

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JULIA GORMAN,

APPELLANT

Appellate Case No. 2011-203707

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

Attorneys for Respondent

INDEX

INDEX	i
HEARING TRANSCRIPT DATED MAY 26, 2011	1
MOTION TO AMEND ORDER ON POLYGRAPH.....	2
RULING OF COURT	6
HEARING TRANSCRIPT DATED OCTOBER 31, 2011	11
MOTION TO AMEND INDICTMENT BY STATE	12
<u>JACKSON V. DENNO</u> HEARING.....	21
TESTIMONY	
TIMOTHY TROXELL (In camera)	
Direct Examination by Ms. Lively	22
Cross Examination by Mr. Galmore	74
ARGUMENT BY MR. GALMORE	167
RULING BY THE COURT	168
TRIAL TRANSCRIPT DATED NOVEMBER 14-18, 2011	170
TESTIMONY	
RICHARD GRIMES	
Direct Examination by Ms. Lively	171
Cross Examination by Ms. Grabert-Lowenstein.....	197
Cross Examination by Mr. Galmore	207
Redirect Examination by Ms. Lively	223
Recross Examination by Ms. Grabert-Lowenstein	224
CESALEE CARNAGHIE	
Direct Examination by Ms. Lively	227
Cross Examination by Ms. Grabert-Lowenstein.....	274
Cross Examination by Mr. Galmore	291
Redirect Examination by Ms. Lively	309
Recross Examination by Ms. Grabert-Lowenstein	309
Recross Examination by Mr. Galmore.....	310

DR. JODY HUTSON	
Direct Examination by Ms. Lively	312
MARTHA G. CARMICHAEL	
Direct Examination by Ms. Lively	326
Cross Examination by Mr. Galmore	328
LIEUTENANT TIMOTHY RUSSELL RAINBOLT	
Direct Examination by Ms. Lively	330
Cross Examination by Ms. Grabert-Lowenstein	338
Cross Examination by Mr. Galmore	339
Recross Examination by Ms. Grabert-Lowenstein	347
ERICA LEE ROSENTHAL	
Direct Examination by Ms. Cote	348
Cross Examination by Ms. Grabert-Lowenstein	355
Cross Examination by Mr. Galmore	356
DR. JOHN CACACE	
Direct Examination by Ms. Cote	359
Cross Examination by Ms. Grabert-Lowenstein	382
Cross Examination by Mr. Galmore	387
Redirect Examination by Ms. Cote	389
DR. DONNA RAY ROBERTS	
Direct Examination by Ms. Lively	392
Cross Examination by Ms. Grabert-Lowenstein	416
Cross Examination by Mr. Galmore	420
Recross Examination by Ms. Grabert-Lowenstein	427
DR. CYNTHIA SCHANDL	
Direct Examination by Ms. Lively	431
Cross Examination by Ms. Grabert-Lowenstein	464
Cross Examination by Mr. Galmore	466
Redirect Examination by Ms. Lively	470
DR. ANN ABEL	
Direct Examination by Ms. Lively	478
Cross Examination by Ms. Grabert-Lowenstein	512
Cross Examination by Mr. Galmore	516
Redirect Examination by Ms. Lively	529
Recross Examination by Ms. Grabert-Lowenstein	532
Recross Examination by Mr. Galmore	536
MARSHA REGINA BESSANT	
Direct Examination by Ms. Lively	538
Cross Examination by Ms. Grabert-Lowenstein	549

YVETTE BROWN

Direct Examination by Ms. Lively	550
Cross Examination by Ms. Grabert-Lowenstein.....	563
Cross Examination by Mr. Galmore	564

DETECTIVE TIMOTHY TROXELL

Direct Examination by Ms. Lively	575
Cross Examination by Ms. Grabert-Lowenstein.....	739
Cross Examination by Mr. Galmore	748

MOTION FOR A DIRECTED VERDICT.....	768

RULING BY THE COURT	775

TESTIMONY CONTINUED

JULIE S. GORMAN

Direct Examination by Mr. Galmore	776
Cross Examination by Ms. Lively.....	835
Cross Examination by Ms. Grabert-Lowenstein.....	860
Redirect Examination by Mr. Galmore.....	871

RENEWAL OF MOTION FOR A DIRECTED VERDICT	873

RULING BY THE COURT	874

VERDICT	875

MOTION FOR NEW TRIAL AND ADDRESS OF JUDGMENT	877

RULING BY THE COURT	882

SENTENCING	886

STATE'S EXHIBIT #67 (ADVISEMENT OF RIGHTS).....	887

INDICTMENTS AND SENTENCING SHEETS.....	888

CERTIFICATE OF COUNSEL.....	897

THE FOLLOWING EXHIBITS IS ON FILE WITH THIS COURT:

STATE'S EXHIBITS #64(CD-PALMER STATEMENT), #65 (CD-GORMAN
STATEMENT),

State of South Carolina
County of Horry

In The Court of General Sessions

State of South Carolina,)
)
)
vs.)
)
Julia S. Gorman,)
)
)
Defendant.)

08-GS-26-3756/08-GS-26-0841
10-GS-26-0041/10-GS-26-2194

TRANSCRIPT OF HEARING

State of South Carolina,)
)
)
vs.)
)
Robert A. Palmer,)
)
)
Defendant.)

10-GS-26-2195/10-GS-26-2196
08-GS-26-04120

May 26, 2011
Conway, South Carolina

Before:

The Honorable, Larry B. Hyman, Judge

Appearances:

By: Candice A. Lively, Esq.
Attorney For State

BY: Carla F. Grabert-Lowenstein, Esq.
Attorney For Robert A. Palmer

BY: James C. Galmore
Attorney For Julia S. Gorman

BRENDA R. BABB
Circuit Court Reporter

Motion to Amend Order on Polygraph

3

1 Ms. Lively: This afternoon is the motion that
2 the State filed to amend the order on a polygraph motion
3 that was signed by Your Honor regarding State v. Robert
4 Andrew Palmer.

5 The Court: I've read your motion.

6 Ms. Lively: Yes, sir, and basically what it is
7 is whenever we were working through preparing the orders as
8 you recall you asked both the defense as well as myself to
9 provide one. I actually had the pleasure, and I was lucky
10 enough to have Erin Bailey assist me with doing the order
11 because I had worked on the actual hearing that took, as
12 you know, over two days. So what I did was whenever we
13 were going back and forth, myself and Ms. Bailey, and
14 actually drafting the order one of the things that I did
15 not look into in detail was the facts and procedural
16 history only because I had cut and paste from an email I
17 had used in dealing with an expert witness that I was
18 trying to get an opinion from. I gave that to Erin for
19 reference for the procedural history.

20 There was a sentence that was left in there.
21 That sentence was that the State's theory of the case was
22 that defendant Palmer had inflicted the fatal blow to the
23 child. That sentence came from me trying to talk to my
24 expert witness about why I was considering charging the
25 defendant around the time that we revoked the proffer. The

Motion to Amend Order on Polygraph

4

1 bottom line, Your Honor, that sentence was left in there
2 inadvertently. It does not change any notice to either one
3 of the defendants. They've both been served with the
4 indictments.

5 The Court: It wasn't a finding in any way?

6 Ms. Lively: It was not a finding, it was just
7 the history of the case, has absolutely nothing to do with
8 it. Your Honor actually signed the order. The issue on
9 the order was a collateral issue, it dealt with the
10 polygraph, doesn't even deal with necessarily the evidence
11 regarding the medical injuries to the child, so I'm just
12 asking the Court to allow me to take it out.

13 The Court: The theory has nothing to do with my
14 order, but let me hear from Mr. Galmore.

15 Ms. Lively: Yes, sir.

16 The Court: I'm sure he's going to tell me
17 something then I'll get the straight scoop from Ms.
18 Lowenstein.

19 Mr. Galmore: Well, Your Honor, I feel that the
20 Court should not permit the State to change the language in
21 the order. This order is a valid court order. The initial
22 hearing was in January. This order is clocked in April.
23 That's more than ninety days. If there was some type of
24 mistake in this order and the order was reviewed by, by
25 both Ms. Lively and Ms. Bailey any mistake should have been

Motion to Amend Order on Polygraph

5

1 caught long before then. This order was filed with the
2 Clerk's office, it is a public document. It is a public
3 record, it is open to the media, it's open to the press.
4 It's open to anyone in this courthouse, anyone in this
5 county to go take a look at, but the problem is the reason
6 why it shouldn't be changed is because it's the law of the
7 case.

8 The Court: No, it's not. Is it the law of the
9 case?

10 Mr. Galmore: Well it's a valid order from
11 April.

12 The Court: Is it a finding by me?

13 Mr. Galmore: It's a valid order from April,
14 April 4th, we're here May 26th, that's more than a month
15 has passed. This order has not been appealed by any party,
16 specifically Mr. Palmer has not appealed the ruling by the
17 Court, so it is in fact the law of the case in my humble
18 opinion.

19 I know the Solicitor is saying that this is some
20 type of side issue but it's not a side issue to me, Your
21 Honor. The State has not put forth any reason why this
22 order should be amended. They put forth how the mistake
23 happened, but that's different than saying here's the
24 reason why it needs to be corrected.

25 The Court: Mr. -- Counsel, Mr. Galmore, I mean

Motion to Amend Order on Polygraph

6

1 do you believe that the State would be unable to change its
2 theory about the trial of the case?

3 Mr. Galmore: Well, just to go back ---

4 The Court: They can do it any time.

5 Mr. Galmore: To go back a little bit we're very
6 confused about the State's theory of the case. We just got
7 an order for expert fees for a defense pathologist, that's
8 just today and we appreciate that, but just to give you an
9 idea of how all of this became a problem Mr. Rittner and I
10 went down to Charleston and spoke with the State's
11 pathologist, Dr. Schandl. While we were interviewing Dr.
12 Shandl she's explaining all about shaking baby and
13 fortECIAL??? hemorrhaging and all of that and we asked a
14 few questions. She literally changes her medical opinion
15 right there at the table with us.

16 She calls Solicitor Lively, I guess she tells her
17 well I'm not sure if this is shaken baby case any longer,
18 so we are confused about what the State's theory is. We're
19 very confused about what evidence the State intends to put
20 forward to show that my client committed any crime at all.
21 I would ask the Court to inquire of the State what evidence
22 are they planning to put forth that says that Julia Gorman
23 inflicted this blow given the fact that we have a court
24 order written by Ms. Lively that says Robert Palmer
25 inflicted this blow.

Motion to Amend Order on Polygraph

7

1 The Court: Ms. Grabert-Lowenstein?

2 Ms. Grabert-Lowenstein: Your Honor, I would
3 probably for obvious reasons have no objections to the
4 change. I will, however, echo counsel's confusion as to
5 the theory of the case given the fact that we went months
6 under a proffer, my client passed a polygraph, and then all
7 of a sudden that as part of that proffer that proffer was
8 pulled and all of a sudden there was a new theory of the
9 case. I, too, would like to hear some facts as to why they
10 would think that my client would be liable for the death of
11 this infant, but I don't, because I'm in a different
12 position, I don't have objection to the change, but I, I do
13 echo Mr. Galmore's confusion and his request for some
14 statement so that, you know, we know why they're proceeding
15 against either one of these individuals.

16 The Court: Well, what are you entitled to?

17 Mr. Galmore: We're entitled to notice of what
18 we're supposed to defend against.

19 The Court: Well that's what in your indictment.

20 Mr. Galmore: Well I have a court order that
21 says Mr. Palmer inflicted the fatal blow.

22 The Court: Well not any more, I just changed
23 it.

24 Ms. Lively: Which was a scrivener's --

25 Mr. Galmore: That's not a scrivener's error,

Motion to Amend Order on Polygraph

8

1 Your Honor.

2 The Court: I understand but I just changed it.

3 Mr. Galmore: I understand.

4 The Court: I don't think that has anything to
5 do with the issue addressed in the order, it's just setting
6 out facts. I'm going to allow that, I don't think it even
7 needs to be amended but I'm going to allow it to be
8 amended. Apparently you folks think it does have a some
9 importance and in that regard I'm helping you by letting
10 you know that that's not their theory, they've got another
11 theory.

12 Mr. Galmore: I would like to know what their
13 theory is.

14 The Court: Well are you prepared to tell them,
15 Ms. Lively, what is your theory, shaken baby, somebody did
16 it?

17 Ms. Lively: It's pretty much in the
18 indictments. Your Honor, and I'm not trying to be smart,
19 this is the thing. He's exactly right, Mr. Galmore, in
20 that we met with the pathologist in Charleston. I met
21 right around the same time he did. That was the basis for
22 withdrawing the proffer. There were some changes in a time
23 line and that is the reason why I am indicted them both for
24 homicide by child abuse and aiding and abetting because I
25 have two individuals who were the only two people who could

Motion to Amend Order on Polygraph

9

1 have had access and contact with this child and the child
2 ends up dead, that's it. So it could have been either one
3 of them and that's where we are.

4 The Court: That's not the first time you've
5 been put in that position, would it be, Mr. Galmore?

6 Mr. Galmore: Well, Your Honor, she's correct,
7 they have a proffer with Mr. Palmer. They withdrew the
8 proffer with Mr. Palmer, he's now at the defense table with
9 us. We have this, this line that says the State proceeds
10 under the theory that Mr. Palmer inflicted the fatal blow.
11 That line had to come from somewhere, it didn't come out of
12 whole cloth. Somebody on the State's side seems to believe
13 that Mr. Palmer inflicted that blow and if that's the case
14 why has my client been indicted. I seriously question the
15 validity of the grand jury indictment in this case.

16 The Court: Well they would have to provide you
17 that under Brady if they had evidence that your client
18 didn't do it and somebody else did if they had anything
19 like that. Ms. Lively says she doesn't, I mean that's not
20 their theory. If it develops in trial that they have
21 someone who was of that opinion, who is a material witness,
22 whether it be an expert or otherwise who had that opinion,
23 and it's exculpatory and they don't give it to you then
24 there's going to be a problem.

25 Mr. Galmore: Well let me ask this, is the State

Motion to Amend Order on Polygraph

10

1 saying they don't know who struck the blow? Are they
2 saying they both acted in concert, or are they saying that
3 Ms. Gorman did it? That's all I want to know, what I need
4 to defend against?

5 The Court: I think the first two questions are,
6 yes, they aren't sure, but they know someone did and they
7 don't know whether Ms. Palmer or Mr. Palmer did, is that
8 not it?

9 Ms. Lively: That's correct, Your Honor, the
10 case law of the Supreme Court of South Carolina clearly
11 allows us to proceed under that theory that we do not know
12 which one was necessarily the principal aiding and
13 abetting, that's why I charged them with both. They both
14 had access to the child and said that no one else was
15 around, gave no accidental reasons for this child's
16 injuries, therefore, I'm proceeding that either one of them
17 had access and could have inflicted the blow that killed
18 the child, there you go.

19 The Court: That's where she's going, Mr.
20 Galmore.

21 Mr. Galmore: Yes, sir, Your Honor, we would
22 simply take exception to the Court's ruling.

23 The Court: That's very well.

24 Mr. Galmore: I do have a copy of the original
25 order that I would like to have clocked as a Court's

Motion to Amend Order on Polygraph

11

1 exhibit.

2 The Court: It's in the file, isn't it, the
3 original order?

4 Mr. Galtmore: Yes, sir.

5 Ms. Lively: It is.

6 The Court: It's in the file.

7 Mr. Galtmore: Out of an abundance of caution I
8 would like to have it clocked.

9 The Court: Hand it over to Ms. Babb and we'll
10 have two in there, okay.

11 Mr. Galtmore: Thank you, sir.

12 (Whereupon, Court's Exhibit Number 1 marked for
13 identification.)

14 Ms. Lively: And, Your Honor, I have the amended
15 order just that only removes that one sentence that, that I
16 would hand up for Your Honor.

17 And I emailed a copy of that to Mr. Galtmore and
18 Ms. Grabert-Lowenstein yesterday, the proposed change which
19 removed that one sentence.

20 Ms. Grabert-Lowenstein: That was received by
21 me, Your Honor.

22 The Court: All right.

23 Mr. Galtmore: Yes, sir, I received it also.

24 The Court: All right, thank you.

25 Ms. Lively: Thank you, Your Honor.

State of South Carolina
County of Horry

In The Court of General Sessions

State of South Carolina,

vs.

Julia S. Gorman,

Defendant.

)
)
)
) 08-GS-26-3756/08-GS-26-0841
) 10-GS-26-0041/10-GS-26-2194
)
)
)

TRANSCRIPT OF HEARING

State of South Carolina,

vs.

Robert A. Palmer,

Defendant.

)
) 10-GS-26-2195/10-GS-26-2196
) 08-GS-26-04120
)
)
)

October 31, 2011
Conway, South Carolina

Before:

The Honorable, Larry B. Hyman, Judge

Appearances:

By: Candice A. Lively, Esq.
Attorney For State

BY: Carla F. Grabert-Lowenstein, Esq.
Attorney For Robert A. Palmer

BY: James C. Galmore
Attorney For Julia S. Gorman

BRENDA R. BABE
Circuit Court Reporter

Pretrial Motions

26

1 three, four, I mean four, five, six, and seven this
2 question said, has anyone ever been the caregiver for a
3 small child other than your own, okay?

4 Ms. Grabert-Lowenstein: And that would
5 substitute for which number?

6 The Court: Four, five, six, and seven, small
7 child other than your own and that will encompass
8 everything, okay. I'm going to make this part of the
9 record, all right, and I have written on the bottom of the
10 questions that I'll ask.

11 Ms. Grabert-Lowenstein: And, Your Honor, what
12 are we, that only leaves eight then?

13 The Court: I'm sorry, let me see that back, I
14 may have meant eight as well. I'm sorry, I meant eight as
15 well. Mark this as a Court's Exhibit.

16 (Whereupon, Court's Exhibit Number 1 marked for
17 identification.)

18 Ms. Grabert-Lowenstein: Okay.

19 The Court: All right, Ms. Lively?

20 Ms. Lively: Yes, sir, Your Honor, all right,
21 one of the other motions by the State is for Your Honor to
22 allow us to amend the, there are two indictments against
23 Julia Gorman and two indictments against Robert Palmer that
24 I'm asking the Court to allow the State to amend.

25 The Court: In what regard, what did those, the

Pretrial Motions

27

1 present indictments allege?

2 Ms. Lively: Yes, sir, they all allege exactly
3 the same thing. I want the Court to know that there is
4 nothing in regards to the facts that are being changed. We
5 have an indictment, I will start with Julia Gorman, 2000 --
6 -

7 The Court: Do you want to amend to for four
8 total or do you want to put the two counts against the two
9 defendants in one indictment each?

10 Ms. Lively: No, sir.

11 The Court: How do you wish to amend?

12 Ms. Lively: Individually.

13 The Court: Okay.

14 Ms. Lively: Each, every, all four individually,
15 Your Honor.

16 The Court: All right.

17 Ms. Lively: What, just so the Court will know,
18 what I'm amending is the time.

19 The Court: Okay.

20 Ms. Lively: Okay, the indictment of homicide by
21 child abuse on Julia Gorman, 2010-GS-26-2194, that one,
22 Your Honor. We had put July the 11th, 2008 through July
23 the 14th, knowingly, aid -- is that the aid and abet one,
24 let's see, knowingly aid and abet in the death of a child.
25 What the State is asking, and the defense is aware, we're

Pretrial Motions

28

1 just asking that the Court allow us to say July the 14th,
2 on or about July the 14th, 2008, as being the date when we
3 believe the fatal injury to the child was inflicted.

4 The Court: And at this time it says what?

5 Ms. Lively: This time it says from July the
6 11th, 2008 through July the 14th, 2008.

7 The Court: So you're essentially ---

8 Ms. Lively: Narrowing.

9 The Court: Narrowing and making more specific
10 the indictment to include a date that is included in the
11 span that you have now?

12 Ms. Lively: Yes, sir, and it's really, and even
13 the case law clearly says by saying on or about I'm still
14 basically have the same thing. I'm just trying, I mean I'm
15 still able to stretch a little bit anyway with the way that
16 the language is but I just want to make it as, I was going
17 to try and keep it simple for the jury and, and our medical
18 evidence and what we've spoken to the defense about we
19 believe that the fatal blows occurred on July the 14th, of
20 2008. So what we want to do is on the two indictments
21 against Julia Gorman, which are the homicide by child abuse
22 and the homicide by child abuse aiding and abetting, we
23 want to put dates on those as being on or about July the
24 14th of 2008 and then on Robert Palmer the same thing.

25 His indictments which involve the homicide by

Pretrial Motions

29

1 child abuse and the homicide by child abuse aiding and
2 abetting that we change that to on or about July the 14th
3 of 2008. It doesn't change any of the facts, doesn't
4 change any of the information that we have. What it does
5 is it actually narrows it for the State in regards to what
6 we're putting forward before the jury and like I said the
7 defense has been aware of that for quite some time so this
8 definitely doesn't come as a surprise. There's no alibi
9 defense in this case; it's never been raised.

10 The Court: Does the defense even have an
11 objection to narrowing it down to a particular date?

12 Mr. Galtmore: Well, Your Honor, I am opposed to
13 the, to the State being allowed to amend the indictments.
14 This case is from 2008, here we are three years later and
15 they're still trying to get the facts straight. I have
16 three indictments against my client. I have an unlawful
17 conduct towards a child; I have homicide by child abuse;
18 and I have homicide by child abuse. I have three different
19 dates where the grand jury took action on these things.

20 The unlawful conduct towards the child the grand
21 jury true billed February 18, 2010. Homicide by child
22 abuse the aiding and abetting theory the grand jury
23 indicted May 17, 2010, and the homicide by child abuse
24 where the State alleges that Ms. Gorman was the person that
25 inflicted the blow was indicted by the grand jury September

Pretrial Motions

30

1 25th, 2008. I think at this late date, you know, the State
2 is the, is the party that has the resource. The State is
3 the party that's been in contact with these doctors down at
4 MUSC and if they can't get their theory straight and we're,
5 we're two weeks before trial perhaps the Court should
6 simply continue the case or quash the indictments or do
7 something but the State shouldn't be given an opportunity
8 to amend at this point. It's been three years.

9 The Court: But doesn't the statute allow that,
10 allow them to do it? I mean doesn't the statute allow them
11 the amend it even after the case is called as long as it
12 doesn't change the nature of the offense?

13 Mr. Galmore: Well and, and that's the problem
14 all along. We've been saying ever since we had that
15 conference about, excuse me, the, the hearing about the
16 polygraph results we've been saying we don't know what the
17 State's theory is. At one point we had an order signed by
18 the Court admitted by the commissioner ---

19 The Court: But the theory, not the test here,
20 is the nature of the offense, isn't it?

21 Mr. Galmore: Well she has to know what she,
22 what she is called upon to defend against and ---

23 The Court: The nature of the offense ---

24 Mr. Galmore: And they have two indictments
25 right here, one saying that she abused the child, another

Pretrial Motions

31

1 saying she aided and abetted in someone else's abuse of the
2 child and, and we just feel that after three years the
3 State should have their theory together by then.

4 The Court: All right, let me hear from Ms.
5 Grabert-Lowenstein?

6 Ms. Grabert-Lowenstein: Your Honor, I just want
7 to clarify something. It's my understanding, are there not
8 three indictments against Robert which would include him in
9 the neglect charge?

10 Ms. Lively: Correct, but I'm not moving to
11 amend the neglect charge because we have, you know,
12 pictures and we have also evidence through statements made
13 by Ms. Gorman that the child was being abused so I'm not
14 moving the dates on the unlawful neglect. The unlawful
15 neglect spans the weekend and there was, there's evidence
16 that the child was acting lethargic, that he was not
17 wanting to eat, that he wasn't feeling well, and everybody
18 was like oh, oh, well, they just let him on and on and on
19 further decline, decline, decline until one of them killed
20 him or both of them did ---

21 Mr. Galmore: Wait a minute, Your Honor, we ---

22 Ms. Lively: --- so that, that's why I'm leaving
23 the unlawful neglect open because of the statement by Ms.
24 Gorman that she abused him. If you shake a child and hit
25 him that's abuse so that's under unlawful neglect. That's

Pretrial Motions

32

1 why I'm leaving it the way it is but I'm saying, and I'm
2 trying, I thought this helps the defense but, you know, I
3 can leave it from the 11th to the 14th because we don't
4 know exactly the exact moment when that fatal injury where
5 his head was crushed was one, we don't know, but I have
6 medical evidence that is saying that it happened on the
7 14th so that is what we were doing and the defense was
8 notified of this.

9 There is no alibi defense, no one saying that the
10 child was in any type of an accident all weekend.
11 Everybody is clearly saying that the caretakers were the
12 two defendants, that's all I was doing was narrowing it.
13 It's a notice document, none of the evidence has changed.

14 The Court: Are you changing, are you changing
15 the nature of the offense in any form or fashion?

16 Ms. Lively: No, sir.

17 Mr. Galmore: Your Honor, I submit they are
18 changing the theory of the case. We're back now to three
19 days earlier, we're back to some lethargy issue.

20 The Court: And that's semantics but we're
21 talking about the nature of the offense not the theory of
22 your case.

23 Mr. Galmore: Well, you know, initially
24 everybody thought that this child was injured on Friday
25 night. Now we're pretty much convinced that these injuries

Pretrial Motions

33

1 occurred on Monday afternoon, so now the Solicitor brings
2 up what happened on Friday night and I don't know if
3 anything actually happened but that's been a recurring
4 problem where we don't know what she has to argue and, and
5 that's why we're opposed to, you know, the State making any
6 amendments to anything.

