary. I think it fits the elements of involuntary,
13 so we would -- that's our position.

14 THE COURT: All right. With that then, let's come
15 back together tomorrow morning at, say, 9:30 and see if we
16 can discuss all of those issues.

17 MR. MEADORS: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MS. PRINGLE: Thank you.

20 (There was an overnight recess).

21 MR. MEADORS: Good morning, Your Honor.

22 THE COURT: I believe what we are supposed to take up
23 this morning is information relating to the testimony of
24 Dr. Saul Kassin, is it, K-A-S-S-I-N?

25 (Ms. Pringle nods in the affirmative).

1 THE COURT: Let me just start off by saying I have
2 read the cases that were submitted by the defense
3 yesterday, and my initial -- I'll be happy to hear from
4 everybody. My initial impression is that under State vs.
5 White, which is 382 S.C. 265; 676 S.E.2d 684, April of
6 2009.

7 (There was an equipment malfunction).

8 THE COURT REPORTER: One moment, please. There is a
9 malfunction.

10 (Pause).

11 THE COURT REPORTER: Okay. It picked up where we
12 left off. It looks like it's going now.

13 THE COURT: Pursuant to State vs. White, a 2009 case,
14 that case indicates that even nonscientific expert
15 testimony must meet the requirements under Rule 702,
16 including factors that would be similar in nature to the
17 Jones requirement, but certainly the requirements under
18 State vs. Council that still apply, and that the Court
19 must conduct a gatekeeping function to determine whether
20 or not the evidence -- the testimony sought is admissible
21 under 702.

22 So with -- with that, I guess background, I'll be
23 happy to hear from the attorneys. I understand that the
24 testimony of Dr. Kassin has been admitted in other cases,
25 and -- but I still think that there has to be some

1 foundation for this Court to admit his testimony.

2 I'll have from the State first since the State wants
3 to...

4 MR. MEADORS: Your Honor.

5 THE COURT: I'm sorry, the defense.

6 MS. PRINGLE: Your Honor, I actually tried to pull up
7 the Jones factors as you're speaking, so I may wish to
8 expand my argument in a moment.

9 I'll be happy to offer Dr. Kassin when he gets here.
10 He is the expert on this. He has testified all over the
11 country, and I think he would be the one to offer the most
12 valuable information the Court making this assessment.

13 I will tell you that I was reviewing an article last
14 night. As of 2005, an informal review by him noted -- and
15 this was in '05, that false confession testimony had been
16 admitted in at least 335 federal and military courts in 36
17 different states.

18 The -- I can read for the Court as far as peer
19 review. I did -- perhaps I should hand up some articles
20 on the issue of false confessions and name for you the
21 journals in which articles on this issue have been
22 published.

23 It's been -- it's a study and a science that's been
24 going on, really, since a century ago, but really began to
25 become very well organized and proven in the 1980s and

1 once the D.N.A. conglomeration started to take place.
2 That's when the actual empirical studies really began to
3 be undertaken.

4 There is a White Paper that I have, Your Honor, that
5 may be useful. It was adopted by the American
6 Psychological Association in 2009. It's a proclamation by
7 the American psychological association about false
8 police-induced confessions, risk factors and
9 recommendations. That's -- that's a policy paper by the
10 American Psychological Association.

11 I can, like I said, hand that up. That was actually
12 published in -- on July 15th, 2009, but that is a formal
13 document, a formal White Paper that has been issued that
14 compiles with all of this information, all of these
15 studies, and I'll be happy to hand that up, if that would
16 assist the Court.

17 When he gets here, I'll be happy to put him up and
18 have a hearing on it.

19 (Pause).

20 And Mr. Strickler asked me to add that what a White
21 Paper is, apparently, is it reflects the position of the
22 American Psychological Association. So that is actually
23 adopted by the A.P.A. and issued by them.

24 These studies and articles have been published and
25 reviewed in numerous law review articles, numerous medical

1 journals, numerous law journals. I just -- I can go on as
2 long as you need to me on that, Your Honor.

3 MR. MEADORS: Judge, we agree with Your Honor.
4 Obviously, we found this case, didn't have it in front of
5 me, but we were thinking about it because it came from
6 this county, State vs. White.

7 Clearly, in this case, Justice Kittredge -- as Your
8 Honor knows, it's kind of -- it's just really a legal
9 concept. You're the gatekeeper from there to there.