7 Ms. Grabert-Lowenstein: And, Your Honor, if I
8 may, at some point Mr. Galmore and our answer has already
9 been diverged but part of the issue here is my client
10 accepted a proffer based on the fact that in the beginning
11 everybody was convinced that it happened on Friday and my
12 only comment would be I think there's a whole bunch of
13 evidence that was lost because of the direction the case
14 took, then fast forward over a year the proffer is pulled
15 and we've got another issue. I think that, you know, I
16 agree with Mr. Galmore that they haven't exactly got it
17 together what the theory is going to be and to leave one
18 indictment which says well it could have occurred, you
19 know, long before when frankly evidence is that both people
20 were concerned about this child's welfare. They had an
21 appointment for him the following Tuesday, it's just
22 ingenious. If things happened on Monday they happened on
23 Monday.

24 The Court: That's what they're doing, isn't it,
25 I mean they're narrowing this, this, this time line down to

Pretrial Motions

34

1 a single day. I mean, doesn't that benefit you?

2 Ms. Grabert-Lowenstein: It may ---

3 The Court: I mean now they've gotten it three
4 days and they're saying we'll narrow it down to one day,
5 the nature of the offense is the same, same, same charge,
6 same defendants, we just bringing it down to one day;
7 doesn't it benefit you?

8 Mr. Galmore: Well the problem is like Ms.
9 Grabert-Lowenstein said the, the police and the prosecution
10 proceeded under an erroneous theory of the case.

11 The Court: And they may have but that's
12 something you can just wear them out with during trial.

13 Mr. Galmore: Well I'd rather just get it
14 quashed and move on.

15 The Court: I'm sure you would, why don't we
16 just dismiss it all? Mr. Galmore, we can't do that, I'm
17 going to allow the amendment..

18 Mr. Galmore: Yes, sir.

19 The Court: All right.

20 Ms. Lively: Thank you, Your Honor. Well, Your
21 Honor, we have still the Jackson v. Deno matter, the
22 statement against interest by Ms. Gorman made to DSS
23 caseworker who the caseworker is here present ready to
24 proceed as well as Detective Tim Troxell from HCPD in
25 regards to Jackson v. Deno; how would you like to proceed?

Detective Troxell - Direct Examination by Ms. Lively 49

1 jury.

2 Mr. Galmore: Yes, sir.

3 The Court: All right.

4 Mr. Galmore: I just want to let you know that
5 the ---

6 The Court: Okay, thank you.

7 Mr. Galmore: --- State's theory, well, yes,
8 sir, yes, sir.

9 The Court: All right, okay, that would leave us
10 with the Jackson v. Deno?

11 Ms. Lively: Jackson v. Deno and the statement
12 against interest. Your Honor, if you want we could
13 actually handle the statement against interest in the same
14 way as we're going to handle the pathologist.

15 The Court: Okay.

16 Ms. Lively: And that way I can let Ms. Yvette
17 Brown go. She's been sitting here, I'm sorry, I could go
18 ahead and have her called but if we're going to do the
19 Jackson v. Deno today we probably need to go ahead and get
20 started.

21 The Court: Okay, let's go ahead.

22 Ms. Lively: Is that okay, all right, well then
23 the State would call Detective Tim Troxell to the stand.

24 Detective Timothy Troxell

25 being first duly sworn, testified in camera as follows:

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 50

1 Madam Clerk: Please state your full name and
2 spell your last name.

3 The Witness: Timothy Troxell, t-r-o-x-e-l-l.

4 Direct Examination

5 By Ms. Lively:

6 Q Detective Troxell, where do you currently
7 work?

8 A With the Horry County Police Department.

9 Q And how long have you worked for the Horry
10 County Police Department?

11 A Nine years.

12 Q And were you working in your capacity as a
13 detective in July 2008?

14 A Yes, ma'am, I was.

15 Q And did you have an opportunity to be
16 assigned the case involving Julia Gorman and Robert Palmer?

17 A Yes, ma'am.

18 Q And tell this Court about that?

19 A I was actually assisted the lead
20 investigator Detective David Weaver on this case. He was
21 called out to Conway Medical Center over the weekend in
22 reference to an infant child that was, sustained some head
23 injuries but had subsequently been transferred down to
24 MUSC. I actually teamed up with him and went down to MUSC
25 and initiated the investigation from that point.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 51

1 Q Okay. well let's get to July the 18th of
2 2008. Were you actually the detective, one of the
3 detectives who was in the interrogation room with Robert
4 Palmer and Julia Gorman?

5 A Yes, ma'am, myself and Detective Weaver
6 were.

7 Q Okay, and Detective David Weaver?

8 A Yes, ma'am.

9 Q All right, now on July the 18th of 2008 who
10 did you interview?

11 A Initially we interviewed Mr. Palmer and
12 then at the conclusion of that interview Ms. Gorman.

13 Q Okay, and at the time whenever you
14 interviewed the Defendant Palmer were you actually in the
15 interview room with them?

16 A Yes, ma'am.

17 Q Okay, and tell the Court what you did when
18 you were in the interview room with Mr. Palmer?

19 A Prior to the initiation of any
20 interrogation Mr. Palmer was advised of his rights under
21 Miranda.

22 Q Okay, and how did you actually go through
23 those rights with Mr. Palmer?

24 A We have a standard form that the police
25 department uses.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 52

1 Q All right, and do you have that form with
2 you?

3 A Yes, ma'am, I do.

4 Q Okay, if you don't mind pull that out for
5 us?

6 (Whereupon, State's Exhibit Number 9 marked for
7 identification.)

8 Ms. Lively: (Continuing)

9 Q Now, Detective Troxell, I want to show you
10 what's been marked as State's Exhibit Number 9 and ask you
11 if this is the form that you're referring to regarding the
12 Miranda rights?

13 A Yes, ma'am, it is.

14 Q And whose form, and who was it that you
15 actually addressed those rights with in that particular
16 form?

17 A Mr. Palmer.

18 Q All right, and whose name is affixed to
19 that statement?

20 A Mr. Palmer's.

21 Q And if you don't mind could you just give
22 us the date of that particular document?

23 A It's actually dated and time stamped at
24 July 18th, 2008, at 9:07 a.m.

25 Ms. Lively: Okay, and defense, everybody seen

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 53
1 this one?

2 Your Honor, the State would move to introduce
3 this as State's Exhibit Number 9?

4 The Court: It's admitted.

5 Ms. Lively: Thank you.

6 (Whereupon, State's Exhibit Number 9 entered into
7 evidence.)

8 Ms. Lively: (Continuing)

9 Q Now, Detective Troxell, please for the
10 record state the questions that you go through with each
11 defendant including Mr. Palmer?

12 A Are you referring to the Miranda
13 advisement?

14 Q Yes.

15 A It says you have the right to remain
16 silent. Anything you say can will be used against you in a
17 court of law. You have the right to talk with a lawyer and
18 have him present with you while you're being questioned.
19 If you cannot afford to hire a lawyer one will be appointed
20 to represent you before any questioning if you so desire.
21 If you make a statement or answer any questions you have
22 the right to stop at any time.

23 Q All right, and when you're reading out each
24 one of those rights do you have him do anything in regards
25 to making sure he understands?

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 54

1 A Yes, ma'am, to the left of each line after
2 every line was read it was asked if he understood it to
3 place his initials beside each line.

4 Q Okay, and so and did he do so?

5 A Yes, ma'am, he did.

6 Q Were there any other additional questions
7 that you asked Mr. Palmer before beginning the actual
8 interview?

9 A Yes, ma'am, the two additional questions
10 is, do you understand your rights as I have read them to
11 you and understanding your rights do you wish to waive them
12 and make a statement or answer any questions at this time.

13 Q Now, Detective Troxell, at any time during
14 this interview did, did Mr. Palmer appear to seem confused,
15 under the influence of any alcohol or drugs, or to not
16 understand what was going on that day?

17 A No, ma'am, actually this is my handwriting
18 on Mr. Palmer's advisement, he was asked if he was under
19 the influence of any narcotics, prescription medication or
20 alcohol, and he responded, no.

21 Q And was there any indication that
22 educationally wise he would not understand what it was that
23 he was doing there with you today or that day?

24 A No, ma'am, he indicated he had a twelfth
25 grade education.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 55

1 Q Okay, and was he able to answer your
2 questions coherently?

3 A Yes, ma'am, he was.

4 Q And at any time during that interview did
5 you threaten him or coerce him or force him to make a
6 statement to you?

7 A No, ma'am, I did not.

8 Q Okay, was that interview actually recorded
9 at the M. L. Brown building?

10 A I know it was video recorded and I believe
11 it was also audio recorded.

12 Q Okay, video and audio recorded, okay, and
13 once again were you in the room with Mr. Palmer at the time
14 that he gave his statement?

15 A Yes, ma'am, I was.

16 Q All right, and you've actually provided a
17 copy of that video taped statement to myself and as well as
18 to the defense; do you recall that?

19 A As I stated Detective Weaver was the lead
20 investigator, I believe he did provide that, though.

21 Q Okay, all right --

22 Ms. Lively: Your Honor, at this time the State
23 would ask to publish the actual statement that was given by
24 Mr. Palmer?

25 The Court: Ms. Grabert-Lowenstein?

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 56

1 Ms. Grabert-Lowenstein: Your Honor, I have -

2 (Whereupon, a video screen was lowered from the
3 court room ceiling.)

4 The Court: Coming down on you.

5 Ms. Grabert-Lowenstein: Yeah, I don't need
6 another broken bone.

7 Ms. Lively: And for the record, Your Honor, as
8 you can see the video of Mr. Palmer's interview is thirty-
9 nine minutes and in the video underneath that for Julia
10 Gorman is an hour and twenty two minutes.

11 The Court: This is Mr. Palmer's, though, Ms.
12 Grabert-Lowenstein?

13 Ms. Grabert-Lowenstein: It is, Your Honor.

14 The Court: Okay, all right.

15 Ms. Grabert-Lowenstein: I have no objection to
16 it being played.

17 The Court: All right.

18 (Whereupon, the video statement of Robert Palmer
19 is played in open court as follows:)

20 Detective Troxell: How you doing with
21 everything?

22 Mr. Palmer: Not good.

23 Detective Troxell: How's Julia holding up?

24 Mr. Palmer: Not good, like I said we tried to
25 lay down last night and just tossed and turned, tossed and

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 57

1 turned. It seemed like the later it got the more I went to
2 sleep. I ended up, got out of bed and went around to the
3 other side of the bed cause she had got on, you know, just
4 tossed and turned and just ridiculous.

5 Detective Troxell: Have you talked to or has
6 she talked to Cesalee?

7 Mr. Palmer: Yes, she was up here yesterday when
8 she got there I guess, you know, everything was kosher.
9 Everybody was just, you know, in a state of shock. She
10 stayed around, picked her Mama up from the bus, bus
11 station, but she was, she didn't sleep once again the whole
12 night and she came home yesterday and she's just like
13 entirely whipped cause she didn't get back till about 7:30,
14 8:00 last night, back to South Carolina from Conway. She
15 went up there after we talked to ya'll the last time and
16 come out and took pictures, and she went up there and I
17 guess maybe slept maybe thirty or forty minutes the whole
18 time, so.

19 Detective Troxell: I can imagine that's a
20 helluva weight to bear, especially, I mean, you've only
21 known him a couple of weeks, but --

22 Mr. Palmer: Yeah.

23 Detective Troxell: It's still a little baby.

24 Mr. Palmer: Yeah, you're exactly right.

25 Detective Troxell: What we need to do is kind

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 58

1 of like I said when we talked to you in the hospital my
2 tape recorder died.

3 Mr. Palmer: Okay.

4 Detective Troxell: And we kind of need to go
5 back over and ---

6 Mr. Palmer: Okay.

7 Detective Troxell: --- some of the things that
8 happened and I know with the way things have been going
9 we'll start say when the baby went in the hospital and just
10 kind of go backwards as ---

11 Mr. Palmer: Which time do you want me to talk?

12 Detective Troxell: The most recent.

13 Mr. Palmer: The most recent when we went in
14 Monday?

15 Detective Troxell: Yeah, when you went in
16 Monday and go backwards, but being that Minor has passed
17 away, or whatever, and this investigation has taken more of
18 a serious note instead of just trying to get information
19 we've got to advise everybody that we talk to from this
20 point forward of their Miranda rights. It doesn't mean
21 you're under arrest or anything like that; it's just before
22 we talk we've got to advise everybody of these, okay.

23 Minor , what is your highest level of education?

24 Mr. Palmer: Robert.

25 Detective Troxell: I'm sorry, Robert, Minor

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 59
1 is the victim.

2 Mr. Palmer: Yes.

3 Detective Troxell: Robert, what is your highest
4 level of education?

5 Mr. Palmer: Twelfth grade, I graduated high
6 school.

7 Detective Troxell: You under the influence of
8 any narcotics right now?

9 Mr. Palmer: No.

10 Detective Troxell: Alcohol?

11 Mr. Palmer: I had a couple last night.

12 Detective Troxell: You fine to drive?

13 Mr. Palmer: Yeah.

14 Detective Troxell: Not got any, you got your
15 mental capacity?

16 Mr. Palmer: Say it again?

17 Detective Troxell: You've got your mental
18 capacity; you know what we're talking about?

19 Mr. Palmer: Yeah, yeah.

20 Detective Troxell: How about narcotics or
21 pills?

22 Mr. Palmer: None.

23 Detective Troxell: Okay, I'm going to read
24 these to you and what I want you to do is just after I read
25 these I want you to put your initials on those lines

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 60
1 indicating that you understand those, okay?

2 You have the right to remain silent. Anything
3 you say can and will be used against you in a court of law;
4 you understand that?

5 Mr. Palmer: Yes.

6 Detective Troxell: Put your initials there.
7 You have the right to talk with a lawyer and have him
8 present while you are being questioned; you understand
9 that?

10 Mr. Palmer: Okay.

11 Detective Troxell: Initial there. If you
12 cannot afford to hire an attorney one will be appointed to
13 represent you before any questioning if you so desire; if
14 you understand that put your initials there.

15 And if you make a statement or answer any
16 questions you have the right to stop me at any time; do you
17 understand that, put your initials there. You understand
18 everything that I have read to you?

19 Mr. Palmer: Yes.

20 Detective Troxell: Okay, put your initials
21 there. You want to talk to me about what happened to
22 Minor and answer our questions?

23 Mr. Palmer: Yeah.

24 Detective Troxell: Okay, put your initials
25 there and sign. It's 9:07 on the 18th, just put 9:07 or 7-

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 61

1 18-08 and then 9:07 there.

2 Mr. Palmer: What was that again, 9:07?

3 Detective Troxell: Yeah, 9:07 is the time on 7-

4 18.

5 Mr. Palmer: 9:07 on 7-18.

6 Detective Troxell: Yeah, all right, like I said

7 I just kinda want to start Monday, what time did you go to

8 the hospital on Monday?

9 Mr. Palmer: Monday evening?

10 Detective Troxell: Yeah?

11 Mr. Palmer: Probably around six, 6:15,

12 somewhere around that time frame. Like I said the

13 paramedics showed up at our house, I had like I said they

14 showed up at the house, took ^{Minor} It seemed like they

15 took the scenic route; they went around and this and that

16 but ended up at Conway Hospital. I met them up there at

17 Conway Hospital; they took him in around six, 6:15 around

18 that time.

19 The Court: Ms. Lively?

20 Ms. Lively: Yes, sir?

21 The Court: Turn it off just a minute, can you

22 stop it?

23 Ms. Lively: Yes, sir.

24 The Court: Ms. Grabert-Lowenstein, your client,

25 is he not here today, I was under the impression ---

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 62

1 Ms. Grabert-Lowenstein: He's not here, Your
2 Honor.

3 The Court: --- the gentleman behind you was
4 your client; is he waiving his presence?

5 Ms. Grabert-Lowenstein: He is.

6 The Court: All right, you've discussed that
7 with him?

8 Ms. Grabert-Lowenstein: I did.

9 The Court: All right, okay.

10 Ms. Lively: And, Your Honor, we've having some
11 speakers brought up so if you're having difficulty hearing
12 it like the rest of us that might assist in, in just a
13 moment.

14 The Court: Okay.

15 (Whereupon, the video statement of Defendant
16 Roabert Palmer was continued.)

17 Detective Troxell: Julia was working on Monday
18 night?

19 Mr. Palmer: Yes.

20 Detective Troxell: What time does she go in?

21 Mr. Palmer: I want to say, she had to be there
22 about six, so she got up around like 4:45 in the morning.

23 Detective Troxell: Did she check on Minor that
24 morning?

25 Mr. Palmer: I don't know.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 63

1 Detective Troxell: You don't?

2 Mr. Palmer: I don't recollect.

3 Detective Troxell: All right, so she got up at
4 4:45, what time did you get up?

5 Mr. Palmer: About that time cause she is real
6 loud when she wakes up.

7 Detective Troxell: When did you first check on

8 Minor

9 Mr. Palmer: I went in there at 9:30 and woke
10 him up.

11 Detective Troxell: Okay, and what was he doing
12 when you --

13 Detective Troxell: He didn't want to get up.
14 He was just laying there and was, you know, just like
15 tired, like he had never slept but, you know, I picked him
16 up and took him to the kitchen, got him something to eat,
17 and tried to play with him for a little while, but he just
18 wanted to lay down so I was let's play with your toys and
19 he'd act like he wanted to lay down again so I put him on
20 the couch, let him lay up there and watch t.v. and he was
21 just like, you know, tossing and turning.

22 Detective Troxell: Okay, did you feed him lunch
23 or anything?

24 Mr. Palmer: Yeah, I fed him lunch.

25 Detective Troxell: About what time was that?

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 64

1 Mr. Palmer: I want to say about 11:30 or 12,
2 somewhere around that time frame. I tried to get him to
3 eat some stuff. He ate a little bit of chicken, a little
4 bit of this and that but, you know, he just seemed like he
5 was tired so I was going to lay him down, laid him down.
6 He just, just tossed and turned, whined out a couple of
7 times.

8 Detective Troxell: What time did you lay him
9 down?

10 Mr. Palmer: I laid him down, made him stay in
11 there for about, you know, thirty, thirty something minutes.
12 to see if he would go to sleep but he just kept whining,
13 whined a little bit, just not like whining, it was like a
14 whimper. It was like kind of, like if you met him and seen
15 him he would just hold his hands out, whine, whine like,
16 you know, come pick me up, come pick me up, so I let him
17 lay there for a while. I picked him back up, took him back
18 in the living room, tried to get him to play with some more
19 toys and tried to get him to, you know, watch t.v. and just
20 stay awake, and just try to, you know, work itself out of
21 whatever it is that he was doing but just, you know, it
22 seemed like it was not going to stop, the whining and just
23 tried acting so around like three, 3:30 I put him back
24 down, laid him down and he went to sleep that time and like
25 I said Julie came home around four, 4:15 around that time

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 65

1 frame. She came in, she said, where's he at, I said, he's
2 laying down, taking a nap. I said, you want to check on
3 him, we walked in, both of us walked in to the edge, edge
4 of the door.

5 Detective Troxell: And that's the room that we
6 went into?

7 Mr. Palmer: Yes, sir, yes, peeked in and like
8 that and he was just asleep.

9 Detective Troxell: Okay, that was about four,
10 4:15?

11 Mr. Palmer: Around that time frame.

12 Detective Troxell: And what did you and Julie
13 do after that?

14 Mr. Palmer: After that we went outside, I mean,
15 went, went out and talked for a little bit, you know, just
16 telling me what, how her day was and this and that and, you
17 know, just talked and started prepping dinner. We had
18 tacos and so we cut up all the stuff and had everything
19 ready, cooked, and then we sat down around like six to eat
20 dinner and she said do you want to wake him up now or do
21 you want us to eat first and I was like, well let's eat and
22 that way, you know, if he wants to act up or something
23 happens, you know, we, we'll both of us be able to take
24 care of him, so she went in there and that's when she found
25 him having like a seizure thing.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 66

1 Detective Troxell: Can you kind of describe
2 what he was doing?

3 Mr. Palmer: When she picked him up and brought
4 him around the corner his, I mean his head was just like
5 limp, his body, his arms. It's kind of hard, it was, his
6 arms and everything was like bowed up at, it was, acted
7 like, it was like a seizure. I mean I've never seen
8 anything like that, so she gave him, I said give him here.
9 I said get me a wet washcloth on his head right here and
10 set him on the end of the couch and had him at like a forty
11 five degree angle and was holding him like that. I said
12 call 911, something's wrong, you know, and cause I was
13 talking to him and he was just, he was swinging with his, I
14 mean his fist balled up sideways like that and was swinging
15 it and hitting me in the face and I was sitting there and I
16 was just shaking cause I didn't what was going on and she
17 called 911 and the paramedics came and then they took him
18 to Conway.

19 Detective Troxell: Sunday, what happened on
20 Sunday?

21 Mr. Palmer: Sunday?

22 Detective Troxell: Did Julia work on Sunday?

23 Mr. Palmer: Yes, yes, she, she went to work
24 Sunday, I talked to my Mom and Dad, they asked us ---

25 Detective Troxell: What time did she go to

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 67

1 work, I'm sorry?

2 Mr. Palmer: I don't know if it was six or eight
3 that morning, I don't really remember.

4 Detective Troxell: But you got up in the
5 morning and --

6 Mr. Palmer: Yeah, she got up in the morning
7 again I talked to my Mom and Dad the day before and they
8 wanted us, me and Minor and Julie to come over to the pool
9 in their neighborhood, so I was like okay. I said when he
10 gets up, which once again at 9:30 Sunday I had to wake him
11 up cause he didn't want to get up, went in there and got
12 him up and got him, you know, his bag together, swimming
13 clothes, and extra diapers and snacks, and this and that.
14 My Dad came and picked me up around like 11, 11:30; we went
15 over to my Mom and Dad's. I took him over there cause my
16 son Dillon wanted to go to the pool so my, me, Dillon, and
17 my Dad and Minor went over there. I had one of those
18 little floatie round things for small children, I set him
19 in it and he just laid there.

20 Detective Troxell: Okay.

21 Mr. Palmer: He just laid there, I mean he
22 didn't, didn't splash in the water, didn't do anything.

23 Detective Troxell: No movement at all in the
24 water?

25 Mr. Palmer: I mean he just, he'd lay there and

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 68

1 he'd whine and whimper.

2 Detective Troxell: Okay, what time did Julia
3 get to your Mom and Dad's house?

4 Mr. Palmer: I want to say it was around three,
5 3:30, around that time frame.

6 Detective Troxell: Did you guys all stay there?

7 Mr. Palmer: We, we ate, Mama went to the store
8 and picked up some food at Food Lion down the road here.
9 We had like a chicken, we picked the chicken off of the,
10 you know, the rotisserie chickens, got one of those and
11 picked the chicken off of that. We had like, you know,
12 some other stuff, we ate, and then, you know --

13 Detective Troxell: Who went to the store?

14 Mr. Palmer: My Mom.

15 Detective Troxell: Your Mom, okay, then you and
16 Julia obviously go back home?

17 Mr. Palmer: No, no, we stayed at my Mom and
18 Dad's, I said you want to go to the pool and I asked her
19 and she said, yeah, so we went back again for the second
20 time to the pool but this time it was my Mama, my son
21 Dillon, Minor Julie, and me.

22 Detective Troxell: Okay, what time did you
23 finally leave your Mom and Dad's house?

24 Mr. Palmer: I want to say like 6, 6:30.

25 Detective Troxell: And you and Julia go back to

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 69

1 --

2 Mr. Palmer: Our house.

3 Detective Troxell: Okay, did anybody go with
4 you, is there anyone else there, just you and Julia?

5 Mr. Palmer: Yeah.

6 Detective Troxell: Okay, and that's where you
7 remained until 9:00 that next morning when --

8 Mr. Palmer: Yes.

9 Detective Troxell: Okay, how about Saturday; do
10 you remember Saturday?

11 Mr. Palmer: Saturday, I don't, I don't have a
12 clue about Saturday. Saturday, oh, Saturday Julie went to
13 work, I was at home with Minor and, you know, I mean the
14 same thing, tried to get him up around 9:30, he acted like
15 he didn't want to do anything, tried a little bit of
16 breakfast. He wanted to get right back, you know, I asked
17 him to go play with his toys and, you know, just to try to
18 do something because I mean he wasn't active at all. He'd
19 just, he'd walk over there and pick up something just look
20 off, look off and look at you like can I please go sit down
21 or something, I mean it was just, that's all he did.

22 Detective Troxell: Okay, did anything, did you
23 guys go anywhere Saturday, do anything?

24 Mr. Palmer: No.

25 Detective Troxell: I meant go to dinner and

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 70

1 t.v. that?

2 Mr. Palmer: Yeah, well that evening, that
3 evening we went to dinner. I mean, but that was around
4 like six, seven that evening.

5 Detective Troxell: Okay, did anyone go with you
6 or was it just you, Julie, and Minor

7 Mr. Palmer: Yeah, just me, Julie, and Minor

8 Detective Troxell: And for time we're going to
9 speed up a little bit and going back further but you guys
10 got Minor from Julie's daughter, Cesalee?

11 Mr. Palmer: Yes.

12 Detective Troxell: And from what I can remember
13 the temporary guardianship was signed over July 1st?

14 Mr. Palmer: Right.

15 Detective Troxell: And she left maybe the day
16 or day after that?

17 Mr. Palmer: Yeah, the next day she left.

18 Detective Troxell: And since then you guys, you
19 and Julia have been the primary caregivers?

20 Mr. Palmer: Right.

21 Detective Troxell: And providers?

22 Mr. Palmer: Well mostly, I guess you would say
23 me because Julia has a job and --

24 Detective Troxell: That's, and that's, yeah.

25 Mr. Palmer: And I'm unemployed.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 71

1 Detective Troxell: During the day when Julia is
2 working and you're the only one that cares and provides for
3 Minor

4 Mr. Palmer: Yes.

5 Detective Troxell: Okay, does anyone else come
6 over and assist you and help you?

7 Mr. Palmer: No.

8 Detective Troxell: Okay, at night when Julia
9 comes over does anyone come over to help and assist you
10 guys?

11 Mr. Palmer: When Julie comes home?

12 Detective Troxell: Or when Julia comes back
13 from work, yeah, I'm sorry, does anybody else come over and
14 --

15 Mr. Palmer: Like I said the only time we only
16 had our neighbor just come over and, you know, the one's
17 you talked to, come over and talked to us for a little bit,
18 I mean, you know, other than that, that's it.