10 I think we have to wait until Dr. Kassin gets here to
11 have a hearing. She said the word "science" in there.
12 It's because science, also nonscience, but that's even
13 more so. Maybe even more clearly we need to have a
14 hearing.

15 I don't know of any empirical studies, and I -- most
16 all of the night last night, and the last day, until he
17 gets here, I've been reading his prior transcripts.

18 We're prepared to ask him about empirical studies,
19 and most of this is anecdotal individual cases, which was
20 kept -- which was kept out in coat, and we hope if Your
21 Honor even allows the testimony, that clearly, he won't be
22 going into individual cases, because it can't be for
23 scientific -- it can't be reliable, excuse me. That is
24 the word. I'm prepared to argue ad nauseam at the
25 appropriate time.

1 THE COURT: What I -- from what I have read,
2 generally the overall -- it's a social science, social
3 psychology, in -- in my review. In my readings, the basic
4 background and information to the methods and the theories
5 have generally been admissible in courts, including in
6 South Carolina.

7 The question becomes whether or not specific studies
8 or specific examples can be testified to or used, and I
9 think that's what Cope addresses, as well as Myers,
10 whether there's -- there's specific instances.

11 Generally, his -- his testimony was allowed into the
12 general principles. And apparently, across the country,
13 there have been over -- what is it, 135 cases that have
14 dealt with the issue of false confessions in state courts,
15 and there's been quite a bit of discussion.

16 Some that I just sampled also indicate that the basic
17 general nature and overall background relating to the
18 science or the studies on a false confessions has been
19 admitted in courts, but what -- where they stopped appears
20 to be specific instances.

21 MR. MEADORS: Judge, also, if I'm wrong, and I'll
22 have this ready by the time he gets here, I think in one
23 of the cases in South Carolina -- and again, if I'm wrong,
24 I apologize -- I'm going to fight him being accepted as an
25 expert if Your Honor is allowing him to testify.

1 Just I think in one case he testified as a social --
2 as psychologist, and I'm going to try to find that record
3 for Your Honor, not as an expert, but again, I'll have
4 that. And we can talk about that when he's called.

5 THE COURT: And you understand that under -- I'm sure
6 you all understand that under State v. Council and State
7 vs. Jones, I have to determine, first, whether the
8 evidence will assist the trier of fact. Then I have to
9 determine whether he's qualified to testify as an expert.
10 Then I have to determine whether the underlying scientific
11 nature of the testimony is reliable, and it's the third
12 point at which we're talking about all of the other Jones
13 factors.

14 MR. MEADORS: Yes, ma'am.

15 THE COURT: Jones and Council factors, and then once
16 I get to whether it's admissible or not, then there are
17 other matters I'll have to consider, as well.

18 MR. MEADORS: Thank you.

19 THE COURT: The only question I have is in light of
20 all this, I've got the jury coming at 10:30. Obviously,
21 we're not going to get them in here at 10:30, if
22 Dr. Kassin is not arriving until 10:30.

23 So I guess I'm just trying to figure out, I would --
24 I think it may take long enough that I may need to send
25 the jury away, but I just need a little bit of guidance on

1 how long you at least anticipate at least going through
2 some of that information. Because obviously, if I decide
3 it's admissible, then I'm sure that we'll hear the same
4 thing over again, to a large degree, going to the weight
5 of his opinion for the jury purposes once his testimony
6 comes in.

7 MR. MEADORS: Judge, I think to save time now, we can
8 talk about -- if Your Honor, allows it. We hope you don't
9 but if you to do -- then there's still the question, and
10 it's going to be just general and not case specific.

11 And then if it's going to be general, reading through
12 all of these documents, one of the factors he testifies
13 and talks about is the duration of the confession, and
14 that has been a continuing problem in here.

15 I'll kind of be fair to the State, because on
16 April 17th, she arrives to the polygraph room at 1:05.
17 After she signs the consent, both the waiver and polygraph
18 consent and the consent to -- the Miranda rights, that's
19 at 1:15. Then from 1:15 until 2:28, she is dealing with
20 another matter, not this case at all. So that's an hour
21 plus there that --

22 THE COURT: Does that include the second polygraph?

23 MR. MEADORS: No, ma'am. That's where --

24 THE COURT: Because as I recall the testimony, he
25 polygraphed her twice.

1 MR. MEADORS: I'm talking and the first polygraph.
2 You have the advice of rights, then the first polygraph.
3 So you have a time between 1:15 until roughly three --
4 13:53, which would be -- excuse me, 14:02:02, which he is
5 dealing with another matter.

6 Beg the Court's indulgence.

7 (Pause).

8 Your Honor, the polygraph involving Zachary
9 Ulungchong begins at 2:28. So from 1:15 to 2:28, I think
10 as I originally said, that's dealing with another matter.

11 So if there's an -- one of his arguments or points is
12 the length of duration, and you get basically broke down.
13 Those are the words he used. Obviously, we're not even
14 dealing with in case, so we wouldn't want him to be -- or
15 then ask that this is the length of duration.

16 There really was just one "no" to that polygraph
17 question, which she then confessed. So I don't know if
18 we'll get to that. I don't know what they're trying to
19 do, if they're going to use that, but that's a problem
20 that maybe we have to say he was talking to Ms. Person
21 about that other matter that first hour or so.

22 I don't know, but we just don't want that time that
23 you weren't dealing with this case, which we can't comment
24 on, to be used against the State.

25 MS. PRINGLE: How about I just say what I'm going to

1 do, and then I think we can shortcut a lot of this.

2 THE COURT: That's be nice.

3 MR. MEADORS: We've been waiting for that. I'd love
4 that.

5 MS. PRINGLE: I've put a lot of thought into this,
6 obviously, over the last week, and sitting through the
7 trial and the issues that have arisen, the complications
8 that have arisen, I understand their position. We have a
9 completely different position with respect to the
10 timeframe. I do think that we will want to take that up
11 again at the time of closing.

12 It's our position that when they brought her down
13 there, it was to interrogate her, to question her. The
14 interrogation process began when she got into that room
15 and signed that Miranda form, but that is separate and
16 aside from Dr. Kassin's testimony.

17 I think in the interest of proceeding in the most
18 prudent and cautious manner, unless they go into it, I'm
19 not going to go into specifics of this case.

20 I've spoken with them at length since last night and
21 this morning about how to do this, about how to keep it
22 general.

23 I think for me to do that, I have to go through all,
24 for example, of the categories of false confessions and
25 not just focus on the one that is applicable here but keep

1 his testimony general.

2 He is prepared to testify. He does have an opinion
3 as to the risk factors present in this case. Frankly, I
4 just don't want to risk -- risk that at this point. If
5 they want to, and they want to cross him on it, then I'm
6 going to go into it completely.

7 But I am willing to put him up as -- generically, to
8 educate the jurors, essentially, that this happens. This
9 is -- false confessions happen; here is how we know they
10 happen; here are the different type of confessions; here
11 are the things that contribute to them.

12 I'm not going to have him focus on just what took
13 place in this setting or what our argument is took place
14 in this setting.

15 I'm not -- if they want to cross him on, you know,
16 time lines and what his science shows, the time -- you
17 know, the interrogation should take longer, then I think
18 that's for them to decide. Then, you know, we can argue
19 about timelines later.

20 But I -- my plan is, unless they're going to go into
21 it, and I'd ask they tell me that now is to stay away from
22 the risk factors, to stay away from her case particularly.

23 Obviously, from all of the materials he looked at
24 involve everything, everything. And we worked it down to
25 just the Zachary Ulenchong, because it is pretty

1 chronological.

2 But in the interest of proceeding cautiously, I think
3 that is the best approach to take. It will shorten this
4 testimony up some, and it will get the point across that
5 we think has to be gotten across to them.

6 MR. MEADORS: Judge, we're kind of getting boxed in
7 there if she wants to be general. There's an
8 hour-and-23-minutes that won't even deal with this case.

9 So if she's going to be general, and I think his
10 testimony will be that of all the cases he studied, most
11 of them are not over four hours. If they're around a
12 two-hour period or less, it's a little bit more credible,
13 so to speak. I'm kind of paraphrasing.

14 If you take away that hour-and-a-half that we won't
15 even deal with this case that we can't even mention, you
16 get us down in that timeframe, Judge.

17 I don't want them to argue later on they had her down
18 here for three-and-a-half hours on something that we can't
19 mention to the jury that we're dealing with. I mean,
20 that's kind of boxing us in to an extent, and if they're
21 not going to be specific, I don't think it's relevant.
22 That's just another argument for later.

23 We have to be able to explain that
24 hour-and-23-minutes, I think, in fairness to the law
25 enforcement and victims. They weren't down there working

1 on her about the Zachary Ulenchong case. They were
2 talking about another baby that had died in her day care.
3 And one of his -- well, I'll save that for cross.