19 Detective Troxell: And they babysat him when?

20 Mr. Palmer: The date, I'm not exactly sure, I
21 want to say it was right after Cesalee left so it might
22 have been around the first week in July.

23 Detective Troxell: Third, fourth, fifth, sixth?

24 Mr. Palmer: Somewhere around that time frame,
25 yes.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 72

1 Detective Troxell: Okay, and since then no one
2 else has watched or cared for Minor or been alone with
3 Minor no other adults? Okay, Weaver, you got anything?

4 Detective Weaver: Julie over the weekend she
5 was working, did, did she have any problems a work that you
6 know of; did she come home --

7 Mr. Palmer: She's had ---

8 Detective Weaver: Did she talk about work or
9 anything?

10 Mr. Palmer: Yeah, they've had, I guess they've
11 had different people in, cause a lot of people, the higher
12 ups are, are I guess getting fired, getting this and that
13 and I mean she's always, it's always something going on
14 she says, you know, in the cash office, that's where she
15 works at, the Bass Pro Shop.

16 Detective Weaver: Did she, did she come home
17 agitated or upset?

18 Mr. Palmer: Yeah.

19 Detective Weaver: Any date?

20 Mr. Palmer: It's like an every day thing, you
21 know, I mean she, when she's ---

22 Detective Weaver: Right.

23 Mr. Palmer: Well she's steady putting in
24 applications trying to get out of there.

25 Detective Weaver: She's not happy there?

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 73

1 Mr. Palmer: Well with the drive, the gas
2 prices, and, you know, just one week they tell you, you
3 know, you can get thirty something hours and the next week
4 maybe you can get forty hours and then they keep, it keeps
5 going back and forth, you know, it's --

6 Detective Weaver: When she comes home from work
7 does she pretty much take over the primary duties of taking
8 care of Minor

9 Mr. Palmer: Yeah, I mean she misses him and she
10 wants to, you know, see him.

11 Detective Weaver: So she, she takes cares of
12 him?

13 Mr. Palmer: Pretty much, yeah, she asked me,
14 you know --

15 Detective Troxell: So you pretty much
16 relinquish the duties?

17 Mr. Palmer: Yeah.

18 Detective Weaver: When she comes home?

19 Mr. Palmer: Yeah, yes, yes.

20 Detective Weaver: Okay.

21 Mr. Palmer: Whenever she, you know, she wants
22 to do nothing when she comes in, hey, she calls him, hey,
23 Buttercup, and this and that, I mean she's, she misses him.
24 I guess it's like having one of her own, you know, but it's
25 just --

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 74

1 Detective Weaver: Okay.

2 Detective Troxell: You said when the paramedics
3 got there you had Minor

4 Mr. Palmer: At a forty five angle sitting up
5 like this.

6 Detective Troxell: And he was shaking and --

7 Mr. Palmer: Shaking and he was like swinging,
8 one of his arms was swinging, I don't know which, I want to
9 say it was his right arm.

10 Detective Troxell: You look like something is
11 weighing heavy on you, Robert; what's on your mind? I know
12 you're upset cause of the passing of Minor but is there
13 something else?

14 Mr. Palmer: No.

15 Detective Troxell: Okay, here's the situation?

16 Mr. Palmer: I'm sitting here.

17 Detective Troxell: Here's the situation,
18 listen, just listen to me, hear me, okay, we've talked to
19 the doctor's. We've spent a week doing this, okay, there's
20 been no one else around. We know when this happened to
21 Minor and we've got it down medically and scientifically.
22 We've already discussed and we've covered when the doctor's
23 said it happened, okay. If it was an accident or something
24 happened at this point in time we need to know?

25 Mr. Palmer: No.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 75

1 Detective Troxell: No.

2 Mr. Palmer: No.

3 Detective Troxell: There's nothing?

4 Mr. Palmer: No, I'm telling you right now
5 truthfully, I don't know what happened. I don't know what
6 the doctors have told ya'll but I'm telling you I've not
7 hurt that child; I would not hurt a child.

8 Detective Troxell: And we're not saying you
9 did.

10 Mr. Palmer: Well you're sitting here and
11 telling me ---

12 Detective Troxell: No, no.

13 Mr. Palmer: You ---

14 Detective Troxell: You, you're crying and
15 you're upset and that's fine, I understand that, but what
16 I'm saying to you is now we've got to get to the bottom of
17 this.

18 Mr. Palmer: I understand.

19 Detective Troxell: And the explanations and the
20 things that have, the dog knocking the baby over and the
21 stroller, those are the only things you know that have
22 happened to Minor

23 Mr. Palmer: When I was there with her, yes, I
24 mean Minor yes, that's the only things I know of but like
25 I said she was with him.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 76

1 Detective Troxell: And him falling off the bed,
2 those are the only three explanations that have been given
3 to us about what happened to Minor correct?

4 Mr. Palmer: Like I said, yeah.

5 Detective Troxell: Okay.

6 Mr. Palmer: The only ones I know of.

7 Detective Troxell: Well the experts at MUSC are
8 saying that's not possible. What happened to Minor was
9 recent, it was when he was in your and Julia's care. Now
10 if Julia did something and told you we, we've got to get to
11 the bottom of it?

12 Mr. Palmer: I understand.

13 Detective Troxell: And it ---

14 Mr. Palmer: I've been cooperative so far.

15 Detective Troxell: And I know you are and we
16 appreciate that. You, we've went and woke you up at 8:00
17 this morning, we're not by any means saying you're not
18 cooperating, but what I'm saying is you've got a lot to
19 loose in this for a kid that isn't even ---

20 Mr. Palmer: She, she's ---

21 Detective Troxell: --- doesn't even have any
22 relation to you?

23 Mr. Palmer: --- a girlfriend, I understand.

24 Detective Troxell: And ---

25 Mr. Palmer: I understand and I'm sitting here,

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 77

1 like I said.

2 Detective Troxell: And now you can't even see
3 your five year old kid anymore.

4 Mr. Palmer: Right.

5 Detective Troxell: You probably won't be able
6 to see him for a while ---

7 Mr. Palmer: Well ---

8 Detective Troxell: --- until this is resolved
9 and you're going to end up going down a road that you don't
10 need to go down. If there was an accident or something
11 happened to Minor if Julia told you, this is what
12 happened.

13 Mr. Palmer: I don't know, she never said
14 anything out of the way, I mean she, to tell me anything, I
15 mean I don't know. I wasn't with her Friday, that Friday
16 that just, Friday and, you know, Friday and Saturday and
17 Sunday and a Monday, that, that Friday I was not with her,
18 I went out with the next, with my next door neighbor for a
19 little while.

20 Detective Troxell: Where did ya'll go?

21 Mr. Palmer: We went to Beef O'Brady's in
22 Conway.

23 Detective Troxell: Okay, that's the first time
24 we've heard of that.

25 Mr. Palmer: You've only asked for, you know,

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 78

1 ya'll keep wanting to say Saturday and Sunday, I mean
2 Sunday and Monday, you know, that's what you --

3 Detective Troxell: Like I said there's a reason
4 for that.

5 Mr. Palmer: Okay.

6 Detective Troxell: And the doctors have
7 explained to us that whatever happened to ^{Minor} happened
8 in a certain time frame ---

9 Mr. Palmer: I do not believe.

10 Detective Troxell: --- within, you're not going
11 to believe that?

12 Mr. Palmer: I'm just telling you that, that ---

13 Detective Troxell: Do you want to read where
14 the doctor wrote that?

15 Mr. Palmer: No, no, I don't want to read it. I
16 had a doctor tell me that the other day in, in the hospital
17 when we got there at like 4:00 in the morning, he said,
18 this is recent. I said, there's no way, there's nothing
19 that, that, he's been around me that would have caused
20 something like that, there's nothing.

21 Detective Troxell: We're not saying you're a
22 violent, mean person.

23 Mr. Palmer: Well --

24 Detective Troxell: Accidents happen,
25 frustration kicks in, it's not your kid, but if, if

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 79

1 something happened at this point we've got to get that out
2 on the table so we can address it and move forward.

3 Mr. Palmer: Okay.

4 Detective Troxell: By stalling and going here
5 and staying here then we're not going to be able to move
6 forward and deal with the situation at hand.

7 Mr. Palmer: Okay.

8 Detective Troxell: And I'm not accusing you of
9 doing anything mean, I don't think you have a malicious
10 bone in your body. I've done a background on you; I know
11 you ain't, you've never been in trouble. You're trying to
12 do right for your kid and this is just a bump in the road.

13 Mr. Palmer: A huge bump.

14 Detective Troxell: That we're all going to get
15 through and we're going to get past, but it's going to take
16 someone owning up and admitting what happened because the
17 doctors are putting it in yours and Julia's hands; I'm
18 going to put it point blank to you.

19 Mr. Palmer: That's all right.

20 Detective Troxell: I'm not going to beat around
21 the bush, I'm not going to bullshit you.

22 Mr. Palmer: I know, I know, that's why ---

23 Detective Troxell: So you and Julia, you're
24 going to end up going to jail for this.

25 Mr. Palmer: I've never even been in one, I

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 80

1 don't even know what it looks like.

2 Detective Troxell: And you've got the most to
3 loose ---

4 Mr. Palmer: I understand.

5 Detective Troxell: --- out of this whole deal
6 and the most to gain, and help me, help me understand,
7 explain it to me cause I've got you guys saying there ain't
8 no way in hell cause the baby's been like this since
9 Thursday when I can prove scientifically, no, it happened
10 recently.

11 Mr. Palmer: I don't know what to tell you cause
12 I haven't hurt him, I haven't done anything. I've been
13 trying to give him more than what he came with.

14 Detective Troxell: Exactly, you've done nothing
15 but care for this baby and he ain't even yours. I'd say
16 you have no ties with him. You've been there from six in
17 the morning till three in the afternoon caring for a kid
18 that you've got no ties to. You're a caring person.
19 You're upset that you've lost a kid that you don't have
20 anything but three weeks invested in. That shows a lot to
21 your character and a lot to the person you are. We've met
22 your parents and they've spoken highly of you.

23 Mr. Palmer: This is, I don't know, I have no
24 clue what to tell you.

25 Detective Troxell: Have you ever seen Julia

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 81

1 loose her grip and loose her control with Minor

2 Mr. Palmer: Not while I was there.

3 Detective Troxell: Not while you were there;
4 does she ever loose her grip and go out of control with
5 you? Has she got a temper?

6 Mr. Palmer: I mean just normal things like I
7 said, everything that's happened to us it seems like are
8 happening bam, bam, bam, you know, the car, me getting laid
9 off, you know, Cesalee coming, and all this with Minor a
10 number of things. I wish there was something I could help
11 you with but I'm --

12 Detective Weaver: What do you think, what do
13 you think happened to him?

14 Mr. Palmer: I don't have a clue, I wish I knew,
15 I mean, like I said he was, she left --

16 Detective Weaver: But the time frame we have,
17 we know is, we know it, it just happened, okay, it
18 happened, we know the time, we know, we know the time
19 frame, this is your opportunity to tell us what happened,
20 Robert, it's very important.

21 Mr. Palmer: I'm telling you.

22 Detective Weaver: Listen to me, listen to me,
23 you're a military guy, right?

24 Mr. Palmer: I was, yes.

25 Detective Weaver: You're a Navy guy, right?

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 82

1 Mr. Palmer: Yes.

2 Detective Weaver: You served your country,
3 right?

4 Mr. Palmer: Yes.

5 Detective Weaver: You have integrity, right?

6 Mr. Palmer: Yes.

7 Detective Weaver: You're right, you did an
8 honorable thing serving our country. Why don't you do an
9 honorable thing right now and tell us what happened? This
10 is your time, buddy, this is your time cause you're going
11 to go to jail?

12 Mr. Palmer: Okay, that's fine.

13 Detective Weaver: And you need to tell us what
14 happened?

15 Mr. Palmer: I don't do anything.

16 Detective Weaver: If it was an accident we need
17 to know that?

18 Mr. Palmer: I didn't do anything.

19 Detective Weaver: Did you ever see Julie?

20 Mr. Palmer: I don't ---

21 Detective Weaver: Hurt him?

22 Mr. Palmer: Not when I was there, no, I'm
23 telling you I don't know. I just, you know, if I had known
24 this was going to happen I would have sit here and got a
25 lawyer, I mean cause ya'll sitting here and accusing me of

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 83

1 this.

2 Detective Weaver: We're not, we're trying to
3 find out what happened. Listen, listen to where we're
4 coming from, okay, we've got a little boy that's dead.

5 Mr. Palmer: I understand.

6 Detective Weaver: We're just trying to find out
7 the facts.

8 Mr. Palmer: I'm living with that.

9 Detective Weaver: I understand that, but we've
10 got to find out what happened to him. That's, that's what
11 we have to do, and we're up to this point whatever you're
12 telling us is not adding up. What the doctors tell us
13 ain't adding up.

14 Mr. Palmer: That's fine, I don't know either.

15 Detective Weaver: We need some answers.

16 Mr. Palmer: I can't help you, all I know is
17 that this is crazy.

18 Detective Weaver: I'm trying to help you, man.

19 Mr. Palmer: That's fine, I understand that.

20 Detective Weaver: But you've got to help me.

21 Mr. Palmer: I'm not hiding anything, if I was
22 hiding anything wouldn't I come up clean; I don't want to
23 go to jail.

24 Detective Weaver: I know you don't.

25 Mr. Palmer: I've never been in jail.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 84

1 Detective Weaver: How long you been with Julie?

2 Mr. Palmer: About four years.

3 Detective Weaver: Four years, is she worth
4 going to jail over?

5 Mr. Palmer: What do you think, nobody's worth
6 going over to jail.

7 Detective Weaver: I'm, I'm asking you?

8 Mr. Palmer: No.

9 Detective Weaver: Well then you need to tell us
10 if you know something about Julie you need to tell us?

11 Mr. Palmer: I don't know, I don't know. It
12 seems like the more we, investigating, the more I find out
13 about her and Cesalee and everything they've had. I don't
14 know, but this was all new to me and I didn't know all this
15 stuff about Cesalee, didn't want her to come in the first
16 place, her and Julie couldn't get along.

17 Detective Troxell: How is not being able to see
18 Dillon affecting you or not even being able to bring Dillon
19 over to your house by yourself?

20 Mr. Palmer: I mean, well how do you, what would
21 you feel?

22 Detective Troxell: I can't imagine, I don't
23 have children of my own, but I can imagine it is possibly
24 tearing you up.

25 Mr. Palmer: It's awful.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 85

1 Detective Troxell: And you're fine with sitting
2 here and going to jail and possibly not seeing him for a
3 real long time because it's you or Julia, we're throwing
4 Cesalee out, okay, it didn't happen. Cesalee was gone,
5 we've already covered that. We've got her airplane
6 documentation, date, time, flight numbers, when Cesalee
7 left Myrtle Beach, okay. She is not in, in the realm of
8 possibility. The only thing she may be guilty of is being
9 a bad, horrible mother, but she wasn't here when these
10 injuries were inflicted to Minor okay, and we can go
11 ahead and throw Friday out the window when you, you were
12 out with your neighbor, it didn't happen Friday, okay.
13 We've got the doctors saying within x amount of time from
14 when we got Minor is when this happened, and you're fine
15 with going to jail?

16 Mr. Palmer: No, I'm not fine with going to
17 jail, I mean seriously I don't know what to tell you. What
18 you're looking for you're not going to find it in me cause
19 I've not done anything out of the way to that child.

20 Detective Troxell: Okay.

21 Mr. Palmer: So I mean if, if I gotta go to jail
22 then I guess I gotta go to jail, so --

23 Detective Troxell: And you're just going to
24 leave it at that?

25 Mr. Palmer: What do you want me to do? I

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 86

1 can't, I --

2 Detective Troxell: You've got to know
3 something. There's no way you don't, that trailer isn't
4 that big?

5 Mr. Palmer: I understand.

6 Detective Troxell: What's, what happened to

7 Minor ---

8 Mr. Palmer: Yes.

9 Detective Troxell: --- was a violent enough act
10 that it would have been known immediately. He would have
11 shown symptoms, he would have been symptomatic immediately,
12 that is straight from, and I'll read all her credentials.

13 Mr. Palmer: I, you don't have to go through
14 the, I mean it's, she's a doctor, right?

15 Detective Troxell: Dr. Anna Able, Medical
16 Director of the Violence Intervention Prevention Center.
17 This lady's an expert, she's the one who's, it's not going
18 to be me and Weaver sitting on the stand, well we think
19 this, it's going to be an expert. I know this is what
20 happened.

21 Detective Weaver: That all she does, man.

22 Mr. Palmer: That's fine.

23 Detective Weaver: She's an expert. It's all
24 she does.

25 Mr. Palmer: I understand, I --

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 87

1 Detective Troxell: And you're going to chalk it
2 up to that's fine.

3 Mr. Palmer: No, I mean what do you want me to
4 say?

5 Detective Troxell: I don't understand.

6 Mr. Palmer: What do you want me to say?

7 Detective Weaver: Do you, do you have any
8 knowledge at all? Have you talked about it? Has Julie
9 said anything to you about it?

10 Mr. Palmer: No, she hasn't been around. She
11 came home last night around 7:30.

12 Detective Weaver: No, I'm talking about Monday
13 or Sunday or any time?

14 Mr. Palmer: We hadn't been ---

15 Detective Weaver: Have you talked about it?

16 Mr. Palmer: We hadn't been alone. I mean it's
17 been in, in and out of questioning and going to see Minor

18 Detective Weaver: You've been in automobiles..
19 You've been driving together.

20 Mr. Palmer: Yeah, I mean she's talking on the
21 phone.

22 Detective Weaver: You've been at the hospital
23 together.

24 Mr. Palmer: She's been talking on the phone to
25 all kinds of people. I've been doing all the driving.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 88

1 She's been talking on the phone, you know, telling, you
2 know, I don't know what, like I said I'm finding more and
3 more out now that, about Cesalee and her relationship, you
4 know, that I had nothing, I had no clue of. I don't, I
5 don't know what to tell you.

6 Detective Weaver: I talked to your parents. I
7 know what kind of person you are.

8 Mr. Palmer: I understand that, I mean --

9 Detective Weaver: Okay, you're a good person.

10 Mr. Palmer: Right.

11 Detective Weaver: But things happen. Maybe it
12 was an accident, we need to know right now, man. We need
13 to know cause, once we walk out of this room, we need to
14 know right now.

15 Detective Troxell: But there's no coming back
16 here.

17 Detective Weaver: We need to know what
18 happened.

19 Mr. Palmer: That's fine.

20 Detective Weaver: Like I said I, I know what
21 kind of person, we've checked around.

22 Mr. Palmer: That's good, I mean, you know, it's
23 not going to do me any good now because of you guys.

24 Detective Weaver: You feel the same way about
25 Julie?

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 89

1 Mr. Palmer: Huh?

2 Detective Weaver: You feel the same way about
3 Julie. You think she's a good person?

4 Mr. Palmer: From what I've seen of her, yes.
5 I, I don't know what you want me to say and I'm not going
6 to say anything.

7 Detective Troxell: We're coming to you first.
8 There's a reason ---

9 Mr. Palmer: That's fine.

10 Detective Troxell: --- we came to you first.

11 Mr. Palmer: And I know there was a reason you
12 came to me first cause you wanting, this is all cause I'm
13 the one that gave him primary care.

14 Detective Troxell: Wrong.

15 Detective Weaver: No.

16 Detective Troxell: Wrong, you're the only one
17 that in the entire time that we've talked to you that has
18 showed any care or compassion or has remotely teared up.
19 When we sat down in that hospital room Julia was stone cold
20 straight faced and we talked. When you came in and when
21 you were describing how you held Minor and he was shaking
22 you got teary then. That showed me what kind of person you
23 are. It shows me what kind of character you have. It also
24 leads me to believe that if there was something that might
25 have happened you would be the one to step up and say, you

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 90

1 know what, someone needs to speak for this child.

2 Mr. Palmer: I understand.

3 Detective Troxell: He can't speak for himself.

4 Mr. Palmer: I understand. I, I, if I could
5 help you I would, I told you that. I'm not going to change
6 my story. I, I have nothing to hide.

7 Detective Troxell: Okay, nothing to hide,
8 nothing else you want to add, nothing? You can't, think
9 back, let me, we'll step out and give you a few minutes to
10 think, maybe something happened, maybe he fell off
11 something, he did something, I don't know, something
12 happened.

13 Detective Weaver: Think hard, man. Hey, look
14 at me, this is the most important day in your life right
15 now, okay?

16 Mr. Palmer: You're telling me.

17 Detective Weaver: So you need to think about
18 it.

19 Detective Troxell: Have you been able to
20 possibly think of anything, any explanation as to why we're
21 here and going through what we're going through?

22 Okay, do you know what's going to happen from
23 this point forward?

24 Mr. Palmer: Yes, I do.

25 Detective Troxell: Not only with you but with

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 91

1 Minor

2 Mr. Palmer: I guess I'm going to jail.

3 Detective Troxell: We're going to the autopsy.

4 Detective Weaver and I are going to attend that and we're
5 going to photograph that, and we're going to have the
6 radiographs, our photographs that we take, the forensic
7 pathologist, and we're going to examine the skull, and
8 there is [sic] ways that we can medically and
9 scientifically prove that the fractures on it are, are
10 fresh fractures, and the way they can prove that is the
11 fractures aren't healed nor are they calloused, okay.

12 There is going to be a mountain of evidence
13 that's saying something happened in that house or something
14 happened while, as you put it, you and Julia were caring
15 for the child, cause no one else could have done it. No
16 one else had access. There was no one else but you guys so
17 I am going to have all this over here and you're saying I
18 don't know, and then you're saying I guess I'm going to
19 jail.

20 Mr. Palmer: What do you want me to say? I mean

21 ---

22 Detective Troxell: You're at a crossroads in
23 your life, like Weaver said, your life, your life is never
24 going to be the same as, once we walk out of this, this
25 office, the next time we walk out of here.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 92

1 Mr. Palmer: It seems like that for the last two
2 years, so I mean nothing's changed, steady going downhill,
3 you do something nice and look where it gets you. I'm in
4 here talking to ya'll two.

5 Detective Troxell: But you can change it?

6 Mr. Palmer: I, I, I ---

7 Detective Troxell: You have the power to change
8 it.

9 Mr. Palmer: Listen to me, I did not do anything
10 to that child. All I did was try to care for him.

11 Detective Troxell: I'm not saying you did
12 anything to that child and I know you tried to care for it,
13 at no point have we said, Robert, you did something to that
14 kid, did we?

15 Mr. Palmer: I'm the primary caregiver, that's
16 what I'm trying to --

17 Detective Troxell: You're the primary
18 caregiver, yeah, but there's also times where the care
19 isn't in your hands, there's Julie.

20 Mr. Palmer: Right.

21 Detective Troxell: The hand of one is the hand
22 of all, if you know something, if she did something I'm
23 telling you now you need to tell us cause you're going to
24 go down, you're going down a path you don't need to.

25 Mr. Palmer: I understand, but I, if I knew I

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 93

1 would tell you, I don't know anything. She has not said
2 anything. I haven't done anything. I don't know what to
3 tell you. I mean, when I'm not there exactly what, I'm not
4 there. I don't have a camera, you know, a camcorder going
5 the whole time saying this is what she did while I was
6 gone, no, I don't know what, while I was not there.

7 Detective Troxell: But she, you don't think
8 she's capable of doing something?

9 Mr. Palmer: I don't know, I don't know.

10 Detective Weaver: I find it hard to believe the
11 last couple of days ya'll didn't talk about what you felt
12 happened to ^{Minor} You didn't talk about it at all, what
13 happened to him?

14 Mr. Palmer: Yeah, we, yeah, what we said was, I
15 guarantee it was Cesalee.

16 Detective Weaver: Not possible.

17 Mr. Palmer: Okay, then ---

18 Detective Weaver: Medically it's not possible.

19 Mr. Palmer: Okay, that's fine. That's what we
20 said, you know, I mean she left.

21 Detective Troxell: Don't you think it's a
22 little odd that she was so quick to throw Cesalee under the
23 bus? So quick to not say maybe it was an accident but that
24 ---

25 Detective Weaver: Her own daughter, flesh and

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 94

1 blood, thrown under the bus.

2 Detective Troxell: That she could care less,
3 she could care less about her daughter?

4 Mr. Palmer: Well that must say something that
5 I'm not the one, wouldn't you think?

6 Detective Troxell: But the hand of one is the
7 hand of all and if you ---

8 Mr. Palmer: I understand.

9 Detective Troxell: --- don't know anything you
10 can't say anything.

11 Mr. Palmer: I don't know anything, I don't.
12 That's what I'm trying to tell you. I do not know what
13 happened to that child.

14 Detective Troxell: So you're going to roll the
15 dice on Julia maning up and saying I did something because
16 if she doesn't then both of you are going to end up going
17 to jail?

18 Mr. Palmer: What I know that's what, I can't
19 stop this, this is the way the justice system works. What
20 do you want me to say?