4 And, Your Honor, under 403, we'd argue it's more
5 prejudicial than probative to the State.

6 THE COURT: Well, we have to get through a whole lot
7 of hoops before we get to that point.

8 MR. MEADORS: Yes, ma'am.

9 (Pause).

10 THE COURT: That still doesn't give me any idea as to
11 what do you think it will take, half hour, 45 minutes,
12 hour, hour-and-a-half, two hours? I understand you can't
13 be specific. I'm just looking for a general timeframe.

14 MS. PRINGLE: His C.V. is 23 pages long, so if I'm
15 going to go through, I'm going to qualify him. I'm going
16 to go through all of these things, and I think hours. I
17 think hours, I think.

18 I'll do my best as far as establishing the foundation
19 for it under the Jones factors to keep it shorter than his
20 testimony would be to the jury, but if this is a
21 contentious -- if there's any question as to whether or
22 not his testimony is going to come in at all, then I've
23 got a -- you know, I've got to make a very thorough good
24 record on that. So I think we're looking at hours.

25 MR. MEADORS: Your Honor, I think Justice Kittredge,

1 in his opinion envisioned that; envisioned a hearing,
2 "This is what you're supposed to do." I don't know what
3 type of hearing actually discusses it. I think you're
4 supposed to determine the reliability. I don't think we
5 have any choice.

6 THE COURT: And the only thing I'm going to say on
7 this is y'all could have told me at the beginning of the
8 week it was going to be an issue, so I could have prepared
9 appropriately to be able to take up things and address
10 them. I --

11 MR. MEADORS: She just said for the first time what
12 she was going to do.

13 THE COURT: I'm talking about the fact that it was
14 known that he was going to testify, and I think -- I think
15 that if -- I should have been given some indication that
16 there were going to be some issues about his testimony
17 before yesterday because I could have done some additional
18 planning for purposes of this case, and that's all I'm
19 saying on it.

20 MR. MEADORS: Your Honor, for the record, we didn't
21 get a list until Monday, and they told us Dr. Kessler was
22 going to testify, this doctor was going to testify.

23 I mean, I just assumed that we'd have to have a
24 hearing, Judge. I mean, I thought that everybody -- so we
25 didn't get the list until Monday.

1 We were told Kessler was going to testify. This
2 doctor was going to testify.

3 THE COURT: As I stated, I'm just making a notation
4 that it could have been discussed before yesterday so that
5 we could have planned appropriately. We'll just take a
6 recess until he comes.

7 (WHEREUPON, a short break was taken.)

8 MR. MEADORS: Your Honor, could I say one thing that
9 may save a whole bunch of time? We're not contesting that
10 this man -- I don't even know if he's in here -- knows a
11 lot about the subject matter. That's not an issue.

12 The issue is whether the subject matter is reliable.
13 I don't know if that helps speeds up the process.

14 THE COURT: Too late now.

15 MR. MEADORS: Actually, it's not. She just shook her
16 head that it might.

17 THE COURT: I talked up to the jury this morning. I
18 told them that there were some legal issues that we had to
19 take up outside of their presence, but I couldn't tell
20 them how long it was going to take us; that I wasn't aware
21 of the extent of the issues until this morning; that I
22 would be asking them to leave and to come back.

23 I also asked them -- specifically, for them to
24 discuss among themselves whether they want to stay this
25 evening or -- or come back tomorrow or come back on

1 Monday.

2 They asked me questions. I told them that I didn't
3 really think I would be able to get it to them today, and
4 they -- the question was asked if we -- if we could get it
5 to them today, about what time would that be.

6 I told them I didn't anticipate that the earliest
7 they would get it is would be six, seven o'clock this
8 evening if, if, at that particular point.

9 I told them to discuss it and to send me a note about
10 it, and what they said was -- and I think part of the
11 consideration is that on Monday, there will be two jurors
12 who have -- who would not be available, so we would have
13 to seat the alternate, alternates, in their place.

14 They wrote me a note that said, "We would like to
15 stay late tonight and finish. We would also like to be
16 able to move" their "cars from the garage to in front of
17 the courthouse," and they wanted an escort, and they also
18 wanted to take shorter breaks, if appropriate.

19 I excused them and told them not to report back until
20 2:30, and so I'm informing you that's currently where we
21 are.

22 Are we ready to proceed?

23 MS. PRINGLE: Ready, Your Honor.

24 THE COURT: Call your witness.

25 MS. PRINGLE: The defense calls Dr. Saul Kassin.