21 Detective Troxell: It's not the justice system.
22 It's not anything being put on you, it's what we can prove.

23 Mr. Palmer: That's ---

24 Detective Troxell: We don't go to Court with
25 assumptions, we go to Court with fact.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 95

1 Mr. Palmer: I got you, I understand that.

2 Detective Troxell: Didn't you think it was odd
3 that we came in there and we didn't just measure the bed?
4 I measured every damn thing in your house that had a flat
5 surface ---

6 Mr. Palmer: I know, I ---

7 Detective Troxell: --- to disprove that he
8 could have fallen from anything.

9 Detective Weaver: Yes, there's no way. I knew
10 that.

11 Detective Troxell: All of that has been chucked
12 out the window.

13 Mr. Palmer: Okay, I don't know what, what you
14 want me to say. Do you want me to just to fess up and say,
15 hey, I did this, I'm not going to do that. I did nothing
16 to that child. I'm, I'm not going to change my story. I
17 did not do anything to this child. Whatever you want me to
18 say, I'm not going to say it. I did nothing to this child.

19 Detective Troxell: At no point, I don't want
20 you to say that, if you didn't do it. All I can ask you to
21 give me is the truth.

22 Mr. Palmer: It seems like ya'll want me to, you
23 walk out and then you come back in and want me to think of
24 something, I don't know, I'm trying to.

25 Detective Troxell: I'm just giving you a chance

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 96

1 to job your memory.

2 Detective Weaver: We just want the truth.

3 Detective Troxell: And to stress the things

4 that ---

5 Mr. Palmer: I, I want the truth.

6 Detective Troxell: And to stress the things

7 that have happened over the course of the week, if you take

8 time to think, you haven't slept, probably haven't eaten,

9 you haven't got adequate rest, things jog your memory. I'm

10 not trying to give you, give me an explanation, that's not

11 what I want.

12 Mr. Palmer: I didn't, you know, after

13 everything that happened Monday or, and Tuesday, where, you

14 know, we was questioned and brought in by different people,

15 nobody once give a rip about how much sleep we had, so

16 right now that's not here nor there.

17 Detective Weaver: That's not true, I asked you

18 a couple of times you getting any rest, how you doing?

19 Mr. Palmer: I didn't get any. I got maybe

20 thirty minutes in a hospital, if you know how hospitals

21 are, it's slamming, beating, people walking, and doing this

22 and that, not once on forty-something hours have I changed

23 my story and I won't do it now.

24 Detective Troxell: Okay, that's fine.

25 Detective Weaver: No problem with that. This

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 97
1 interview's over, buddy.

2 Mr. Palmer: All right.

3 Detective Weaver: Sit down, you ain't going
4 anywhere just yet, we've gotta get a set of handcuffs for
5 you.

6 (Whereupon, the video statement of Robert Palmer
7 is concluded.)

8 Ms. Lively: Your Honor, the next statement is
9 going to be the statement provided by Julia Gorman. If you
10 want me to I can handle the preliminary issues regarding
11 the Miranda of this defendant as well.

12 The Court: Okay, why don't you do that then
13 we'll take a break before we actually do the statement,
14 okay?

15 Ms. Lively: Yes, sir.

16 Ms. Grabert-Lowenstein: Your Honor, if I could
17 just advise the Court, I've got a 2:00 appointment with the
18 orthopaedist. Do you think we'll be done ---

19 The Court: Okay, we won't take a long break.

20 Ms. Lively: (Continuing Direct Examination of
21 Detective Troxell.)

22 Q Detective Troxell, on that same day, July
23 18th, 2008, did you have an opportunity to meet with the
24 defendant Julia Gorman?

25 A Yes, ma'am, I did.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 98

1 Q And will you tell the Court on that date
2 what it was that you did in regards to that meeting with
3 her?

4 A At approximately 10:06 on the morning of
5 July 18th we initiated an interrogation with her at the
6 Horry County Police Department in the incident with Minor
7

8 Q And were you in the interview room with the
9 defendant Julia Gorman?

10 A Yes, ma'am, I was.

11 Q And whenever you were in the interview room
12 with her did you provide her with a document the same as
13 the one that you provided to the defendant Robert Palmer?

14 A Yes, ma'am.

15 Q Okay, and please tell the Court what that
16 document was?

17 A Again it's the standard police department
18 form for the advisement of one's Miranda rights.

19 Q And do you have a copy of that or the
20 actual document in your file?

21 A Yes, ma'am, I do.

22 Q Okay, if you'd, please, retrieve that for
23 me?

24 Ms. Lively: And we'll have it marked as State's
25 Number 10?

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 99

1 (Whereupon, State's Exhibit Number 10 marked for
2 identification.)

3 Q I'm going to show you State's Exhibit
4 Number 10, you've already given us the date and the time on
5 that document; whose name is affixed to that document?

6 A There's a signature of Julia Gorman.

7 Q All right, and in that statement did you
8 also read out each individual right that this defendant had
9 before she made a statement to you?

10 A Yes, ma'am.

11 Q If you would, please, tell the Court what
12 that document states?

13 A You have the right to remain silent.
14 Anything you say can and will be used against you in a
15 court of law. You have the right to talk with a lawyer and
16 have him present with you while you're being questioned.
17 If you can't afford, if you cannot afford to hire a lawyer
18 one will be appointed to represent you before any
19 questioning if you so desire. If you make a statement or
20 answer any questions you have the right to stop at any
21 time.

22 Q And after each one of those rights what do
23 you have anyone that's being interrogated do to make sure
24 that they've read each line?

25 A Place their initials indicating that

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 100

1 they've understood each line that was read to them.

2 Q And was that done on this form?

3 A Yes, ma'am, it was.

4 Q Okay, and during your talk with Ms. Gorman
5 on that date did you have any concerns that she might be
6 under the influence of alcohol or drugs or not understand
7 what it was that you were doing on that morning?

8 A I don't see my handwriting on this,
9 Detective Weaver may have handled that part, but I don't
10 recall any impairment.

11 Q Okay, and you actually were in the room
12 with her and during interrogation, correct?

13 A Yes, ma'am.

14 Q Did you personally observe any concern, did
15 you personally have any concerns about her ability to
16 understand what was going on that day?

17 A No, ma'am, not at all.

18 Q And during any time during the interview
19 did you force her, coerce her, or attempt in any way to, to
20 get a statement out of her that was not voluntary?

21 A No, ma'am.

22 Q Okay, and did you also indicate to her or
23 did you have any indication that she was educationally or
24 mentally incapacitated in any way?

25 A There was no indication of that.

Detective Troxell - Dir. Exam. In Camera by Ms. Lively 101

1 Ms. Lively: Okay, Your Honor, at this time the
2 State would move State's Exhibit Number 10 into evidence
3 and ask that we can publish this statement to you.

4 The Court: Any objection?

5 Mr. Galmore: No objection.

6 The Court: All right, it's in.

7 (Whereupon, State's Exhibit Number 10 entered
8 into evidence.)

9 The Court: All right, are you ready to publish
10 the statement?

11 Ms. Lively: Yes, sir, Your Honor, the State is
12 ready.

13 The Court: All right, let's just take a quick
14 break since it is over an hour, okay.

15 Ms. Lively: Yes, sir.

16 (Whereupon, a recess was taken.)

17 The Court: Everyone is here and we're on the
18 record.

19 Ms. Lively: Yes, sir, back on the record and
20 for the record, Your Honor, the State is ready to proceed
21 with publishing the statement of Julia Gorman. Detective
22 Troxell has already testified in regards to the Miranda and
23 the issues as to whether or not he discussed the rights
24 with this defendant and the State is now asking that this
25 witness be excused while this statement is published, it's

Detective Troxell - Cross Examination by Mr. Galmore 102

1 my understanding without objection from the defense.

2 The Court: Understand that he needs to be at
3 his dentist now and the counsel for both defendants have
4 indicated that they do not wish to cross examine him; is
5 that right, Ms. Grabert-Lowenstein?

6 Ms. Grabert-Lowenstein: It is on behalf of Mr.
7 Palmer.

8 The Court: Is that right, Mr. Galmore?

9 Mr. Galmore: I would just ask one question.

10 Cross Examination

11 By Mr. Galmore:

12 Q If this was the only interview that
13 Detective Troxell did with Ms. Gorman?

14 A We did a previous interview at the
15 hospital.

16 Q Which hospital?

17 A MUSC.

18 Q Were any interviews conducted at Conway
19 Medical Center?

20 A I didn't, I believe Detective Weaver
21 initially might have done one.

22 Mr. Galmore: Okay.

23 The Court: All right?

24 Mr. Galmore: Yes, sir.

25 The Court: No objection to his being excused?

103

1 Mr. Galmore: No, sir.

2 The Court: All right, you may be excused.

3 Detective Troxell: Thank you, Your Honor.

4 Ms. Lively: Thank you, Your Honor.

5 The Court: Bobby, can you give me a light here,
6 is there a way to give me one?

7 Thank you, I think we can see it.

8 (Whereupon, statement of Julia Gorman played in
9 open court as follows:)

10 Detective Troxell: Grab a seat for me, we'll be
11 right with you.

12 Ms. Gorman: Okay.

13 Detective Troxell: I've got to get Weaver.

14 Ms. Gorman: I don't like this.

15 (Whereupon, Detective Weaver enters the interview
16 room with Detective Troxell.)

17 Detective Weaver: Hey, Julie.

18 Ms. Gorman: Hey.

19 Detective Weaver: Have a seat here.

20 Ms. Gorman: Okay.

21 Detective Weaver: That's my seat.

22 Ms. Gorman: That's my seat, I don't see a name
23 tag.

24 Detective Weaver: We'll get to that later.

25 Ms. Gorman: I know, I was just reading, passing

1 time.

2 Detective Weaver: Okay.

3 Detective Troxell: What is that, that?

4 Ms. Gorman: This is when she was in, when we
5 lived in North Carolina, I had told him that remember I was
6 looking for it for you?

7 Detective Troxell: Yeah, yeah.

8 Ms. Gorman: It was just, I wanted you to read
9 even through school, you know, she had problems.

10 Detective Troxell: Y ---

11 Ms. Gorman: Here's her discharge papers,
12 contract from the doctor that, you know, she was supposed
13 to follow the rules at least for the, you know, failure to
14 comply, what would be happening, the letter she wrote me.

15 Detective Troxell: Yeah, we'll get to all that
16 in just a second, how are you doing this morning?

17 Ms. Gorman: How do I look?

18 Detective Troxell: You look exhausted.

19 Ms. Gorman: Robert told me, he goes, I may have
20 went to bed last night, he was but I tossed and turned.

21 Detective Troxell: How you handling everything;
22 how you dealing with it?

23 Ms. Gorman: Trying to stay strong, I've gotta
24 stay strong for everybody. I don't, I don't know, I don't
25 if it's hit me, but I'm sure it will. I came home because

1 I thought it best as I was telling Detective Weaver after
2 everything that, that I was being told, things that have
3 been said to me, I just felt very uncomfortable and felt it
4 was best I come home.

5 Detective Troxell: What were you being told,
6 what was being said to you?

7 Ms. Gorman: Wednesday, Tue -- Tuesday, I'm
8 trying to get my dates right because everything just kind
9 of comes together now, I don't know about 7:00, you know,
10 we were leaving the hospital because we needed to get some
11 rest, you know, we had been up for over forty hours, told
12 the nurse, gave our cell phones, and said if Richard shows
13 up, please, give me a call so I can come back. No phone
14 call, so we went on, woke up at 4:00, couldn't sleep, so I
15 left the hotel room and went to the hospital with Minor
16 went to the phone and they told me I couldn't come in
17 because no visitors were allowed for the father. Okay, I
18 could accept that and I was in the hallway waiting for him
19 to come up and he saw me and I put my finger up, you know,
20 cause I was on the phone, hold on a second, and he stopped
21 and he told me he debated on stopping or just keep walking,
22 and he, and, and, you know, he, he told that, you know,
23 that he was brain, you know, Minor was brain dead and, of
24 course, it's devastating and but all my, all my feelings
25 aside I stepped up to him and gave him a hug, you know, I'm

1 sorry, you know, I'd do that to anybody, and we talked and
2 I told him and I said, you know, any animosity that anybody
3 has my family, your family, you know, because both of our
4 families don't like each other, I said this isn't about us
5 no more. It's about Minor you know, so he, he agreed
6 that, you know, I could go back in and I could see him on
7 my own, I didn't have to have supervision or anything and I
8 said I, I appreciate that, you know, I've been here since
9 day one, you know, to take that away from me, you know, is,
10 is, this is punishment enough.

11 It's punishment enough what I'm going through but
12 that's even more punishment for me, so we went inside, told
13 the nurse, he said, you know, I would be allowed back in
14 unless there was a confrontation. I said, okay, they said,
15 okay. I told them I was going home, you know, to get my
16 car and everything. That's when ya'll showed up to take
17 pictures and everything.

18 And when I got back, you know, and I called him
19 and said I was on my way and that's when I got the message
20 that Minor had passed, as I was driving back to
21 Charleston, and it was just devastating. I got there, went
22 up to the room, you know, saw Minor took Richard, I
23 didn't have to go back, you know, I could have stayed home
24 but I needed to make sure he was okay, like or not like,
25 make sure you're okay, too.

107

1 We went to dinner at Uno Mas and we talked and
2 everything and he offered me to stay in his hotel room, you
3 know, cause I told him I would sit up with a pillow and a
4 blanket and I would sleep in my car, it was no big deal.
5 And he goes, no, come stay there, he wasn't, I said all
6 right, so I drive him to the Air Force Base. We went up
7 there and we were talking and he was telling me that he'd
8 spoke to Detective Weaver and told him, I can't do it
9 verbatim, that it was your day off, you said you were off.
10 He says I'm a marine, I'm in the military, I work twenty
11 four seven, and you will do the same and if you can't
12 comply, you know, do that then you need to give the case to
13 somebody else because you don't get a day off. I said,
14 okay, I didn't say nothing more. I just bit my tongue and
15 cause he doesn't know that I've been conversing with you,
16 you know, I've kept that to myself. I can't remember if I
17 told him that you guys were at my house. I believe I did
18 but I didn't tell him why you were there, and then he told
19 me that the reason why my mother was coming here, I said,
20 my mom didn't know anything, I mean she didn't even see,
21 she didn't know nothing more cause I thought it wasn't good
22 for her to know on a bus, you know, three day trip. My mom
23 is about sixty, you know, I didn't know if she could take
24 that and I felt it would be better here, you know, there
25 when she got here, if anything was to happen to her, crack

1 emotionally, we were in a facility. They could take care
2 of her.

3 He told me the reason why my mother was coming
4 was to help get Minor well, and then when I was at work
5 one day I wouldn't know when I came home from work she
6 would have packed his stuff and left, be gone. It's very
7 deceitful, you know, very, you know, dirty and I almost
8 said something to him about, nothing new to me my mother's
9 done it to me before, you know when I, when I was in high
10 school, I was a sophomore, when I was a freshman, going
11 into freshman high school in Kansas, we went to Kansas to
12 visit my dad and I hadn't know, I hadn't really seen my dad
13 in years and she made me stay. She told me I had to stay
14 for a couple of weeks, get to know your dad and your
15 brothers, begged and promised, please let me come home.
16 She said a couple of weeks you can come home. After she
17 left Kansas she called me and told me I was staying. I
18 don't know this man from a hill of beans, I mean my dad's
19 like hell I will tell you that, hell, couldn't tell you if
20 he was alive, that's how I felt that year because I was
21 angry, you know.

22 My sophomore year my parents remarried and they
23 fought a lot. There were -- my mom told me that they got
24 into a fight again, you know, arguing, she was leaving,
25 told me I could come with her. I said, no, I'm on the

109

1 honor roll student, really good grades, really good school
2 and I had good friends. She said, okay, permission not to
3 come home after school I was going to the mall and my
4 brothers called and told me I needed to come home now, I
5 was like, come home now. When I came home our house was
6 cleaned out except my bedroom. She took everything and
7 left us. She already had it planned, you know, so I mean
8 once again I've been abandoned so, you know, and, and to
9 tell me that you're going to do this to a baby, to take him
10 from my home without me, again abandonment, you know,
11 you're taking from me, taking my life.

12 Detective Troxell: Right.

13 Ms. Gorman: So I didn't say nothing and then he
14 told me, let's see, well then I told him I'll step outside
15 and talk on the phone. I called my sister, you know, I was
16 telling, talking to my sister and I was telling her these
17 things. My sister's got reason to be because it's happened
18 to her, too, you know, growing up and I said, all right, we
19 talked about an hour and I went back inside the hotel room
20 and sat there for a minute, couldn't sleep, very
21 uncomfortable being here now because, and at first I didn't
22 want to stay anyway. I was trying to be okay with
23 everything and so I wrote him a note saying I can't sleep,
24 I'm going to back to the hospital to be with Minor call
25 me in the morning, you know, so I left, called my sister

1 back and I said you need to talk to me, back to the
2 hospital so I had something to do for the, for that I don't
3 know forty five minutes or whatever.

4 Then she talked to me and stayed out in the
5 parking lot for a minute and I went upstairs and Nancy's
6 the nurse that was there and, excuse me, and her and I
7 talked for a long time, just talking and she told me to go,
8 you know, cause they were checking on Minor and his fever
9 and I said I was getting emotional and she says why don't
10 you go take a break and when you come back then we'll give
11 him a bath and change his beddings and make me feel useful
12 so that I can do for him, went downstairs took a break,
13 smoked some cigarettes, came upstairs and we cleaned him
14 up, changed, you know, did everything we were supposed to
15 do and it made me feel good.

16 It's something to do, it's like this, this was
17 like my ending chapter and I don't mean it like that but it
18 was the final thing that I could do for him and then
19 Richard called me and asked where I was at and I said did
20 you get my note. He goes, no, and I said it's sitting
21 there by the keys, it says I came to the hospital. He
22 said, okay. I stayed at the hospital and then he called me
23 and said that they were, him and Cesalee were downstairs
24 and I was very hesitant to go down there because I didn't
25 know what I was going to come into, you know, if she was

111

1 going to lash out. And they walked up and I walked
2 downstairs and I didn't touch her, didn't, we were caught
3 up like this. I, I couldn't go to her, it's just it, it's,
4 I was so afraid, I didn't know if she was going hit me, you
5 know, because she has before so it, it's nothing new and --

6 Detective Troxell: Why do you think she would
7 hit you?

8 Ms. Gorman: Angry, you know, just to be
9 expected, you know, just I, you know, if I was in her
10 position, you know, if it was me and I, I don't know what I
11 would do either, you know, but because I know her
12 background and everything and I, I was already prepared.

13 So we were talking and I was, you know, she said
14 she made a scrape book and everything and asked me if I
15 wanted to look at it and ---

16 (Whereupon, Ms. Gorman's cell phone rings.)

17 Ms. Gorman: --- stop phone, and I looked at it,
18 you know, they asked if they could put their luggage in my
19 car, not a problem. Before we did that, you know, we were
20 talking and everything and I was telling, I said did they
21 call you and tell cause it was very adamant Minor being in
22 a private room and ---

23 (Whereupon, Ms. Gorman's cell phone rings.)

24 Ms. Gorman: --- sorry ---

25 Detective Troxell: Could you just shut that off

1 or something?

2 Detective Weaver: Could you cut that off?

3 Just, just cut it off.

4 Detective Weaver: A little bit of a hassle.

5 Let's keep moving.

6 Ms. Gorman: --- letting them, letting them know
7 that they decided not to move Minor to a private room
8 because his blood pressure was like, you know, going up and
9 down and they felt like if they moved him he might go into
10 cardiac arrest. So I told him and he was mad because they
11 didn't call him and I said because he surely didn't want
12 information from me and I said it wasn't right that they
13 were giving me information, I was, I just happened to be
14 there and, and, I said so he is still in the same spot, you
15 know. And of course Cesalee asked what cardiac arrest
16 meant and I said it means heart failure and his comment was
17 it doesn't mean nothing because he ain't there anyway. No
18 that's not I mean, his heart works but it might be by
19 machine but his heart, his lungs, his organs work so don't,
20 you know, that upset me because he said that, to where he
21 it, even though he's gone, his soul, but physically his
22 body works and, and I wanted her to know that. So we
23 walked to the car, put our stuff in the car, put their
24 stuff in the car and Richard had told me that him and
25 Cesalee had talked and, and Ceslaee was standing there,

113

1 that they didn't want anybody to go to jail. They said
2 whoever did this it's punishment enough because, cause
3 they're going to be, whoever killed my son is going to have
4 to live with this for the rest of their life and jail is,
5 is a privilege, a luxury. I was, like, okay, what do you
6 want me to say, you know. Okay. So, and then, you know,
7 at the, at the car I was telling Cesalee what had happened
8 Monday, you know, from the time I left, the time I got home
9 and I was telling her, you know, he was having seizures and
10 Richard told me, he goes, he wasn't having seizures in your
11 arms, he was dying in your arms, he was already dead.
12 Okay. I didn't say nothing. I just, you know, Detective
13 Weaver, I mean, this is way of grief, you know, and I
14 accept that, you know, and that's why I bit my tongue. I
15 didn't lash back, say anything because, you know, what am I
16 supposed to say?

17 You know I, very, I called Doctor, I mean,
18 Detective, I'm sorry, Detective Weaver, and I said he told
19 me this stuff and I said I don't feel comfortable being
20 here. I said I promised I would pick up my mom and I'm
21 coming home. They were going to have him baptized, blessed
22 and while we were at the hospital before I picked up my
23 mother, one of the children in the hospital may have
24 claimed to have kidney failure so immediately they went to
25 the family and offered Minor kidneys. Well, from,

1 fortunately the child's kidneys did not fail yet and always
2 a, a baby on one of the floors had a bad heart so they're
3 donating his heart to that baby.

4 Detective Troxell: Okay.

5 Ms. Gorman: I, I don't know if that's how it
6 works immediately you're a waiting list or you're on a
7 list, you know, for all the states, I don't know how it
8 works, and so he said that he was down, he was down getting
9 a CAT scan to make sure all their organs, his organs were
10 functional and being able to be able to donate. And, of
11 course, you know me I said well as long as he's compatible,
12 and he's like he's compatible to everybody cause he's O
13 positive and I said, okay, I wouldn't know that, you know,
14 I'm not a doctor. And I got a message on my, you know,
15 Robert texted me and told me that Minor was on the news
16 and I went, oh, my gosh, so, of course, my, I told Richard,
17 my mom, Cesalee, and Richard were standing there, we were
18 outside the emergency room because I told them to meet me
19 there. I moved my car with all their stuff cause I was
20 leaving. I said I got information that Minor s been on
21 the news. The first words out of his mouth was the
22 airport, picks up the phone calls his Master Chief and the
23 first thing out of his mouth is Master Chief Minor been
24 on the news, they're telling everything, you know, what's
25 happened. I said, whoa, whoa, whoa, I said that is not

115

1 what I said. I said do not put words in my mouth. I said
2 I told you I heard he was on the news and that's it. When
3 I get home I'll find out and I'll call you back. Robert
4 told me, you know, because of how, you know, it keeps
5 getting words in mouths and saying things he says don't
6 call him back, so I would ask if you guys could let him
7 know how it got out, you know, public information, that
8 it's going to be, it's in the paper today because Robert
9 said every time I tell him something it seems like things
10 get twisted and I said, okay, so I let it be. I didn't
11 call him back and he said all it's doing is just creating
12 more problems.

13 And I have to respect that. And we stood there
14 for a while and we talked and we went through everything
15 and like I, you know, and before I got to the hospital ---
16 I picked my mom up and before I got to the hospital I
17 stopped because my mom knew and I told mom everything, you
18 know, from basically, you know, from the weekend on and how
19 he felt and everything and my mom cried and like I told
20 Cesalee and my mom and Richard I said he's in a, you know,
21 he's up in the clouds playing with Mikey and Nora, our pet
22 dog from when the kids were little.

23 Detective Weaver: Who's Mikey?

24 Ms. Gorman: He was our dog.

25 Detective Weaver: Oh.

1 Ms. Gorman: You know, like Cesalee was little,
2 you know, we had him since she was five.

3 Detective Weaver: Right.

4 Ms. Gorman: So until she was sixth grade and so
5 from first grade to sixth grade he was our family dog.

6 Detective Weaver: Yeah.

7 Ms. Gorman: And we had him cremated and he's in
8 a box.

9 Detective Weaver: Yeah.

10 Ms. Gorman: And we buy flowers for him, put
11 them in the house, so and, you know, just to let her know
12 that he's playing fetch and Mikey will watch over him cause
13 Mikey was our, he was a good dog.

14 Detective Weaver: Yeah.

15 Ms. Gorman: And, of course, you know, to make
16 some things funny and I said and the turtle, too. And
17 Minor like the turtle? And I said, oh, yeah, the
18 turtle drowned in the fish tank and so, you know, you had
19 to find some sense of humor. You had to find some things
20 to laugh about ---

21 Detective Weaver: Yeah, sure.

22 Ms. Gorman: --- you know, to get through it and
23 I said, you know, grandpa's there, you know, and --- but,
24 you know, these people are now our family and his family
25 there's all kinds of people up there for him. And I told

117

1 them I said, and I told Cesalee and I told Richard he
2 doesn't look the same as what you saw yesterday. I said,
3 you know, he's more swollen and I described, you know, how
4 he looked and I said I want you to remember this, you
5 remember Minor as he is, not was or when, as he is not how
6 he looks because he, he ---

7 Detective Troxell: Julia, I hate to interject
8 but now that we've, we've kind of got to the point where
9 Minor is deceased. Before we talk and this is just
10 standard practice with everybody, we did it with Robert
11 earlier, you've got to be advised of your Miranda rights,
12 the investigation as, you know, has taken a turn into now a
13 death investigation.

14 Ms. Gorman: Okay.

15 Detective Troxell: Just an advisement standard
16 policy and procedure I've got to advise you of these.
17 These are an advisement of your Miranda rights. What I'm
18 going to do is I'm going to read each line to you and I
19 want you to initial beside each line.

20 Ms. Gorman: Okay.

21 Detective Troxell: Just indicating you
22 understand them, okay. "You have the right to remain
23 silent. Anything you say can and will be used against you
24 in a court of law." You understand that?

25 Ms. Gorman: Yes.

1 Detective Troxell: Okay, put your initials
2 there. "You have the right to talk with a lawyer and have
3 him present while you're being questioned." Do you
4 understand that?

5 Ms. Gorman: Yes.

6 Detective Troxell: Put your initials there.
7 "If you cannot afford to hire a lawyer one will be
8 appointed to represent you before any questioning if you so
9 desire"?

10 Ms. Gorman: Yes.

11 Detective Troxell: Okay. "If you make a
12 statement or answer any questions you have the right to
13 stop at any time." Do you understand that?

14 Ms. Gorman: Yes.

15 Detective Troxell: Okay, then put your initials
16 there.

17 Ms. Gorman: I was just reading it, I'm sorry.

18 Detective Troxell: I'm sorry.

19 Ms. Gorman: You spoke fast.

20 Detective Troxell: You understand everything
21 that I've just read to you?

22 Ms. Gorman: Yes.

23 Detective Troxell: Okay, initial there. Do you
24 want to answer my questions and continue to make a
25 statement and stuff?

119

1 Ms. Gorman: That's fine, I don't have anything
2 to hide.

3 Detective Troxell: Okay, initial, yes. It's
4 10:06, put 7-18 and the time there, okay, I'm sorry, I
5 didn't mean, you can ---

6 Ms. Gorman: That's, that's okay, I mean you got
7 to do what you got to do, too.

8 Detective Troxell: --- kinda get to the crux of
9 it because we're running time, we've got to get down to
10 Charleston. Monday, take us through the events of Monday.
11 I know you've already done all this one time before ---

12 Ms. Gorman: I knew that.

13 Detective Troxell: --- but our tape recorders
14 malfunctioned.

15 Ms. Gorman: Monday morning I got up 4:30,
16 quarter to five and it's on my side hit my alarm clock a
17 few times, getting ready, get dressed. I walk by his room,
18 I go in, I check on him, he's sleeping good, leave. I go
19 to work. Robert calls me 9 - 9:30 and says to me he woke
20 him up because he, he'd been asleep for a while and, you
21 know, that we re trying to get him out of sleeping so much,
22 of course, because of how she was and he goes, you know, he
23 was tired, you know, cranky. He fed him breakfast and
24 called me again and told me he fed him lunch and he was in
25 there playing with his toys and everything. When I got

1 home he was taking a nap. I went in there and checked on
2 him.

3 Detective Troxell: What time did you get home?

4 Ms. Gorman: I want to say by four.

5 Detective Troxell: About four, so you ---

6 Ms. Gorman: Four fifteen, it just --

7 Detective Troxell: You left at five and got
8 back at four?

9 Ms. Gorman: Yeah.

10 Detective Troxell: Okay.

11 Ms. Gorman: But, by that time I, I don't know
12 it could be four, four-thirty.

13 Detective Troxell: Exactly, yeah, okay,
14 sometime between four and four-thirty.

15 Ms. Gorman: I can't, because, you know, traffic
16 and, you know, came home, walked in, and checked on him, of
17 course.

18 Detective Troxell: Right when you got home you
19 checked on him?

20 Ms. Gorman: Yeah.

21 Detective Troxell: And what was he doing when
22 you checked on him?

23 Ms. Gorman: He was still sleeping, you know,
24 cause he was taking his nap and he takes a few hour nap,
25 you know, and he, he was breathing fine, everything was

121

1 fine. He had his blankie, so I walked out and a little bit
2 later when Robert and I were walking by, you know, going to
3 the bedroom we stopped and checked on him. I mean we check
4 on him periodically, still everything was fine. So I went,
5 you know, and cooked dinner and Robert says to me, what do
6 you want to do about Minor I said, let's eat dinner
7 first, you know, kinda peaceful instead of trying to feed
8 him and eat mine at the same time. So we ate and Robert
9 took the dog out and I went back in the bedroom to get him,
10 to wake him up, you know, because I was going to wake him
11 up now and that's when he was making the really strange
12 noises and slack looking, saliva.

13 Detective Troxell: And what time was that?

14 Ms. Gorman: By, by 6:00 I, I presume because it
15 --

16 Detective Troxell: So sometime between,
17 something happened between four and six-fifteen, didn't it,
18 because when you went in at six-fifteen he was salivating,
19 okay?

20 Ms. Gorman: Because, you know, when we checked
21 on him and everything, well I checked on him even after
22 four and he was fine so, so anywhere between dinner time,
23 you know, as we were eating dinner until by six, whatever
24 time I called 911.

25 Detective Troxell: Okay.

1 Ms. Gorman: And that's on Robert's phone.

2 Detective Troxell: Okay.

3 Ms. Gorman: Cause I used his, it was the first
4 one I could grab.

5 Detective Troxell: While you're at work, who
6 cares for Minor

7 Ms. Gorman: Robert does.

8 Detective Troxell: Robert, does anyone come
9 over to assist Robert in caring for him?

10 Ms. Gorman: Nope.

11 Detective Troxell: Okay, so Robert was the only
12 one that had access to Minor all day Monday?

13 Ms. Gorman: Yes.

14 Detective Troxell: Okay, Sunday, what happened
15 on Sunday?

16 Ms. Gorman: Sunday, went to work because Robert
17 didn't work. Robert called me and said his Daddy was
18 coming over, you know, picked them up, him and Minor and
19 they were going over to his parents house.

20 Detective Troxell: What time did you have to go
21 to work on Sunday?

22 Ms. Gorman: I think I went to work at six.

23 Detective Troxell: You left your house at six
24 or you got there at six?

25 Ms. Gorman: I got to work at six.

123

1 Detective Troxell: Okay.

2 Ms. Gorman: That means I leave my house at
3 5:15.

4 Detective Troxell: Okay.

5 Ms. Gorman: So he called me and told me he'd
6 fed him breakfast and they got him ready and everything,
7 got their bags together. His daddy came and picked them up
8 and they went over to his parents house and he called me
9 and to tell me that, you know, they were going to the pool
10 and stuff. I said, okay, you want me to get off now or,
11 you know, keep working because at my job or at least what I
12 do when I'm finished I can leave or I can stay and do other
13 things to make time. He goes, go ahead and leave, I said,
14 okay, so I left work, I got there about 1:00.

15 Detective Troxell: And you got there where,
16 Robert's parents house?

17 Ms. Gorman: Robert's parents house.

18 Detective Troxell: Okay.

19 Ms. Gorman: It was one or two, I can't remember
20 which time I clocked out, and I walked in the house and his
21 Mama was in there so, of course, I talked to her for a
22 minute and I asked where Robert and them were, and she
23 said, well they're at the pool with Paw Paw and Dylan,
24 which is his dad, and I said, okay, and about, you know,
25 ten minutes later Paw Paw, Dylan, Robert, and Minor were

1 coming back and he goes I was waiting for you to come to
2 the pool and I looked at him, I said, who was in the house
3 ---

4 Detective Troxell: Yeah.

5 Ms. Gorman: --- you know what happens when
6 Mama's in the house, so, you know, he was a little cranky
7 and he was still tired, lethargic acting and, you know, I
8 said, there's something wrong, and I said, I'm going to
9 make him a doctor's appointment, you know, because my
10 thought was he, he might have a disability because of being
11 seventeen months and not talking very well maybe he was
12 slow and I wanted to check on that, you know. I was
13 concerned ---

14 Detective Troxell: Uh-huh.

15 Ms. Gorman: --- because if there was any mental
16 problems we could start a system cause Robert says can they
17 do that, and I said, absolutely, you know, I says young
18 childrens is when they go and find out their chromosomes
19 are in, you know, not together. He said, okay, you know,
20 and we fed him lunch. He had chicken and some okra and,
21 yuck, potato salad, some baked beans, and laid him down,
22 take a little nap, and he wouldn't go to sleep, he just
23 laid there with his eyes open, you know, kind of slit. He
24 was so tired he wouldn't go to sleep, so put his bathing
25 suit back on and his mom and Dylan and Robert and I and

125

1 Minor we went back to the pool and he's in this baby tube,
2 you know, that way when he sits in it if he goes, leans
3 forward, you know, the face can't get in the water, if he
4 leans backwards there's a pillow behind him so they can't,
5 they can't go nowhere sideways or nothing, so I let him,
6 I'd hang on to the back and I'd swim with him, you know,
7 and then I would play with Dylan. Robert's playing with
8 Dylan, you know, and Gail would, you know, talk to Minor
9 and, and we'd, you know, he was right there by my side and
10 everything and he just sat there and, you know, most babies
11 would kick, love water, but he was just whatever. I put
12 some sunglasses on him, put a hat on him, you know, so I
13 could make sure the sun doesn't, you know, get sun burnt
14 and, you know, we put sun block on him, and I put, we put
15 water on his face. We like watered him on his face, you
16 know, to keep it cool and cause it's hot, it wasn't that
17 hot, but I mean just, you know, how it is even for us, so
18 we swam for a little bit and then we took him out of the
19 pool and I dried him off. We sat out there in the pool
20 area, you know, to kind of dry off our bathing suits. We
21 went back to the house. We changed our clothes and we
22 probably stayed about ten, twenty minutes longer, I guess,
23 we came home and fed him.

24 Detective Troxell: When you say we, it was you,
25 Robert, and Minor

1 Ms. Gorman: Yeah, it was me, Robert, and

2 Minor

3 Detective Troxell: Okay.

4 Ms. Gorman: We left his parents house and we
5 came home, gave him something to eat and he was just, you
6 know, he was exhausted by now. The heat makes you tired,
7 you know, pool makes you tired, so we laid him down and he
8 went to sleep, that was Sunday.

9 Detective Troxell: Okay, Saturday, you have to
10 work Saturday?

11 Ms. Gorman: Yes, I did, it was my weekend to
12 work.

13 Detective Troxell: What time did you go in on
14 Saturday, six?

15 Ms. Gorman: No five.

16 Detective Troxell: What time did you get off?

17 Ms. Gorman: Three.

18 Detective Troxell: And, of course, Minor was
19 being cared for by Robert?

20 Ms. Gorman: Right.

21 Detective Troxell: When you got home at three
22 what happened?

23 Ms. Gorman: When I walked in the door, of
24 course, Minor making his whine, whine, whine, you know.
25 It just gets louder when I get home, but that's just the

127

1 way he is, you know. If, if I walk in the door he starts,
2 I mean he, he, he makes noises but it just seems like when
3 a woman walks in it just gets more loud and he comes over
4 and he starts trying to climb up my leg and cause he wants
5 to be carried and we don't carry him because we were trying
6 to break a habit.

7 Sounds mean, sounds ugly but, you know, I can't
8 clean, cook, or do anything if I've got a baby hooked to
9 me, you know, so, you know, I grabbed his finger, you know.
10 He takes my finger and we walk around, you know, and I went
11 over to the toys and, you know, sit down and, you know,
12 talk to him and everything and, and cooked dinner, I can't
13 think what I cooked. No, I lied, we went to dinner because
14 I was so tired from working such long hours so I said we
15 got a gift certificate from T-Bones and so we drove to T-
16 Bones at Barefoot Landing and he was tired and cranky, he
17 just kept itching and itching and itching, so I gave him
18 some of his allergy medicine thinking, you know, maybe that
19 would help relieve the itching just as if I would take
20 Benadryl or something.

21 There was a waiting list so Robert stayed inside
22 the restaurant and Minor and I went walking around, you
23 know, just right there by the, the bucking bull, if that's
24 what it's called, and the mechanical bull, and when we
25 would walk his, his leg would give out. His right leg gave

1 out so, of course, you know, your reaction is to grab the
2 little tiger so he don't fall and then, you know, he has
3 his toes curled and we walked some more and then his leg
4 gave out again. I was like did, did the nurse put the
5 shots in his --- did the nurse actually hit his muscle when
6 she was putting the shots in cause these shots didn't have
7 to go in his muscle. So we went back over to the
8 restaurant and I sat him in the rocking chair that's
9 outside and I laid him next to me and we were talking and
10 everything and he was just sitting there and we'd rock and
11 he'd make some, you know, a whiny noise and I'd say, you
12 know, stop and Robert would look out the window cause he
13 was sitting right there and I said, well let's go inside.
14 You want, you want some Apple Jacks cause we brought some
15 Apple Jacks for him. So we went inside and he kept
16 bothering his leg so Robert was sitting here, Minor was
17 sitting here, I was sitting here, so I had put my hand
18 right here on his leg so he couldn't mess with his boo boo,
19 so his head was like laying right here on my shoulder and
20 he just, you know, being irritable, you know, he's
21 teething, what, you know, and that, and he bit me, and I
22 was just like, what? That's the first time he's ever bit
23 me since he's bit there, been there because before Cesalee
24 left he bit her, slapped her, head butted her, and we were
25 just like you can't do those things, you know, head butting.

129

1 and stuff you'll get a concussion and she said well Richard
2 allowed him to do it. I was like you guys can't do that.
3 I said because then he goes running against things with his
4 head, you know, cause it's okay to do, and you're telling
5 him, no, you know, you can't do that. It's owwie's, you'll
6 get hurt, you know, go in the kitchen, get him out of the
7 kitchen, this is hot, you know, the stove, I'm cooking hot,
8 grease, and come get him, you know, and so we did that, ate
9 some dinner, and he was so tired and so I laid him down on
10 the bench, you know, next to me and he went to sleep, and
11 after we ate dinner, picked him back up, about 9:00 I
12 guess, which is, you know, 8:30, 9:00 is his bedtime. So
13 we were out, you know, late for him, got back in the truck,
14 put him in his car seat, drove home, changed his diaper and
15 laid him back down to go to sleep.

16 Detective Troxell: Okay, Ms. Gorman, you came
17 to, became to be the primary caregiver of Minor when your
18 daughter Cesalee came here, right, she signed over
19 temporary guardianship to you July 1st?

20 Ms. Gorman: Right.

21 Detective Troxell: And she returned back to
22 Arizona sometime shortly thereafter like the second, I
23 believe?

24 Ms. Gorman: The next day.

25 Detective Troxell: Okay, and since that time

1 there's been no one else that has cared for or provided for
2 Minor other than you and Robert?

3 Ms. Gorman: Right, and our neighbors one time
4 babysat him.

5 Detective Troxell: And that was a couple of
6 days right after, like the 4th, 5th, or 6th of July?

7 Ms. Gorman: Right, right.

8 Detective Troxell: So after say the 6th of July
9 there's no one Minor has been alone with?

10 Ms. Gorman: No, just me and Robert.

11 Detective Troxell: Just you and Robert, okay,
12 and, Julia, I'm going to cut to the chase. That's the
13 problem we're having, you know, we talked to the doctors.
14 We've spent every day since Tuesday in Charleston. You may
15 not have seen us but we've been in Charleston and we know
16 when Minor was injured. We can scientifically and we can
17 medically prove when Minor was injured, okay, and the
18 reason for me bringing that up and the necessity of that is
19 it wasn't Cesalee and we can prove beyond a shadow of a
20 doubt that it wasn't Cesalee, so to get to the gist of your
21 last statement being Robert and I, which one was it? If
22 something happened and it was an accident or something got
23 a little bit out of control now is the time we need to put
24 it on the table cause as you said it's already, it was in
25 the paper today.

131

1 Ms. Gorman: Right.

2 Detective Troxell: Today's headline was "Abused
3 Child Dead," tomorrow's headline is "Arrest Made in Abused
4 Child Death." Do you get what I'm saying?

5 Ms. Gorman: Yeah.

6 Detective Weaver: It's not adding up, Julie?

7 Ms. Gorman: I've, but I've told you everything.
8 We've told you everything.

9 Detective Troxell: And here, here's the other
10 part I have with you, Julia, that's the first tear I've
11 seen from you. Robert sat here and bawled when he told
12 that story. When you're confronted with going to jail then
13 you start tearing up and I've got and now the tears are
14 gone. This is serious, okay, your life at this point is
15 changed. Your life was changed on Monday. The decisions
16 you make in this room with me and Weaver now are going to
17 affect you from this point forward. It determines if you
18 go home today or not or if you go to the jail. Something
19 happened, we know it did, like I said we can prove it.

20 Ms. Gorman: Okay, I understand that, but I've
21 never laid a hand on him. I've never, I've never ---

22 Detective Troxell: You ---

23 Ms. Gorman: --- abused him. Yes, I've smacked
24 him on the butt, you know, with his diaper on and I have
25 admitted to that. I've smacked his hands, I've admitted to

1 those things.

2 Detective Troxell: Right.

3 Ms. Gorman: But I have never hurt him.

4 Detective Troxell: The explanations that were
5 given for Minor s injuries, and correct me if I'm wrong --

6 -

7 Ms. Gorman: Okay.

8 Detective Troxell: --- I don't want to put
9 words in your mouth, were the bulldog puppy may have
10 knocked him over, correct?

11 Ms. Gorman: Right, right.

12 Detective Troxell: The, the stroller going
13 backwards down the steps but he never fell out of the
14 stroller and hit the steps, correct?

15 Ms. Gorman: Right.

16 Detective Troxell: Falling off the bed?

17 Ms. Gorman: Right.

18 Detective Troxell: Which is only eighteen
19 inches off the ground?

20 Ms. Gorman: Right.

21 Detective Troxell: And hitting the carpeted
22 floor?

23 Ms. Gorman: Well that's, you know, that's what
24 we're being told now, you know, but we don't know if there
25 was a toy, well, yeah, she said he hit a toy.

133

1 Detective Troxell: Okay, so even a less than
2 eighteen inches fall into a toy?

3 Ms. Gorman: Okay.

4 Detective Troxell: And what else?

5 Ms. Gorman: She texted me and said he kicked,
6 crawled out of it or he got out of it, the playpen.

7 Detective Troxell: We ran everyone of those by
8 Dr. Abel, who by her own title is ---

9 Ms. Gorman: The forensic.

10 Detective Troxell: There you go, Forensic
11 Medical Director of the Violence Intervention and
12 Prevention Center, and she said there ain't no way in hell.
13 Something violent happened to Minor whether it was
14 accidental or malicious is what we need to get to the
15 bottom to and if it was accidental put it out on the table,
16 let us know so we can go that route with it.

17 Ms. Gorman: I, my heart is racing a thousand
18 miles a minute. I never laid a hand on, on my grandson.

19 Detective Weaver: Tell us what happened, Julie?

20 Ms. Gorman: I'm telling you.

21 Detective Weaver: Tell us what happened?

22 Detective Troxell: No, you're not, you're not
23 telling us.

24 Ms. Gorman: What do you want?

25 Detective Weaver: If it was an accident we need

1 to know; we need to know what happened?

2 Ms. Gorman: Well I, but I, I didn't do anything
3 to, to my grandson. Robert didn't do anything to our
4 grandson, you know, there's a time ---

5 Detective Troxell: So Minor s skull just
6 magically cracked in three spots.

7 Ms. Gorman: I, I, I, oh, my God.

8 Detective Troxell: It couldn't, by your own
9 statement, it couldn't have been anybody else but you or
10 Robert, so who was it? Was it you, was it Robert? Did
11 Robert do something and he told you and you don't want to
12 tell us?

13 Ms. Gorman: No.

14 Detective Troxell: Then it was you?

15 Ms. Gorman: No, no, no.

16 Detective Troxell: Look, Julie, the, the skull
17 fractures didn't just appear there. They, something caused
18 it?

19 Ms. Gorman: I understand that. You --

20 Detective Weaver: And they're fresh.

21 Ms. Gorman: I mean, I, you know --

22 Detective Weaver: They're fresh, Julie.

23 Ms. Gorman: You know there's a moment that, you
24 know, of our, you know, if our dog knocked him over again.

25 Detective Troxell: Nope, ran that by, not

135

1 possible.

2 Ms. Gorman: There is no way in, and I'm sorry,
3 no way in hell we would hurt a child. I've never hurt any
4 of my children and I'm not going to hurt anybody else's
5 child, I wouldn't ---

6 Detective Troxell: Okay.

7 Ms. Gorman: --- do that.

8 Detective Troxell: I, I, let's play a little
9 scenario game here, okay? Let's pretend we're in a
10 courtroom cause this is where this is going to end up
11 going, okay?

12 Ms. Gorman: Okay.

13 Detective Troxell: Cause tomorrow's headline is
14 going to read "Couple Arrested in Child's Death."

15 Ms. Gorman: Okay.

16 Detective Troxell: Do you know who the couple
17 is?

18 Ms. Gorman: Yes, me and Robert.

19 Detective Troxell: There you go. You're on the
20 right track with me, okay, so we're sitting in a courtroom
21 six, eight, nine months down the road from now. You got a
22 judge, you've got the jury of twelve of your peers sitting
23 to your left, okay, and I'm representing this case and it's
24 not going to be me and Weaver on the stand saying we
25 believe this is what happened, we believe this. It's going

1 to be the medical director of the Intervention and
2 Prevention of Child Abuse, Dr. Abel, on the stand saying
3 there ain't no way in hell that this happened twelve or
4 three or four weeks ago with Cesalee, that this happened in
5 the time frame that we've discussed, okay, because we know
6 when it happened, that's why we were discussing the time
7 frame that we're discussing. I'm not going to tell you the
8 date that I know it happened or the hour ---

9 Ms. Gorman: Right.

10 Detective Troxell: --- that I know it happened,
11 but I know it happened in those days that we discussed and
12 the doctor is going to say, no way, it can't happen at,
13 okay?

14 Ms. Gorman: Okay.

15 Detective Troxell: Well, thank you, Doctor, for
16 your testimony. Doctor, or Detective Troxell, who was in
17 care and custody and control of the child? Well by their
18 own statement it was Robert and Julie.

19 Ms. Gorman: Right.

20 Detective Troxell: Okay, what do you think
21 it's, how long do you think it's going to take a jury of
22 twelve or your peers to say you're guilty?

23 Ms. Gorman: I've seen it on t.v. and I, I don't
24 know if ---

25 Detective Troxell: And ---

137

1 Ms. Gorman: --- it is --

2 Detective Troxell: Sweetheart, this isn't t.v.,
3 this is real life, this is the rest of your life you're
4 playing with.

5 Ms. Gorman: I, I know, I mean all I've ever
6 known, I, I've never --

7 Detective Troxell: How long do you think ---

8 Ms. Gorman: I've never been in --

9 Detective Troxell: --- it's going to take for
10 me to get a guilty verdict on you?

11 Ms. Gorman: Seconds.

12 Detective Troxell: There you go.

13 Ms. Gorman: Seconds.

14 Detective Troxell: And you know what's going to
15 happen. You're not, there's not a bit of remorse coming
16 from you, you're fine, until now you're crying ---

17 Ms. Gorman: No, you don't understand.

18 Detective Troxell: --- because you're going to
19 jail.

20 Ms. Gorman: I'm sitting here and you're ---

21 Detective Troxell: Are you, are you a cold-
22 blooded killer?

23 Ms. Gorman: No.

24 Detective Troxell: Did you cold-bloodedly kill
25 your seventeen-month-old grandkid?

1 Ms. Gorman: No.

2 Detective Troxell: Then what the hell happened
3 to him?

4 Ms. Gorman: I don't know.

5 Detective Troxell: Yes, you do.

6 Ms. Gorman: No, I don't.

7 Detective Troxell: Yes, you do.

8 Ms. Gorman: No, I don't.

9 Detective Troxell: Now is the time ---

10 Ms. Gorman: I swear.

11 Detective Troxell: --- to come in ---

12 Ms. Gorman: I swear.

13 Detective Troxell: --- and put it on the table.

14 Ms. Gorman: I swear to God.

15 Detective Troxell: Did you kill your grandson?

16 Ms. Gorman: No, I did not.

17 Detective Troxell: Because that's what it looks
18 like, sweetheart, and you're going to jail for it.

19 Ms. Gorman: I didn't do nothing.

20 Detective Troxell: You can't convince me of it,
21 you can't convince your damn self of it. You killed your
22 grandbaby.

23 Ms. Gorman: No, I didn't.

24 Detective Troxell: Yes, you did. Now it's time
25 to come to grips with it. Let's own up and let's cross the

139

1 bridge and let's handle it.

2 Ms. Gorman: I'm not going to admit to something
3 I didn't do.

4 Detective Troxell: Okay, well then don't admit
5 to it cause I've already proven it. I don't need you to
6 admit it. I'm giving you the opportunity to explain
7 yourself, the opportunity to give me why it happened, how
8 it could have happened, what explanation do you have, and I
9 have nothing. When I can prove that there was something,
10 that's not going to fly, and like you said it's going to
11 take me seconds, seconds. That's fine. Shake your head,
12 I, I don't know.

13 Ms. Gorman: I, I ---

14 Detective Troxell: Something happened.

15 Ms. Gorman: --- I don't know.

16 Detective Troxell: If it was accidental tell
17 us.

18 Ms. Gorman: I wish I could tell you if there
19 was something that happened but I'm telling you the truth,
20 I'm telling you the truth.

21 Detective Troxell: Go ahead, Weaver, I'm just
22 about done with this.

23 Detective Weaver: Julie, Julie, look at me.

24 Ms. Gorman: I, can I take my medicine, is that
25 okay?

1 Detective Weaver: No, I need you to talk to me,
2 it's very important, Julie. You need to tell me what
3 happened. It wasn't, listen to me, if it was an accident
4 you need to tell me?

5 Ms. Gorman: Detective Weaver, if there was
6 something that happened I would tell you if I hurt my
7 grandson.

8 Detective Weaver: Julie, something happened.

9 Ms. Gorman: I would tell you.

10 Detective Weaver: Evidence is saying something
11 happened.

12 Ms. Gorman: I understand that.

13 Detective Weaver: Okay, did you have a bad day
14 at work? Did you come home from work ---

15 Ms. Gorman: No.

16 Detective Weaver: --- things got out of hand
17 maybe?

18 Ms. Gorman: No.

19 Detective Weaver: You and Robert had a fight,
20 maybe you took it out on Minor

21 Ms. Gorman: No.

22 Detective Weaver: Accidentally?

23 Ms. Gorman: No.

24 Detective Weaver: Something happened?

25 Ms. Gorman: No, I would never, Robert and I

1 haven't argued.

2 Detective Weaver: Why?

3 Ms. Gorman: I'm not lying to you, I swear to
4 you I'm not lying to you.

5 Detective Weaver: Maybe you didn't mean to do
6 it, Julie, but it happened.

7 Ms. Gorman: I didn't do it, I did not hurt my
8 grandson. I have never ever picked him up angry, you know
9 ---

10 Detective Weaver: Never.

11 Ms. Gorman: --- or anything like that, you
12 know. I get frustrated, which anybody would, but I've
13 never grabbed him, moved him, shoved him.

14 Detective Weaver: Julie, something had to
15 happen, I mean the evidence doesn't lie.

16 Ms. Gorman: I understand that.

17 Detective Weaver: The medical evidence doesn't
18 lie.

19 Ms. Gorman: I understand that. You know, he,
20 he's not in our height, in our sight a hundred percent of
21 the time, you know, he may go to the bedroom. He may walk,
22 our dog is free to roam the house, I, I --

23 Detective Weaver: Dr. Abel discredited all
24 that, it didn't happen. Cesalee didn't do. It's fresh, it
25 just happened. We know exactly when it happened.

1 Ms. Gorman: I, I understand.

2 Detective Weaver: This is very, this is the
3 most important day in your life.

4 Ms. Gorman: I understand.

5 Detective Weaver: I promise you.

6 Ms. Gorman: And I'm telling you everything.

7 Detective Weaver: If it's an accident we need
8 to know.

9 Ms. Gorman: I understand.

10 Detective Weaver: I don't, I don't think you're
11 a cold-blooded killer, but I think something happened, I
12 know it happened.

13 Ms. Gorman: I never laid a hand on him, I've, I
14 never would do that, I wouldn't do that.

15 Detective Weaver: I don't believe you and I,
16 you know I --

17 Ms. Gorman: I wouldn't do something like that,
18 I know, no, I wouldn't do anything like that. I have three
19 children and I've never hurt my children ever, no.

20 Detective Weaver: You sure about that?

21 Ms. Gorman: Yes, I respect my kids, yes, I've
22 never abused my children. I've I, they've never gone to
23 the doctors or hospital because of ---

24 Detective Weaver: You sure?

25 Ms. Gorman: Yes, the only time my, my kids have

143

1 been in the hospital is because my son, when he was little,
2 he was across the street and his Dad was sitting on the
3 steps and there was a, a man that was standing, Kyle had
4 went behind the man and the man didn't know he was there
5 and he stepped back, my son fell. Robert took, Rob took
6 him to the hospital immediately and had him checked.

7 Another time, I can give you every one, I was
8 going for an interview at Mervyn's. My friend had come
9 over to watch my son. Her and her son and my son were
10 playing, they bumped heads in the front. My son went limp,
11 you know, he fell, you know, on, on, we had some futon and
12 stuff right there, called 911. We, I drove with him to the
13 hospital and everything. The third time we were in
14 Virginia. We walked, I was taking them to the day care and
15 I walked from the day care later to the bus stop, there was
16 ice on the road, I held on to my kids ---

17 Detective Weaver: All right, let's get back to
18 Minor okay.

19 Ms. Gorman: Okay, but I'm letting you know that
20 these are the only things that ever happened to my
21 children. You know when Cesalee was in Washington she was
22 outside playing ---

23 Detective Weaver: You know, do you think Robert
24 had something to do with it?

25 Ms. Gorman: No, no, and I swear to you, no.

1 Detective Weaver: Julie, it's either you or
2 Robert.

3 Ms. Gorman: We didn't do anything.

4 Detective Weaver: You can't say ---

5 Ms. Gorman: Oh, my God.

6 Detective Weaver: We can't say it was the dog.
7 We can't say it was the, the stair, the stairs. We can't
8 say that, we can't, we can't say that, the doctors can't
9 say that.

10 Ms. Gorman: I, I understand that, I understand
11 that, but we wouldn't hurt him. We wouldn't hurt him. I
12 know we wouldn't hurt him. I know we didn't hurt him. I
13 swear on my life. I, I'll swear to God and I don't swear
14 to him.

15 Detective Weaver: I don't believe you. I
16 believe something happened and, Julie, this is very
17 important today because once we walk out of this room today
18 there's going to be no more opportunities, if it was an
19 accident people understand that.

20 Ms. Gorman: I understand it, too.

21 Detective Weaver: If you got angry, everybody
22 gets angry.

23 Ms. Gorman: I know but it, I ---

24 Detective Weaver: I mean everybody gets angry,
25 everybody, things, things happen, people get out of

145

1 control, it happens. It doesn't mean you're a bad person.

2 Ms. Gorman: I know that.

3 Detective Weaver: It just means that it
4 happened.

5 Ms. Gorman: I understand.

6 Detective Weaver: But you've got to take
7 responsibility for it.

8 Ms. Gorman: And I will take responsibility.

9 Detective Weaver: It's not, let me tell you
10 something, it's going to look a lot better if you say,
11 yeah, it was an accident. I lost my temper, I lost my mind
12 for a minute, okay. It happened but when we get on there,
13 like Troxell said we get up there, how do you think it's
14 going to say, she's a cold-blooded killer.

15 Ms. Gorman: I know.

16 Detective Weaver: How long do you think it's
17 going to take?

18 Ms. Gorman: Seconds, like I told you.

19 Detective Weaver: Right, but if it was an
20 accident, you lost your cool, you had a bad day, you had a
21 fight with Robert, something happened. We know, we know
22 something happened, there's no disputing that. We need to
23 find out what happened.

24 Ms. Gorman: I swear to you like I told both of
25 you, I'm trying to calm down now and not scream and yell,

1 I'm sorry, I'm yelling, you know.

2 Detective Weaver: It's all right.

3 Ms. Gorman: I'm sure it's very frustrating for
4 ya'll. This is, I'm overwhelmed now and because this is
5 happening and I'm telling you, I swear to you we never hurt
6 my grandson. I don't know, arguing, frustration, whatever,
7 I have never manhandled my grandson. Robert has never
8 manhandled my grandson. I'm telling you this from my
9 heart, my soul, I, I, we, I didn't ---

10 Detective Weaver: Would you, the last couple of
11 days what have you been talking about, you and Robert?
12 Didn't, didn't you all discuss how, how this could happen
13 to Minor

14 Ms. Gorman: I'm sorry?

15 Detective Weaver: Didn't you all discuss, you,
16 you and Robert, didn't, the last couple of nights, since
17 Monday, weren't you all bouncing it back to each other what
18 happened to him? I don't know what happened to him, tell
19 me what happened?

20 Ms. Gorman: Yes, we, we had ---

21 Detective Weaver: Which?

22 Ms. Gorman: We don't, we ---

23 Detective Weaver: What did you all talk about,
24 what happened to him?

25 Ms. Gorman: And that's what we'd ask. We, we,

147

1 were dumbfounded, we just, we don't know. We don't know,
2 we had no answers for each other, Just, you know, he, he
3 he, all we know is he wasn't feeling good, you know, so I
4 made an appointment for, for Tuesday for him to go to the
5 doctor's because Monday I was, you know, I couldn't get him
6 there Monday afternoon, you know, cause it was, it was too
7 soon.

8 Detective Weaver: And that, that's what I'm
9 saying, Julie, I don't think you're a bad person. You
10 brought that baby here, you take, you took, you're taking
11 care of him. You take, you're, you took him to doctor's
12 appointments. You've tried, I, I know you love this baby.
13 I know something happened. I, I mean you were trying to do
14 the right things and take care of him but something
15 happened when you got angry, you got upset, things got out
16 of control. It happens all the time but I need you to tell
17 me that, otherwise you're going to go to jail as a, as a
18 cold-blooded killer; you understand what I'm saying?

19 Ms. Gorman: Yes, I do.

20 Detective Weaver: It looks a lot better if you,
21 if something happened to set you off other than they look
22 at you like a calculated cold-blooded killer that killed
23 her grand, grandson; you understand what I'm saying?

24 Ms. Gorman: Yes, I understand what you're
25 saying.

1 Detective Weaver: But it does, it doesn't add
2 up for me cause I know you've tried to care for this kid.
3 You've, you've ---

4 Ms. Gorman: I have, I mean ---

5 Detective Weaver: You've tried to take him to
6 the doctor.

7 Ms. Gorman: We've taken, we did in here.

8 Detective Weaver: You've fed, you've bathed
9 him, okay, I know you're a, I know you didn't mean to hurt
10 him but something happened and you need to take
11 responsibility right now, right here and now.

12 Ms. Gorman: I didn't, I've told you everything.
13 I've taken responsibility for my actions, I did not hurt my
14 grandson.

15 Detective Weaver: I don't believe you.

16 Detective Troxell: What do you think is going
17 to happen from this point forward, Julie?

18 Ms. Gorman: I'm not going home.

19 Detective Troxell: Okay, and tomorrow we're
20 going to attend the autopsy of seventeen-month-old Minor
21 and one thing we're going to do, we're gonna, we're going
22 to have physical evidence because now we can actually get
23 in and physically examine the skull cap, which is where
24 he's been injured, okay, and we're going to have
25 photographs. There's going to be a doctor that's going to

149

1 be able to hold Minor skull up in court and see the
2 cracks in his skull and be able to testify that there's no
3 way a bulldog puppy knocked him over and caused all these,
4 these skull fractures and these breaks in his skull.
5 There's no way a fall from a, a bed that's seventeen inches
6 off the ground could have caused this. Every explanation
7 you've offered the doctor is going to be there, an expert,
8 who's going to be there and say there's no way, we can't do
9 it. I mean, imagine you've got a china bowl and you drop
10 it from here it might be a little stress, a little stress
11 fracture. You drop it from here and the crack's going to
12 get a little bit bigger, you drop it from up here the damn
13 things going to break.

14 Ms. Gorman: Right, I understand.

15 Detective Troxell: And that's what we're
16 looking at, that's something from up here.

17 Ms. Gorman: I never dropped him. I've never
18 dropped him ever, I'm just --

19 Detective Troxell: Something happened.

20 Ms. Gorman: I'm, I'm going through my brain
21 right now.

22 Detective Troxell: Okay.

23 Ms. Gorman: Let ---

24 Detective Troxell: Well take your time, we'll
25 step out if you want and ---

1 Ms. Gorman: No, you don't have to do that.

2 Detective Weaver: We need some kind of
3 explanation, did ---

4 Ms. Gorman: I'm telling you.

5 Detective Troxell: Well then explain it to us,
6 give us something that caused Minor to no longer be with
7 us?

8 Ms. Gorman: I wish I could.

9 Detective Troxell: Because I can tell you what
10 I'm going to read to, what Dr. Abel's going to read in
11 court. "History given by Robert and MGM," that's maternal
12 grandmother, "of recent minor, the bulldog puppy and fell
13 three steps in a stroller, comma, does not explain this
14 child's clear recent head injury," okay?

15 Ms. Gorman: Right.

16 Detective Troxell: "And this is due to
17 radiological appearance of blood in the head seen in
18 radiographs and x-rays." That's what's going to be read,
19 and I mean we've got no other adult could have been around,
20 could it?

21 Ms. Gorman: No, there's no other adults in the
22 home. All there was, was Robert, me and the day Robert and
23 I went out and Tony and Erica came to our house cause we
24 asked them to come to our house because it was --

25 Detective Troxell: But that wasn't within the

151

1 last couple of days and that was ---

2 Ms. Gorman: I understand that.

3 Detective Troxell: --- weeks ago.

4 Ms. Gorman: But I'm, you know, they came to our
5 house and watched him there because, you know, they can put
6 him in his bed instead of us coming home and carrying him
7 from there to here cause it was raining. He, the only
8 other places he's been, you know, besides us taking him out
9 to eat is Robert took him over to his parent's house and we
10 all went swimming, came home, and we laid him on the bed,
11 never dropped him in his bed, never, never just threw him
12 anywhere.

13 Detective Troxell: Robert never has lost his
14 temper? I mean he has no ties to Minor it's not his kid.

15 Ms. Gorman: No.

16 Detective Troxell: I mean, it's like, it's kind
17 of been thrown in, into the mix of all this and he's, he's
18 just your boyfriend. He's got to now watch a child that he
19 didn't help create, who's the child of someone he doesn't
20 really like too much, hasn't heard anything good about.

21 Ms. Gorman: Right, that's all he's heard is,
22 you know, what I've told him. I mean --

23 Detective Weaver: And he didn't think it was a
24 good idea for them to come from the get go?

25 Ms. Gorman: And he didn't, he didn't.

1 Detective Weaver: I mean do you think it's
2 possible that maybe he had something to do with it?

3 Ms. Gorman: No, I mean he just, he ---

4 Detective Weaver: He's got a pretty good, he's
5 got a bad temper, doesn't he?

6 Ms. Gorman: Robert?

7 Detective Weaver: Yeah.

8 Ms. Gorman: No.

9 Detective Weaver: No?

10 Ms. Gorman: No, he's actually very even
11 tempered.

12 Detective Weaver: I was misinformed?

13 Ms. Gorman: No, I mean, I mean we've, we have
14 our arguments but he doesn't have a bad temper, you know,
15 he's never laid a hand on me ever, you know.

16 Detective Troxell: Well every logical
17 explanation ---

18 Ms. Gorman: He's never physically hurt me, you
19 know.

20 Detective Weaver: You don't think it was him?

21 Ms. Gorman: No. Robert and I have been
22 together about four years and I and that was one of my, my
23 things, a man touched me I would leave because I have
24 already been through that once and I refuse to be
25 physically abused by a man and, or be cheated on because of

153

1 some things that happened to me in the past.

2 Detective Troxell: Okay, so you've just said,
3 and there's no way in your mind it could have been Robert?

4 Ms. Gorman: No.

5 Detective Troxell: Okay, so out of the two
6 possible, no one in your mind, that leaves you.

7 Ms. Gorman: I understand that.

8 Detective Troxell: So tell us what happened.
9 Something happened, Julie, something happened in that
10 house.

11 Ms. Gorman: Well, what is your name? I can't
12 even remember.

13 Detective Troxell: Tim.

14 Ms. Gorman: Tim. Tim, I'm looking at you and,
15 you know that, how much sleep I got, you know, I've been at
16 that hospital every day until yesterday evening when I left
17 because I felt, because I can't, and the rest of my family
18 can be there and have their time, I came home. Robert and
19 I didn't discuss it, you know, I told him, we talked about,
20 he told me about what was on the news and we went out for a
21 little bit, you know, just to unwind because it's just been
22 so stressful, we came home, went to bed.

23 Detective Troxell: We, it's been the same for,
24 we've been in Charleston, you may not have seen us.

25 Ms. Gorman: I know, I know.

1 Detective Troxell: But we've been there.

2 Ms. Gorman: That's what he said, you know, you
3 guys have said, I mean I wasn't, no one said I looked for
4 ya'll or anybody else. I didn't, I never looked behind my
5 shoulders to see if anybody was watching me or anything,
6 you know, because I'm not, I'm not guilty. If I was, if
7 you're guilty you're constantly looking over your
8 shoulders, you know, you're, you're looking constantly. I
9 don't have that, I was there trying to hear. When you,
10 when I talked to you and you said that you wanted to, you
11 know, talk to me today, you know, I didn't expect it to be
12 so early but, you know, I just stuck my phone in the living
13 room and, you know, Robert said someone is at the door. We
14 got up ---

15 Detective Weaver: That's why, that's why ---

16 Ms. Gorman: --- be right there ---

17 Detective Weaver: I think it was an accident.

18 Ms. Gorman: --- you know.

19 Detective Weaver: I'm trying to give you an out
20 here. I don't think you killed him cold-bloodedly, okay.

21 Ms. Gorman: No.

22 Detective Weaver: I know you've been to the
23 hospital. You've been there from, from since Monday. I
24 know you, I know you've been there for him, you feel bad
25 what happened.

155

1 Detective Troxell: I'm going to get you some
2 tissue.

3 Detective Weaver: You tried to care for him.

4 Ms. Gorman: Thank you, please, thank you.

5 Detective Weaver: All right, Julie, you hear
6 what I'm saying?

7 Ms. Gorman: I understand it, just ---

8 Detective Weaver: I mean, I know even
9 afterwards, I mean you've been there for him and you, and I
10 truly believe you, you feel bad what happened, but come on,
11 everything leads back to you. You had the care. I need
12 you to tell, I need you to give me something. I need you
13 to give me something, you've got to tell me what happened?

14 Ms. Gorman: All I know is my dog had knocked
15 him down, that's all I know.

16 Detective Weaver: Julie, Julie.

17 Ms. Gorman: I swear to you.

18 Detective Weaver: That is not possible.

19 Ms. Gorman: I know, I mean --

20 Detective Weaver: I promise you, I wish it was,
21 but that's not possible. I need you to tell me what
22 happened. We've talked before, right? I believe you, I
23 believe you. I, I, I never, listen to me, look at me:
24 Since he came, since Cesalee left and you took care of him
25 ---

1 Ms. Gorman: Yes, sir.

2 Detective Weaver: --- you made sure he went to
3 the doctors.

4 Ms. Gorman: Yes, sir.

5 Detective Weaver: You made sure he was fed.

6 Ms. Gorman: Yes.

7 Detective Weaver: You put him in bed, you cared
8 for him.

9 Ms. Gorman: Yes, yes.

10 Detective Weaver: I know that.

11 Ms. Gorman: Yes.

12 Detective Weaver: Right?

13 Ms. Gorman: Yes.

14 Detective Weaver: But something happened along
15 the way, I don't know, I need you to fill in the blanks for
16 me and I know you feel bad what happened to him because
17 you've been at the hospital. You've been there for the
18 little guy, you've been there, you put lotion on him. You
19 feel bad what happened to him, but you can't change what
20 happened.

21 Ms. Gorman: And you're right, I can't change
22 what happened to him.

23 Detective Weaver: Right, but you can tell me,
24 you can tell me what happened. You can explain what
25 happened, if it was an accident we need to know because

157

1 you're going to jail for murder. You need to tell me what
2 happened. I can't help you if you don't help me.

3 Ms. Gorman: All I know is, all I know is Minor
4 went and picked up Binkie, which is that big stuffed animal
5 and Logan knocked him down.

6 Detective Weaver: Julie.

7 Ms. Gorman: Lo ---

8 Detective Weaver: Julie, that's not possible,
9 look at me. Do you want me to help you?

10 Ms. Gorman: I want you to help me.

11 Detective Weaver: Do you want me to help you?

12 Ms. Gorman: I do, this is the ---

13 Detective Weaver: Probably nobody ever helps
14 you, do they? You've been doing everything on your own all
15 these years, haven't you?

16 Ms. Gorman: Yes, sir.

17 Detective Weaver: Yeah, I'm here to help you,
18 but I can't help you unless you tell me what happened. I
19 can't be on your side until you tell me what happened. I
20 can, I can go to the jury. I can go to the Solicitor, I
21 can tell them it was an accident but I need you to tell me
22 that. I need you tell me that it was an accident, whether,
23 whether you just lost your temper, whatever happened. I
24 need you, I need something, I need you, I need you to work
25 with me. I need you to work with me so I can work for you.

1 You understand what I'm saying? Right now you're giving me
2 nothing. You're giving me nothing. It just doesn't seem
3 possible. Nobody's going to believe, nobody's going to
4 believe it.

5 Ms. Gorman: I understand that.

6 Detective Weaver: Listen, I'm going to give you
7 a few minutes to think about it. I, believe it or not,
8 look at me, look at me, believe it or not I'm here to help
9 you.

10 Ms. Gorman: I know you are and ---

11 Detective Weaver: I'm on your side.

12 Ms. Gorman: --- and I believe you.

13 Detective Weaver: I'm on your side but you've
14 got to give me something to work with. You've got to help
15 me. I'll be right back. I need to go to the, use the
16 restroom. I'll give you a few minutes to think about it.

17 (Whereupon, Detective Weaver exits the interview
18 room.)

19 Ms. Gorman: Why is all this happening? I
20 didn't do anything. He went to go get Blinkie, Logan came
21 to the crate and knocked him down. That's the only thing I
22 can think of and I, and I remember it, that's it. I keep
23 being called a liar --- a liar.

24 (Whereupon, Detective Troxell enters the
25 interview room.)

159

1 Ms. Gorman: I need to take my medicine. That's
2 all I know, Lord, help me. I didn't, I never hurt any of
3 my children. I can take my medicine?

4 Detective Troxell: Do you have medicine on you?

5 Ms. Gorman: Yes.

6 Detective Troxell: Okay, you don't have any
7 guns or anything in your purse, do you?

8 Ms. Gorman: No.

9 Detective Troxell: Good, feel free to take your
10 medicine.

11 Ms. Gorman: I don't carry of that stuff.

12 Detective Troxell: Lee me see it before you
13 take it real fast, make sure you're, you're not taking
14 illegal drugs.

15 Ms. Gorman: I take one.

16 Detective Troxell: Okay.

17 Ms. Gorman: I take it twice a day.

18 Detective Troxell: Like I said this is, we're
19 trying to give you and Robert a opportunity to explain what
20 may of, what could of and ultimately what did happen?

21 Ms. Gorman: I understand that.

22 Detective Troxell: I mean ---

23 Ms. Gorman: I understand.

24 Detective Troxell: --- we both agree something
25 happened, right?

1 Ms. Gorman: I understand, yes, I understand.

2 Detective Troxell: Okay.

3 Ms. Gorman: I understand all that.

4 Detective Troxell: And I told you we're going
5 to have the physical evidence of the skull, in addition the
6 jury is going to see these pictures. They're going to look
7 at these pictures, Minor staring up looking like that
8 while you're standing vigil over his bed. If he could have
9 moved would he have cried? I mean he's the last one, he
10 knows what happened to him.

11 Ms. Gorman: I understand.

12 Detective Troxell: Okay, unfortunately he's not
13 here to speak for himself.

14 Ms. Gorman: I know that.

15 Detective Troxell: So he's got now a team
16 Detective Weaver, myself, the other guys we work with and
17 the medical staff at MUSC, we're speaking for him now.

18 Ms. Gorman: Right.

19 Detective Troxell: But if he had been able to
20 that day in the hospital would he have grunted like he did
21 and pointed at you and to him?

22 Ms. Gorman: He wouldn't have pointed at me and
23 Robert.

24 Detective Troxell: He wouldn't have?

25 Ms. Gorman: No, I'm certain we did not hurt my

'161

1 grandbaby. This is my blood, this is, this is, this is my
2 grandbaby. I didn't treat him as my grandson. I treated
3 him as my baby as if I gave birth to him.

4 Detective Troxell: And we're not disputing for
5 one second you cared for him. You fed him, you clothed
6 him, bathed him, kept him, took him to the doctor, did
7 everything that you could but at some point something bad
8 happened and we know that and we just agreed that at some
9 point something bad happened.

10 Ms. Gorman: But we agreed but I can't tell you
11 what, you know? All I know is that you keep telling me,
12 you keep telling me that it's not possible. The only thing
13 I know is that one time ^{Minor} went and I remember it all,
14 he went over to the crate got Binkie, Logan knocked into
15 him.

16 Detective Weaver: Not possible, Julie.

17 Ms. Gorman: I know that, I understand all that,
18 but in the bathtub, he's never fallen in the bathtub. I,
19 I've picked him up out of the bathtub, have never dropped
20 him.

21 Detective Troxell: Well, well let's take
22 falling away.

23 Ms. Gorman: He's never slipped and falled [sic]
24 even on the floor of the bathroom.

25 Detective Troxell: Okay.

1 Ms. Gorman: Because we have carpet down.

2 Detective Troxell: Well let's, let's take
3 falling out of the equation, let's say ^{Minor} didn't fall?

4 Ms. Gorman: Okay.

5 Detective Troxell: Another explanation for it
6 is that he was shook.

7 Ms. Gorman: No, I've never shook him, never
8 shook him. Shake a baby, no, no, I, I, no.

9 Detective Troxell: Well I, I guess we're going
10 to agree to disagree on that because ---

11 Detective Weaver: What about, what about
12 Robert?

13 Ms. Gorman: No.

14 Detective Weaver: Does he get frustrated?

15 Ms. Gorman: No, Robert has better patience than
16 I do to be honest with you, and he, you know, I walk out of
17 the house because ^{Minor} was whining and stuff because it's
18 just, it's ---

19 Detective Troxell: It gets to you?

20 Ms. Gorman: Well he, he and, you know ---

21 Detective Weaver: That's what I'm saying.

22 Ms. Gorman: --- and I've told you he, I go
23 outside because the whining and crying I just, it's non
24 stop but I go outside or I send him to his room. Robert
25 takes ^{Minor} you know, outside with him a lot even though

163

1 he's still, you know, whining and crying and he just walks
2 him around, you know, and it doesn't faze him, you know,
3 you know, he's just, we just figured it was separation from
4 his mama and everything but, no.

5 Detective Weaver: That's what I'm saying, maybe
6 you had a bad day at work, maybe a fight with Robert, you
7 picked him up, he was whining, you got a little frustrated
8 and you shook him a little hard?

9 Ms. Gorman: I don't think hard, I don't believe
10 I ---

11 Detective Weaver: Is it possible?

12 Detective Troxell: But it's possible that you
13 could have done that, is it?

14 Detective Weaver: Look, look at the little guy.

15 Detective Troxell: It's possible, isn't it?

16 Ms. Gorman: I, I don't want to see him no more.

17 Detective Weaver: Look at the little guy,
18 doesn't he deserve, doesn't he deserve to know what
19 happened to him?

20 Detective Troxell: It's, it's possible you just
21 said it's possible you could have got a little frustrated,
22 is it not, Julie?

23 Ms. Gorman: I don't know anymore.

24 Detective Troxell: You, you ---

25 Ms. Gorman: I did not hurt my family.

1 Detective Troxell: You didn't intentionally
2 cause any harm to your grandson, we know that. You are a
3 caring grandmother that took your grandbaby to the doctor,
4 fed him and clothed him.

5 Detective Weaver: And that's what we want to be
6 able to tell people that this was an accident, you got a
7 little frustrated.

8 Ms. Gorman: I, I, I never, I don't believe I've
9 ever shook him.

10 Detective Troxell: But it's possible you could
11 have?

12 Detective Weaver: Did you get aggravated?

13 Detective Troxell: Is it not?

14 Detective Weaver: Or you don't remember?

15 Ms. Gorman: No.

16 Detective Weaver: Maybe, maybe you got angry,
17 you don't remember, you lost, lost control for a little bit
18 and shook him?

19 Ms. Gorman: No.

20 Detective Weaver: Is it possible?

21 Detective Troxell: And we're not saying ---

22 Ms. Gorman: I don't know.

23 Detective Troxell: --- is ---

24 Detective Weaver: It is possible.

25 Ms. Gorman: I don't know, I don't know, it's

165

1 possible.

2 Detective Weaver: Look at the little guy.

3 Ms. Gorman: I don't want to see them no more.

4 Detective Weaver: He deserves to know what
5 happened to him.

6 Ms. Gorman: Please, I, I don't want to see
7 those.

8 Detective Weaver: Julie, I can't help you if
9 you don't talk to me.

10 Ms. Gorman: I'm telling you I don't know.

11 Detective Weaver: I'm here for you, but I can't
12 help you ---

13 Ms. Gorman: I know, I know.

14 Detective Weaver: --- if you don't talk to me.
15 We need to know what happened. You know me, we've been
16 through, I've, I've known you for four days now?

17 Ms. Gorman: And I ---

18 Detective Weaver: I believe you're a good
19 person.

20 Ms. Gorman: I ---

21 Detective Weaver: And you know I'm here for
22 you.

23 Ms. Gorman: I know.

24 Detective Weaver: But I can't help you if you
25 don't talk to me, I can't.

1 Ms. Gorman: I don't recall if I sh --- shook
2 him, okay, I don't.

3 Detective Troxell: Is it completely in the
4 realm of possibility?

5 Detective Weaver: Julie, it happens.

6 Ms. Gorman: Well I, you know what, excuse me,
7 I'm sorry, I didn't mean to spit.

8 Detective Weaver: Please, Julie, just tell me.

9 Ms. Gorman: You know what I wish?

10 Detective Weaver: I can't help you.

11 Ms. Gorman: I don't know if I shook him hard, I
12 don't know, I don't.

13 Detective Troxell: Let me just ---

14 Ms. Gorman: I don't, I don't even recall it.

15 Detective Troxell: Let me just say ---

16 Ms. Gorman: I don't recall shaking him at all.

17 Detective Troxell: --- what you just said.

18 Ms. Gorman: I know what I said.

19 Detective Troxell: I don't think I shook him
20 hard.

21 Ms. Gorman: Right, I know what I said.

22 Detective Troxell: That you shook him easy.

23 Ms. Gorman: But I don't think I, you know how
24 you play with them and but I don't, I know what I said.

25 Detective Troxell: So ---

167

1 Ms. Gorman: I know what I'm saying to you.

2 Detective Troxell: --- so you're starting to
3 remember. It, it's possible that you shook him, maybe not
4 meaning to hurt him at all because there's not a mean bone
5 in your body, you didn't mean to hurt him?

6 Ms. Gorman: I know I wouldn't hurt him.

7 Detective Troxell: You didn't want to hurt him,
8 you didn't want this to happen.

9 Ms. Gorman: No one would wish this on their
10 worst enemy. I wouldn't, I wouldn't wish this on anybody.
11 I wouldn't wish this on anybody. God Almighty, my life has
12 just been so ---

13 Detective Weaver: You've had a hard road,
14 Julie. I know, I know, but things are hitting rock bottom
15 right now.

16 Ms. Gorman: Oh, my God.

17 Detective Weaver: But I promise you I'm here to
18 help you. I'm here with you, but I need to know. I need
19 you to remember. I need you to tell me because I can't go
20 to the jury and say she killed him, the doctors will tell
21 you she killed him, I need to tell them why, I need ---

22 Ms. Gorman: I didn't do that.

23 Detective Weaver: I need, I need to have them
24 see this side of you that, that you took care of the little
25 guy, that you're sorry that you, you didn't mean for it to

1 happen. . But I can't do it unless you tell me?

2 Ms. Gorman: I understand that, I understand
3 that, I understand that, all I, I don't know. I really
4 don't know if I shook him hard, if I did I would tell you
5 and, and ---

6 Detective Weaver: That's what happened, isn't
7 it?

8 Ms. Gorman: I don't know.

9 Detective Weaver: You do know.

10 Ms. Gorman: Honestly, Detective.

11 Detective Weaver: Julie?

12 Ms. Gorman: I swear to God.

13 Detective Weaver: Julie, you're almost there;
14 tell me the truth.

15 Ms. Gorman: I would if I could.

16 Detective Weaver: Tell me the truth, you'll
17 feel so much better.

18 Ms. Gorman: I wish, look at me, I'm broken. I
19 have been honest. I've, I've told you everything I've
20 done. I feel I've told you everything I've done from the
21 bottom of my heart, my soul, I was gonna sit down and write
22 everything down.

23 Detective Weaver: Do you want to do that?
24 Would it be easier for you?

25 Ms. Gorman: No, I don't think, I mean

169

1 everything that has happened, you know, because I, you
2 know, from the time it all, from Monday to now the, the
3 things that I said I felt that if I wrote it down because
4 of all the statements and everything that it was, it's not,
5 you know, when, when I talked to you yesterday and I
6 thought about all the things I was being told I was going
7 to go home and write it out.

8 Detective Troxell: Uh-huh.

9 Ms. Gorman: I was so exhausted that I just, I
10 needed a break just for myself just to, just to put
11 everything in, you know, when my friends asked me last
12 night, how's he doing, we didn't tell them that he, that he
13 passed away. I just, I just wanted a break just to, just
14 to ---

15 Detective Troxell: What did you do to take a
16 break? Did you go anywhere?

17 Ms. Gorman: We went to Beef O'Brady's and we
18 went to Fatz, shot some pool. We went to Beef O'Brady's
19 first and I spoke to Kim, I spoke to Sam, Meg, and Jessica.

20 Detective Weaver: This was last night?

21 Ms. Gorman: Yeah.

22 Detective Weaver: Was this after we spoke?

23 Ms. Gorman: Oh, yeah.

24 Detective Weaver: And we talked about what,
25 eight or 9:00 last night?

1 Ms. Gorman: Yeah, we did because I got home,
2 took a shower and everything and we left. I told Robert
3 and we, let's just go out, you know.

4 Detective Weaver: Julie, look at me. I'm going
5 to have to cut you off, time's running out, dear. I need
6 to know what happened, if you want me to help you and stand
7 beside you and help you.

8 Ms. Gorman: I want to tell you exactly.

9 Detective Weaver: I want you to tell, I want
10 you to tell.

11 Ms. Gorman: What do you want me to tell you?

12 Detective Weaver: Julie, I want you to tell me
13 that you were angry, that you had a bad day, that you shook
14 him, you didn't mean to, I mean, I know I've already done
15 the background on you. I know you've had a hard life. I,
16 I know you didn't mean to do this.

17 Ms. Gorman: A background won't reveal anything
18 on me, I've never ---

19 Detective Weaver: I'm not talking about
20 arrests.

21 Ms. Gorman: No, I was going to say I don't have
22 anything on my record.

23 Detective Weaver: No, no, I'm not talking about
24 that. I've talked to people that know you, I know what
25 kind of person you are.

171

1 Ms. Gorman: You, I mean I have had a rough life
2 and I admit it.

3 Detective Weaver: Exactly.

4 Ms. Gorman: But you know what?

5 Detective Weaver: But this was an accident.

6 Ms. Gorman: I still took care of my kids and
7 I've taken care of Minor

8 Detective Weaver: I understand that, but this
9 was an accident, but time's running out. I can't help you.
10 It, I'm the only one that can help you.

11 Ms. Gorman: If, if I shook him I swear to you I
12 don't believe I shook him hard, you know. I don't think I
13 have that much, I don't know.

14 Detective Weaver: But what, but --

15 Ms. Gorman: That's the only explanation I got,
16 I'm sorry.

17 Detective Weaver: But when you get angry you
18 don't know, you don't know you snapped but you did shake
19 him?

20 Ms. Gorman: I never picked him up when I was
21 angry, you know.

22 Detective Weaver: Oh.

23 Ms. Gorman: I know.

24 Detective Weaver: Julie, I, I can't help you
25 if you're not going to sit there and help me. I mean I'm

1 just ---

2 Ms. Gorman: I know I picked him up, but I don't
3 think I did it hard. I can't tell you if I did but I have
4 shaken him but I, I don't know if I shook him hard. I don't
5 know if I ---

6 Detective Weaver: You sure, you didn't, you
7 sure out of anger, maybe you had a fight with Robert
8 something, something? I, I, how am I supposed to go and
9 help you and say ---

10 Ms. Gorman: I know.

11 Detective Weaver: --- yes, she thinks she shook
12 him but she don't know it was real hard. I want to see you
13 take responsibility, yeah, you made a mistake, it was an
14 accident. You didn't mean for it to happen but this is
15 what happened. Let's make it better, and I'll be here to
16 help you make it better but I can't do it if you're not
17 going to be totally honest with me. I can't do, Julie.

18 Ms. Gorman: I ---

19 Detective Weaver: I can't fabricate.

20 Ms. Gorman: I'm not asking you to fabricate. I
21 don't want you to fabricate. I don't want you to, I don't
22 want people to put words in my mouth. I don't want, I
23 don't want, oh, my God.

24 Detective Weaver: I'm running out of options,
25 I don't know how.

173.

1 Ms. Gorman: I understand.
2 Detective Weaver: I don't know how to help you.
3 Detective Troxell: Julie?
4 Ms. Gorman: Yes, sir?
5 Detective Troxell: Can you show me when you
6 shook him easy how you did it?
7 Ms. Gorman: I went like this.
8 (Whereupon, Ms. Gorman demonstrates.)
9 Detective Troxell: Like that?
10 Ms. Gorman: Yes.
11 Detective Troxell: Okay.
12 Ms. Gorman: And I, I don't know if that's hard
13 or anything.
14 Detective Troxell: Okay, when was this?
15 Ms. Gorman: I, I can't keep the date.
16 Detective Troxell: But you, you shook him?
17 Ms. Gorman: Yes, I believe it.
18 Detective Weaver: Was, was it Monday when you
19 came home from work; did you have a bad day?
20 Ms. Gorman: No, no, I didn't.
21 Detective Weaver: How about Sunday?
22 Ms. Gorman: No, I mean work is work.
23 Detective Troxell: What was the --
24 Detective Weaver: We're, you just frustrated
25 with him because --

1 Ms. Gorman: It was just --

2 Detective Weaver: I mean I know it's
3 frustrating.

4 Detective Troxell: Y ---

5 Ms. Gorman: I was frustrated with him because,
6 you know, what I mean, I mean I just feel like I'm this bad
7 person.

8 Detective Troxell: By no means you're not a bad
9 person. We've sat here and tried to tell that for an hour.

10 Ms. Gorman: I know you have.

11 Detective Troxell: We don't, we're not here to
12 pass judgment on you. We're not here to, to think, wow,
13 what a horrible person.

14 Ms. Gorman: I feel like I've been judged since
15 day one.

16 Detective Weaver: No.

17 Detective Troxell: Not at all.

18 Detective Weaver: Julie, listen to me, if I
19 thought that, do you think I'd be sitting here trying to
20 help you right now?

21 Ms. Gorman: No, and I know ---

22 Detective Weaver: I can, I guarantee --

23 Ms. Gorman: --- that, I know you guys believe
24 me.

25 Detective Weaver: I, I ---

175

1 Ms. Gorman: And I know you believe him, I know
2 you guys do.

3 Detective Weaver: I'd be out the door in a
4 heart, in a heartbeat and just go by what we have, okay,
5 but I'm trying to get, you're, we're here for you. This is
6 your opportunity to tel your side of the story, okay, this
7 is, this is for Julie.

8 Detective Troxell: We've been ---

9 Ms. Gorman: My work is my work, I leave it
10 there, you know. I might be there for hours, you know,
11 fixing problems and trying, you know, I mean, you know,
12 what I do. I work in a cash office. I count money all day
13 long. We have a new program, we're a day behind because we
14 count day before, you know, yesterday's stuff.

15 Detective Weaver: Right.

16 Ms. Gorman: So we have to learn a new program,
17 so I'm at work a little bit longer because of the fact that
18 the system's changed. I have to go from one desk to
19 another desk to find answers and go back and try to fix
20 things. I work long, I was working long hours, I mean I
21 did, you know --

22 Detective Weaver: Was it maybe you were just
23 frustrated because he ---

24 Ms. Gorman: But Monday I, I never touched him
25 Monday.

1 Detective Troxell: Let's, let's go back. We'll
2 get that out of the way. Don't worry about that, is that
3 normally how you carry him was like that? When you carry
4 him, can you show me how you normally carry him?

5 Ms. Gorman: I carry him like this when I do or
6 sometimes like this.

7 (Whereupon, Ms. Gorman demonstrates.)

8 Detective Troxell: Okay.

9 Ms. Gorman: Sometimes it's on my hips so I can
10 lean sideways but or I carry him up here.

11 Detective Troxell: When you held him in front
12 of you what were you doing? Where were you at?

13 Ms. Gorman: W ---

14 Detective Troxell: But like we were saying we,
15 we've been working this thing and wanted to get you an
16 opportunity to explain yourself. We had information from
17 the doctor's on Tuesday. We could have just said to hell
18 with it on Tuesday and left the hospital with you and
19 Robert and, and gone to jail.

20 Ms. Gorman: Right.

21 Detective Troxell: But we want to give you the
22 opportunity to tell us what happened in your own words and,
23 and show us and explain to us why this might have happened
24 and to let us know that, you know, I, I didn't
25 intentionally do anything to harm my grandson.

177

1 Ms. Gorman: I, I would never hurt him, God, I
2 would never hurt him.

3 Detective Weaver: Not on purpose.

4 Ms. Gorman: No.

5 Detective Weaver: Not on purpose.

6 Ms. Gorman: No.

7 Detective Troxell: Maybe that day he was just
8 crying and just --

9 Ms. Gorman: I guess, I don't know.

10 Detective Weaver: Julie, I, I like you that's
11 why I'm taking this time to help you. I like you, I think
12 you're a good person. Not too many grandmothers would take
13 their grandchild and take, and take him from their daughter
14 and take him to the doctor. You got him shots, you got the
15 little guy shots. He was having problems with a headache
16 you took him to the emergency room, right?

17 Ms. Gorman: Yes, yes.

18 Detective Weaver: Right. They gave him,
19 remember they gave him a popsicle when he was throwing up?

20 Ms. Gorman: Yes, yes.

21 Detective Weaver: Not too many ---

22 Detective Troxell: And that was the first time
23 you had seen him when he since he was born, right?

24 Ms. Gorman: Yes.

25 Detective Troxell: You had never seen him

1 before?

2 Ms. Gorman: No.

3 Detective Weaver: Not too many grandmothers
4 would do that. You since this happened you've been at the
5 hospital every day, forty hours, no sleep. I know you're a
6 good person, that's why I'm taking this time with you, but
7 if you can't help me I can't help you. I need to know what
8 happened. If you got angry and you shook him accidentally
9 it looks a lot better than that you hurt him on purpose.
10 Do you understand what I'm saying?

11 Ms. Gorman: Yes.

12 Detective Weaver: We're running out of time,
13 Julie, if you want me to help you.

14 Ms. Gorman: I never come home angry from work,
15 I don't. I will say that, you know, because work is, work
16 is work, he cries every day, he's cranky every day, whines
17 every day.

18 Detective Troxell: And on top of that you,
19 he's, he's your grandbaby but he's also a bit of a burden
20 you don't want.

21 Ms. Gorman: He's not a burdensome, you, just,
22 he's not a burden.

23 Detective Troxell: And I don't mean it in a bad
24 way, but he, he's actually changed your lifestyle a little
25 bit. You're used to doing, you and Robert are doing what

179

1 you want to do when you want to do it, but now you've got
2 to care for a baby. He ---

3 Ms. Gorman: But that was a choice I made. I
4 was willing to change, sacri--, you know.

5 Detective Troxell: And you did, you made the --

6 -
7 Ms. Gorman: And it is a sacrifice ---

8 Detective Weaver: You made those sacrifices.

9 Ms. Gorman: --- you know, to change ---

10 Detective Weaver: Because of him, Julie.

11 Ms. Gorman: --- you know.

12 Detective Weaver: You were frustrated because
13 you didn't know what to do for the little guy, that's what
14 happened.

15 Ms. Gorman: No.

16 Detective Weaver: You were frustrated. You,
17 the little guy's crying, whimpering, you got frustrated
18 with yourself and it just happened. You shook him but you
19 weren't upset with him, it was you. You were upset, you
20 were kind of frustrated that you didn't know how to help
21 the little guy; isn't that possible? I mean in like ---

22 Ms. Gorman: Yes, that's possible.

23 Detective Troxell: How long after you shook him
24 was the seizures?

25 Ms. Gorman: I didn't, I never, Monday when I

1 picked him up was when I picked him up out of the bed was
2 the only time I picked him up Monday. He was asleep when I
3 left, when I came home he was taking his nap, checked on
4 him. We checked on him again and he was still napping. By
5 6:00, like I said, I went in there to go wake him up to,
6 you know, feed him dinner. He was making that strange
7 noise and the saliva, I picked him up out of the bed. I
8 leaned him over my arm because I didn't know if he was
9 choking or if he was going to throw up because I didn't
10 want him to choke on it. That's what I did, I whipped him
11 over my arm, okay, that's what I did.

12 Detective Troxell: Okay, you were trying to
13 provide care for him then.

14 Ms. Gorman: You know.

15 Detective Troxell: You've done everything in
16 your power, everything you possibly could.

17 Ms. Gorman: You know, it --

18 Detective Weaver: What was it like?

19 Ms. Gorman: You know just, I mean we have him
20 on videotape, you know, the noises he makes but this is
21 when I'm not home.

22 Detective Weaver: Yeah.

23 Ms. Gorman: And so take that and you intensify
24 it.

25 Detective Troxell: Usually when you get him he

181

1 gets louder, yeah?

2 Ms. Gorman: Yeah, so it intensifies louder.

3 Detective Troxell: Okay.

4 Ms. Gorman: So Robert, but Robert did it so he
5 could say that, you know, when you're not here this is how,
6 you know, he's not as loud, you know, as when you are here,
7 you know, just that he was, I'm not trying to be a jerk,
8 you know, cause I was like, damn, every time I walk in the
9 house. I'm going outside ---

10 Detective Weaver: And ---

11 Ms. Gorman: --- and as soon as I walk outside
12 he stops crying.

13 Detective Weaver: Right.

14 Ms. Gorman: You know, I'd sit on the porch,
15 smoke a cigarette, you know, and then as soon as I'd walk
16 back in he'd start, start it all over.

17 Detective Weaver: All right.

18 Ms. Gorman: So he comes ---

19 Detective Weaver: That's, that's how he is.

20 Ms. Gorman: --- grabs my leg, you know, and
21 takes his foot and tries to climb up my leg, and, no, you
22 know, stop ---

23 Detective Weaver: I've got stuff to do.

24 Ms. Gorman: --- you know, I've got to cook
25 dinner. You want to eat, don't you, you know, I got to

1 cook dinner, you know. It's not that Robert can't cook
2 cause he can, I just, I'm the woman I guess, I don't know.
3 It's my job, my duty, I guess it's a job duty but, you
4 know, but I provide for Minor to make sure he has a good
5 healthy balanced meal.

6 Detective Weaver: Sure, I know how that is.

7 Ms. Gorman: And that we have a good healthy
8 balanced meals as well. I mean we don't eat junk. We
9 don't buy t.v. dinners, you know, or any of that crap, you
10 know, picked him up, "stop," put him back down, took him by
11 his fingers as usual.

12 Detective Troxell: And then walked him to his
13 bedroom.

14 Ms. Gorman: Walked him to his room and I
15 stopped at the door, "go to your bed," because we didn't
16 want the portacrib to be punishment because I didn't want
17 him to think every time he went into the portacrib he,
18 because he was between bedtime and naptime.

19 Detective Troxell: Bedtime and naptime.

20 Ms. Gorman: So we used the other bed as, you
21 know, to go sit down on cause I don't want that because you
22 know, you, I didn't want that. I didn't want him to be
23 confused because he's been confused, you know, with his
24 Mama and everything.

25 Detective Weaver: Where was Robert at when --

183

1 Ms. Gorman: He could have been outside, he
2 could have been in the back room, but he wasn't in the room
3 with me.

4 Detective Weaver: Did Minor stop crying after
5 that or did he cry more?

6 Ms. Gorman: He didn't cry any, any, you know,
7 any differently.

8 Detective Weaver: Yeah.

9 Ms. Gorman: It was still the same noises.

10 Detective Weaver: Yeah.

11 Ms. Gorman: And he doesn't shed tears or
12 anything.

13 Detective Weaver: No?

14 Ms. Gorman: When I took him to the room I
15 stopped at the door and he goes in and he still looks at
16 you and whines and cries but I walk away and went back to
17 cook dinner and then walked back there. I believe I walked
18 back there and said, you ready to come out, no crying, you
19 know, we're not going to cry no more.

20 Detective Weaver: Right.

21 Ms. Gorman: And he'll start right, you know,
22 take a deep breath and, you know, he'd start again ---

23 Detective Weaver: Right.

24 Ms. Gorman: --- come out, play with the toys.
25 I'd sit down on the floor with him, you know. He, he wants

1 to lean on me, he wants to try and crawl in my lap, you
2 know, those are all the things that he did with his mother,
3 you know ---

4 Detective Weaver: Right.

5 Ms. Gorman: --- until she got ---

6 Detective Weaver: Right.

7 Ms. Gorman: --- tiresome of it then she'd shove
8 him away. You know he would be confused why one minute I
9 can do it and ---

10 Detective Weaver: Right.

11 Ms. Gorman: --- then I can't, so we, you know,
12 we are, I was just trying to break these habits ---

13 Detective Weaver: Sure.

14 Ms. Gorman: --- you know, so when he went home
15 to his mother, you know, she, she'd be able to handle him,
16 you know.

17 Detective Weaver: Right.

18 Ms. Gorman: It wouldn't be such, you know, a
19 tiresome thing for her for, you know, she's frustrated.

20 Detective Weaver: Right.

21 Ms. Gorman: She's angry, she doesn't know what
22 to do, and here I'm trying to break all these habits, you
23 know, and make him a fresh little boy ---

24 Detective Weaver: Yeah.

25 Ms. Gorman: --- good boy, so when she got well,

185

1 you know, and everything ---

2 Detective Weaver: That's what I'm saying,
3 you're just, you ---

4 Ms. Gorman: --- got well, and she could take
5 care of her son.

6 Detective Weaver: That's what I'm saying,
7 you're trying to do the right thing. It just got out of
8 hand. How hard did you shake him?

9 Ms. Gorman: I don't think any harder than that.

10 Detective Weaver: Julia, you had to. Come on,
11 it's just me and you talking?

12 Ms. Gorman: I know.

13 Detective Weaver: We've got a good rapport.

14 Ms. Gorman: I understand that.

15 Detective Weaver: And I like you, I think you
16 like me, tell me?

17 Ms. Gorman: I do, I ---

18 Detective Weaver: You had to shake him more
19 than that, medical evidence said you did. People don't ---

20 Ms. Gorman: I don't think I went like this,
21 that would ---

22 (Whereupon, Ms. Gorman demonstrates.)

23

24 Detective Weaver: Nobody's going to believe me,
25 nobody's going to believe me.

1 Ms. Gorman: You.

2 Detective Weaver: When I try and tell them
3 that.

4 Ms. Gorman: I never extended my arms out. I,
5 you can't, I can't do that. I don't know, it's always my
6 arms are here, he's here. I, I don't know, I can sit here
7 all day and do this, I don't know how hard or anything, I
8 just, oh, my God.

9 Detective Weaver: Hang in there, I'll get you.

10 Ms. Gorman: Detective Weaver, I'm telling you,
11 I can't tell you how hard.

12 Detective Weaver: Tell me, Julie.

13 Ms. Gorman: That's it, that's what I'm telling
14 you.

15 Detective Weaver: Come on, his injuries say
16 different.

17 Ms. Gorman: I understand what you guys are ---

18 Detective Weaver: His injuries ---

19 Ms. Gorman: --- telling me.

20 Detective Weaver: His injuries are different,
21 you have to ---

22 Ms. Gorman: I've never, I've never dropped him,
23 never, never.

24 Detective Weaver: How do you explain those
25 injuries then?

187

1 Ms. Gorman: I can't.

2 Detective Weaver: He's got a fractured head.

3 Ms. Gorman: I know that.

4 Detective Weaver: How, how am I supposed to
5 help you? How am I supposed to say, yes, all she did was
6 just shake him? He's got a fractured head. How am I, who,
7 who's going to believe me? You need to tell me what
8 happened, time's running out, Julia. I'm not, you know, I
9 like you, I want to help you, but if, if you're going to
10 sit there and not tell me what, what happened, you know,
11 I'm not going to make stuff up for you.

12 Ms. Gorman: I don't want you to make stuff up
13 for ---

14 Detective Weaver: You've got to tell me what
15 happened?

16 Ms. Gorman: I don't want you to make up stuff
17 for me.

18 Detective Weaver: Okay.

19 Detective Troxell: It was an accident, that's
20 neither here nor there. Did we discuss what Robert, was he
21 not there? Did you tell him, toss it back around on the
22 ride home from Charleston, you know?

23 Ms. Gorman: No.

24 Detective Troxell: So Robert has no idea that
25 this ever transpired?

1 Ms. Gorman: No. No, Robert doesn't even know,
2 you know, what my daughter told you what Richard said that
3 the baby died in my arms. I couldn't tell him that because
4 that's devastating and I felt I couldn't tell him and I'm
5 not going to tell him that.

6 Detective Troxell: Tell him?

7 Ms. Gorman: What Richard had said because I
8 don't know because like everything Richard said to me, what
9 I'm being told is a lie. you know, I caused him to leave
10 her and I'd say, well Richard says this and he goes he's
11 not, just like when you guys came to my house and he had
12 said that you guys were charging me.

13 Detective Troxell: We hadn't met with him ---

14 Ms. Gorman: I know.

15 Detective Troxell: --- Richard.

16 Ms. Gorman: You know and you guys said, and you
17 were just like what, what the hell, you know, and I
18 remember what you said, you know, in your eyes and I could
19 see it in you guy's eyes just the, you know, where is this
20 coming from, you know, I, I, you know, you can read things,
21 too. And when called I told him again what you had said
22 that you better do your job, you know, you better, that you
23 don't get days off and such and so on, and I knew then even
24 before because you guys had told me we have not saw him
25 personably, we're not going to release any information

189

1 until we can identify him and everything else. But I was
2 doing what I felt was right by calling you and letting you
3 all know what I'm being told ---

4 Detective Troxell: Yeah.

5 Ms. Gorman: --- you know.

6 Detective Troxell: Uh-huh.

7 Ms. Gorman: Everything I've been told, I'm sad,
8 too, and I mean, and grieving or not grieving, hell I
9 haven't ever been able to cope. I haven't even got over my
10 shock. I haven't even got over to, to be able to deal
11 because I have to be so fricking strong for everybody else
12 to make sure that they can do, you know ---

13 Detective Troxell: Because that's the type
14 person you are, from what I've got to know from you over
15 the course of the week that's the kind of person you seem
16 to be or you're the, you're the glue that holds everything
17 together. You try to provide for everybody else and, and --
18 --

19 Ms. Gorman: And I do.

20 Detective Troxell: --- and not so much for
21 yourself.

22 Ms. Gorman: And I do. Everybody comes before
23 me and I, if, you know, called me and said you needed help,
24 you know, what I'd be right there to just that's me, that's
25 my nature. That's what I was given my gift for was to help

1 people. I will be bent over backwards. I may be shitted
2 on a lot, but you know what, that's okay. It isn't what
3 comes around goes around, it's that's okay, you know. It's
4 not my loss, it's yours when it comes to things like that,
5 you know. I mean I have a big family and I only talk to
6 two people in my family because none of them care about me
7 and that's fine, that's their loss not mine, you know.

8 Detective Troxell: Why didn't you?

9 Ms. Gorman: All I know ---

10 Detective Troxell: Go ahead, I'm sorry.

11 Ms. Gorman: If, if I shook him I, I can't, I
12 don't, Robert doesn't know, Robert doesn't know.

13 Detective Troxell: Why didn't you tell Robert?
14 Why not tell Robert in the car on the, when we're, when
15 you're driving back and it's an hour and a half drive and
16 you're trying to toss around and figure what happened but
17 you know what?

18 Ms. Gorman: You know what, when we drove we
19 really didn't talk, obviously we really, I mean we bits and
20 pieces because we just ---

21 Detective Troxell: Just so physically ---

22 Ms. Gorman: We needed ---

23 Detective Troxell: --- and mentally drained.

24 Ms. Gorman: We needed a, you know, that was our
25 break. For the most part we were quiet, being quiet, you

191

1 know, might say something funny, you know, get a laugh here
2 and there because he, you know, he was frustrated because
3 the fact that when, when I, when we went to the hospital,
4 you know, went back to the hospital Tuesday night said that
5 we were going to the hotel and told the nurse, gave them
6 our cell phone numbers and everything but stop while you
7 were ahead, and then, and something about the father and
8 she goes, well his mother's already called and said she did
9 not want you guys here with Richard because of, there will
10 be confrontation and I say, Ma'am, I'm going to tell you
11 now, I said there will be no confrontation from us. If he
12 wants to be that way I'll leave because this isn't a place
13 to have a scene. This is, you know, ICU and, number one,
14 it's not about us, okay. That, that hurt Robert, you know,
15 and then when I got to the hospital Richard saw me. Richard
16 said that, you know, he debated on stopping and talk to me,
17 and Robert stayed at the hotel because he felt if he came
18 there might be a confrontation, you know. So he was, you
19 know, alleviating anything, you know, he didn't want to
20 walk in and you come charging him, you know, and Richard
21 said, he goes if I would of saw Robert he goes I would have
22 charged him. I would have and I was like that's why he
23 didn't come and I told Robert that and Robert's like I'm
24 going home, you know, and I said, we'll go.

25 Detective Troxell: It's not the place for a

1 confrontation.

2 Ms. Gorman: You know and it's not, you know,
3 and I told him, I said, come pick me up from the hospital
4 and I'll go home with you and, you know, I'll get my car
5 and I can come back, you know, make sure Richard has
6 everything he needs, you know. I don't, I don't like
7 Richard, I don't and I'm very honest about that, you know.
8 I mean the whole time Cesalee was there just text messages
9 and, you know, she, he would tell her to "F" you and go to
10 hell, I want a divorce, you know, just back and forth, back
11 and forth between them and then he'd call my phone. He'd
12 text my phone, you know, and I'd have to sit there and, and
13 be the mediator in the middle. Leave her alone, you know,
14 you know she has problems, you know how she is, you know,
15 she's, she's going to flip and I said now, you know, we
16 don't want that.

17 When she pulled her stunt about, you know, going
18 out till 6:00 in the morning, 6:30, whatever time it was,
19 and then the next night doing it again. I called him and I
20 told him to shut up and listen and I said, you need to get
21 your wife and your young'un and you need to take them home
22 immediately is what I told him, and then after, you know,
23 as, and I was driving when I did this so I had left work
24 and called. When I got home I, I took Cesalee outside,
25 just Cesalee and I had told her, and I wasn't yelling or

193

1 screaming because I had calmed down by now because, you
2 know, I was venting and then, you know, I went inside and
3 Robert says, you know, she can go but the baby can stay and
4 he goes and then he's, he's like, you know, she don't have
5 to go either, even though he was very hesitant to let her
6 come and, you know, and he was very hesitant, but it's my
7 daughter, you know, do the right thing, now look, look who
8 we are.

9 Detective Troxell: I know shit happens to good
10 people, Julia, but it's just how we take corrective action
11 to fix and atone for the bad thing. It'll get better, like
12 Weaver said we're here to, to help you. I mean we've been
13 beside you a hundred percent through this whole ordeal till
14 the end. We could have been the mean assholes like you
15 said after we talked on Tuesday and, but we were trying to
16 ---

17 Ms. Gorman: Sunday and Monday, I mean just
18 Monday it could have, and I know that.

19 Detective Troxell: Give me one second, I'll be
20 right back with you.

21 (Whereupon Detective Troxell exits the interview
22 room.)

23 Ms. Gorman: I don't think I did that either.
24 I'm just, fuck it, say it, do whatever. No one's going to
25 go down with me, and I'm not going to let anyone else take

1 the fall.

2 Detective Weaver: Hey, Julie, can you come with
3 me? We're going to take a break for a little bit, all
4 right, I'm going to, I'm --

5 Ms. Gorman: Can I go outside and smoke a
6 cigarette?

7 Detective Weaver: --- get you in a more
8 comfortable place, In a little bit, I'll take you out, get
9 your purse.

10 Ms. Gorman: You dropped a paper down on the
11 ground.

12 Detective Weaver: I'll get that, no big deal.

13 (Whereupon, the playing of the video statement of
14 Julia Gorman is concluded.)

15 Ms. Lively: Your Honor, that was the conclusion
16 of Julia Gorman's interview. There is a follow up with Mr.
17 Palmer but all it has is he goes into the room and
18 basically invokes his rights to an attorney.

19 The Court: You don't intend to offer it?

20 Ms. Lively: No, that part, no, sir, not that
21 part.

22 The Court: All right, well then ---

23 Ms. Lively: And she's accurate as to whether --

24 -

25 The Court: Then it would be --

195

1 Ms. Lively: Exactly and that's the reason ---

2 The Court: You're not going to offer it so you
3 don't need to have a Jackson v. Deno on that.

4 Ms. Lively: Exactly, and that's the reason why
5 I'm telling you that now that it was a second, well a
6 continuation but it's not necessary and that was the
7 complete of Gorman.

8 The Court: Okay, all right, let me hear you,
9 Ms. Grabert-Lowenstein, and Mr. Galmore, either one of you
10 or both of you?

11 Ms. Grabert-Lowenstein: I can reply real quick,
12 Your Honor, I have no objections to either tape.

13 Mr. Galmore: Your Honor, I would object to Ms.
14 Gorman's tape coming in. I think the tape itself they have
15 repeatedly made reference to forty hours without sleep.
16 They've repeatedly made reference to medications. Ms.
17 Gorman even asked and received permission to take
18 medication during the interview. At, at best, Your Honor,
19 after, I don't know, sixty minutes or so of looking at this
20 thing the best that the State was able to produce is well
21 maybe I might have shaken the baby. I don't think that's a
22 confession and, quite frankly, I think that this does not
23 fit within the confines of being knowingly and voluntarily
24 given.

25 The Court: All right, and that's the question

1 of whether it was voluntary; how old is your client?

2 Ms. Graber-Lowenstein: Forty, Your Honor.

3 The Court: Does your client suffer from any
4 mental or educational deficits, Mr. Galmore?

5 Mr. Galmore: No, sir.

6 The Court: No question she was not, did not
7 appear at least to be under any toxicants, was she?

8 Mr. Galmore: Well, Your Honor, there is the
9 issue of the medication. They were also on the tape they
10 made reference to going out to Fatz and Beef O'Brady's the
11 night before the interview was given.

12 The Court: Well didn't she tell the officer she
13 was not, she didn't appear to be to me and she told the
14 officer at that time she was not, are you telling me now
15 she was?

16 Mr. Galmore: No, I'm just telling you that the,
17 the interview she says that her and Mr. Palmer went out to
18 two bars the evening before and that this interview took
19 place early the next day.

20 The Court: Okay, all right, thank you. I've
21 considered the circumstances of the, of the interrogation
22 and the characteristics of your client. I think your
23 client is an intelligent person; it's obvious from her
24 responses. On the tape I do not see any evidence that
25 would indicate to me that she was intoxicated, did not know

197

1 what she, she was doing and she's a person that is mature.
2 I've looked at the details of the interrogation. She was
3 advised of her Miranda rights, no question about that. It
4 was about an hour and a half long. I don't find that to be
5 overly lengthy.

6 The, there was no use of, in my view, of any
7 threats or punishment for her answers. I notice that she
8 did have her medication; she did have a purse. She did
9 have something to drink during the interrogation. I paid
10 close attention to the surroundings, it appeared to be like
11 an office, more or less, nothing coercive about that. I
12 believe it was a voluntary statement and I will admit it,
13 okay.

14 Ms. Lively: Thank you, Your Honor.

15 The Court: Thank you.

16 Ms. Lively: The State had a motion to sequester
17 all witnesses. Obviously this is the very fact specific
18 case. As you can see part of the problem with this case is
19 that we ultimately the forensically we know what happened
20 to the child; we don't know the actual mechanism and, and
21 what occurred, so we think that credibility is a huge issue
22 in this case and we ---

23 The Court: Sort of unusual for you to move to
24 sequester witnesses for the State to do that, of course the
25 defendants will both have a right to be present.

State of South Carolina
County of Horry

In The Court of General Sessions

State of South Carolina,)
)
)
vs.)
)
Julia S. Gorman,)
)
)
Defendant.)

08-GS-26-3756/08-GS-26-0841
10-GS-26-0041/10-GS-26-2194

TRANSCRIPT OF HEARING

State of South Carolina,)
)
)
vs.)
)
Robert A. Palmer,)
)
Defendant.)

10-GS-26-2195/10-GS-26-2196
08-GS-26-04120

November 14-18, 2011
Conway, South Carolina

Before:

The Honorable, Larry B. Hyman, Judge

Appearances:

By: Candice A. Lively, Esq.
Nancy G. Cote, Esq.
Attorneys For State

BY: Carla F. Grabert-Lowenstein, Esq.
Attorney For Robert A. Palmer

BY: James C. Galmore, Esq.
J. Andrew Ritner, Esq.
Attorneys For Julia S. Gorman

BRENDA R. BABB
Circuit Court Reporter

Mr. Grimes - Direct Examination by Ms. Lively 127

1 Mr. Galmore: That's it, thank you, Your Honor.

2 The Court: All right, if you would, Ms. Graham,
3 bring the jury in.

4 (Whereupon, the jury returns to the courtroom at
5 9:52 a.m.)

6 The Court: All right, let the record reflect
7 that we have our jurors and we have our alternates and
8 everybody is ready to go, I hope, and you had a good
9 evening. Ms. Lively?

10 Ms. Lively: Thank you, Your Honor, the State
11 would call Richard Grimes to the stand.

12 **Richard Coleman Grimes**

13 **being first duly sworn, testified as follows:**

14 Madam Clerk: Please state your full name and
15 spell your last name for the Court?

16 The Witness: Richard Coleman Grimes, last name
17 g-r-i-m-e-s.

18 **Direct Examination**

19 **By Ms. Lively:**

20 Q Richard, where do you live?

21 A Las Vegas, Nevada.

22 Q And how long have you lived there?

23 A Seven months now.

24 Q And, Richard, how do you know Cesalee
25 Grimes or Cesalee Carnaghie?

Mr. Grimes - Direct Examination by Ms. Lively

128

- 1 A She is my wife and we met in high school.
- 2 Q Now how old are you?
- 3 A Twenty-two.
- 4 Q How old were you when you and Cesalee met?
- 5 A Sixteen.
- 6 Q How old was she?
- 7 A Sixteen.
- 8 Q Now, Richard, where were you living
- 9 whenever you met Cesalee?
- 10 A Mohave Valley, Arizona.
- 11 Q Who was she living with in Arizona at that
- 12 time?
- 13 A Her grandmother Judy Morris in Tupac,
- 14 Arizona.
- 15 Q Did you know Julia Gorman at that time?
- 16 A No, ma'am.
- 17 Q Did you know Robert Palmer at that time?
- 18 A No, ma'am.
- 19 Q Now, Richard, when you and Cesalee met in
- 20 high school were you friends or did it become more?
- 21 A We were friends at first but then it became
- 22 more.
- 23 Q And how long did you date?
- 24 A Two years.
- 25 Q During that relationship what happened?

Mr. Grimes - Direct Examination by Ms. Lively

129

1 A She was continuing to stay with her
2 grandmother for a while and things were becoming sketchy up
3 there and ended up moving in with me and my mother at our
4 place in Mohave Valley.

5 Q Okay, while she was living with you and
6 your mother did she become pregnant?

7 A Yes, ma'am.

8 Q And ya'll were both what age at that time?

9 A Seventeen.

10 Q What did you do, what did you decide
11 regarding the pregnancy?

12 A What do you mean?

13 Q Was there ever a thought in your mind to
14 not go forward with the pregnancy?

15 A No, ma'am.

16 Q When was your son born?

17 A February 16th, 2007.

18 Q Were you at the hospital when he was born?

19 A Yes, ma'am.

20 Q And when he was born did you see anything
21 wrong with him?

22 A No, ma'am.

23 Q How was he?

24 A Angry.

25 Q Okay, angry, what did you and Cesalee name

1 him?

2 A Minor

3 Q What was his, what did he weigh, how long
4 was he; do you remember?

5 A He was six pounds twelve ounces and twenty-
6 one inches long.

7 Q Now, Richard, were you working at the time
8 or were you still in school?

9 A I was doing both.

10 Q And did you ever graduate from high school?

11 A Yes, ma'am.

12 Q When was that?

13 A December of 2008, I believe, I'm sorry,
14 2006 or 7.

15 Q Okay, December of 2007, so this, was this
16 after Minor was born?

17 A Yes, ma'am.

18 Q All right, now, Richard, who was the
19 caretaker for Minor

20 A Both Cesalee and I were.

21 Q Okay, and were you doing anything other
22 than going to school and working?

23 A Just taking care of our son.

24 Q Now describe to the jury what kind of a
25 child Minor was?

Mr. Grimes - Direct Examination by Ms. Lively

131

1 A My son was a very happy go lucky child. He
2 always had a smile on his face; he never, he never was
3 really fussy. Even when he was sick he, he'd always smile
4 for something.

5 Q Richard, during the time whenever you had
6 Minor or you and Cesalee had Minor , in your care was
7 there ever a time when he suffered any type of traumatic
8 injuries to his head?

9 A No, ma'am.

10 Q Was there ever a time dropping down the
11 stairs?

12 A No, ma'am.

13 Q How about being in a car accident; were you
14 ever in a car accident with the child in the car?

15 A No, ma'am.

16 Q What type of illnesses did Minor have
17 while he was a child?

18 A He had the common colds throughout just
19 like any child would ever get. The only thing that he had
20 was thrush that was in his mouth and we went to the doctor
21 and got that taken care of and got the antibiotics for
22 that.

23 Q Okay, and was he okay after that?

24 A Yes, ma'am.

25 Q And was Minor taken to his well baby

Mr. Grimes - Direct Examination by Ms. Lively

132

1 checks like he was supposed to?

2 A Yes, ma'am.

3 Q When did he start walking?

4 A I don't know, ma'am, I wasn't, I was in the
5 military for that. I wasn't able to be there.

6 Q Okay, right, tell this jury when you went
7 into the military, when did you sign?

8 A I enlisted in the military in the middle of
9 2007 and was on the delayed entry program. I didn't ship
10 out until after I graduated. I graduated boot camp January
11 of 2008.

12 Q Okay, and you said that Minor was born
13 February 16th of 2007, correct?

14 A Yes, ma'am.

15 Q Okay, so you shipped out right before his
16 first birthday?

17 A Yes, ma'am.

18 Q Were you able to make it back for his first
19 birthday?

20 A Yes, ma'am.

21 Q And who was there for his first birthday?

22 A Myself, my wife, Minor my family, and
23 Cesalee's grandmother, Judy Morris.

24 Q Okay, Richard, at this time the baby's
25 life, he's one year old, had you ever met Julia Gorman?

Mr. Grimes - Direct Examination by Ms. Lively

133

1 A No, ma'am, I take that back, yes, ma'am.

2 Q Okay, all right, when?

3 A She had flown out to put Cesalee in foster
4 care and Cesalee had called me upset and distraught because
5 of what was going on and I went up to see what was going on
6 and see if everything was okay and I met her for maybe five
7 minutes.

8 Q Okay, and for the purposes of a
9 chronological order was this before Minor birth or after
10 Minor birth?

11 A This was before.

12 Q Okay, so at the time of Minor being born
13 up until his first birthday had Julia Gorman ever been out
14 there to visit you and the child?

15 A No, ma'am.

16 Q Now in February of 2008 when you get home
17 is Minor walking?

18 A Yes, ma'am.

19 Q What other type of developmental things did
20 you notice that had changed since you were gone?

21 A He was starting to say the common words; he
22 was very advanced. He, he could pick out colors if you'd
23 ask him. He could pick out certain shapes if you'd ask
24 him. You could say certain things to him and he could
25 point out, he could point to it for you, he just --

Mr. Grimes - Direct Examination by Ms. Lively

134

1 Q Okay, now, Richard, how long were you in
2 town before you had to ship off again?

3 A Thirty days.

4 Q During that thirty days did anything else
5 occur between you and Cesalee?

6 A As far as?

7 Q As far as your relationship?

8 A We had gotten married.

9 Q Okay, all right, and at that point in time
10 whenever you got married was Ms. Gorman or any other
11 members of Cesalee's family come?

12 A The only people that were there were her
13 grandmother Judy Morris, her grandmother's husband Ron
14 Morris, our adopted sister Shaley Greer, her father Brook,
15 and Minor and then her I guess it would be her uncle
16 which was her grandfather, Ron Morris', twin brother, and
17 his wife.

18 Q Okay, now, Richard, after you left who took
19 care of Minor

20 A Cesalee did.

21 Q And when was the next time you saw your
22 son? Well when you left where did you go?

23 A I went to M.C.T. for a month in Camp
24 Pendleton, California, and ---

25 The Court: Could you tell us what M.C.T. is?

Mr. Grimes - Direct Examination by Ms. Lively 135

1 The Witness: (Continuing)

2 A Marine Combat Training. At the end of that
3 training Judy Morris, my wife and Minor came out and saw
4 me and I got to see him for that night before I flew out
5 the following morning for Pensacola, Florida.

6 Q Okay, and when you were at Pensacola,
7 Florida, how long were you there?

8 A About four months.

9 Q Okay, and were you able to visit with
10 Minor and Cesalee while you were in Pensacola?

11 A For the first couple of months while I was
12 there I couldn't do anything but talk to them over the
13 phone. When I was about to graduate my first school they
14 came out to see me and then that was, that was it.

15 Q Do you remember about when that was?

16 A No, ma'am, I don't.

17 Q Was it before Cesalee and Minor came to
18 South Carolina?

19 A Yes, ma'am.

20 Q All right, now, Richard, was that the last
21 time you saw Minor before he was injured?

22 A Yes.

23 Ms. Lively: May I approach, Your Honor?

24 The Court: Certainly.

25 Ms. Lively: (Continuing)

Mr. Grimes - Direct Examination by Ms. Lively

136

1 Q I'm going to show you what's been marked
2 State's Exhibits, put them in some order, Exhibit 1,
3 Exhibit 7, 11, 12, and 13, okay, I'm going to ask you for
4 each one, if you'll hold it, State's Exhibit 1; do you
5 recognize that?

6 A Yes, ma'am, I do.

7 Q Okay, and is that a picture that you've
8 provided to my office ---

9 A Yes.

10 Q --- regarding your son?

11 A Yes, ma'am.

12 Q Then if you'll look at the next exhibit,
13 please?

14 Ms. Grabert-Lowenstein: Your Honor, I'm sorry I
15 don't mean to interrupt, if we could see the specific
16 exhibit?

17 Ms. Lively: Sure, I'm sorry, I thought that
18 they were aware of it.

19 Ms. Grabert-Lowenstein: We're aware, but we
20 didn't know the specific numbers.

21 The Court: These have been marked for I.D.,
22 have they not?

23 Ms. Lively: They have, Your Honor.

24 Ms. Grabert-Lowenstein: Thank you, Counsel.

25 Ms. Lively: Sure, Your Honor, just so that

Mr. Grimes - Direct Examination by Ms. Lively 137

1 you're aware of which ones have been marked, thank you.

2 Ms. Lively: (Continuing)

3 Q Again do you recognize State's Exhibit 1?

4 A Yes, ma'am.

5 Q And State's Exhibit 7; do you recognize
6 this photo as well?

7 A Yes, ma'am.

8 Q State's Exhibit Number 11; do you recognize
9 this photo?

10 A Yes, ma'am.

11 Q State's Number 12; do you recognize this
12 photo?

13 A Yes, ma'am.

14 Q And finally in State's 13; do you recognize
15 this photo?

16 A Yes, ma'am.

17 Q Now are these photos that you had in your
18 care and custody?

19 A Yes, ma'am.

20 Q And you've provided them to my office,
21 correct?

22 A Yes, ma'am.

23 Ms. Lively: Your Honor, the State would move to
24 introduce State's 1, 7, 11, 12, and 13 into evidence at
25 this time?

Mr. Grimes - Direct Examination by Ms. Lively

138

1 The Court: Mr. Galtore and Ms. Grabert-
2 Lowenstein?

3 Mr. Galtore: Without objection.

4 Ms. Grabert-Lowenstein: Without objection, Your
5 Honor.

6 The Court: Very well.

7 Ms. Lively: Thank you.

8 (Whereupon, State's Exhibit Number 1, 7, 11, 12,
9 and 13 entered into evidence.)

10 Q (Continuing) I'm going to let you hold
11 these, okay?

12 The Court: They are admitted without objection.

13 Ms. Lively: Thank you, Your Honor.

14 Q (Continuing) Now, Richard, if you could
15 briefly, let me do this, I know this is hard, I'm sorry, in
16 Number 1 it says 01-04-2008; is that the correct date?

17 A I honestly don't know, ma'am. It was a
18 cheap camera that had gotten dropped a couple of times.

19 Q Okay, but obviously in this picture who's
20 that standing there with you?

21 A That's my son.

22 Q Minor

23 A Yes, ma'am.

24 Q And in picture Number 7, who's represented
25 in this picture?

Mr. Grimes - Direct Examination by Ms. Lively

139

1 A Our whole family, my wife, Minor and I.

2 Q Okay, once again emotionally what kind of
3 baby was he?

4 A A very happy go lucky.

5 Q And in Exhibit Number 11 this is him as
6 well?

7 A Yes, ma'am.

8 Q And in 12 was this taken around the same
9 time?

10 A Yes, ma'am.

11 Q Playing, and finally in State's Exhibit
12 Number 13 which is in evidence; do you remember when that
13 picture was taken?

14 A Yes.

15 Q Yes, could you, please, tell us when that
16 was taken?

17 A On his visit to see me in South, in
18 Pensacola.

19 Q And visit in Pensacola was this the last
20 time you saw him before he was injured?

21 A Yes, ma'am.

22 Q Richard, what did you know about the
23 decision for Cesalee and Minor to come to South Carolina?

24 The Court: Ms. Lively, are you seeking to
25 publish those?

Mr. Grimes - Direct Examination by Ms. Lively

140

1 Ms. Lively: Well, yes, sir, Your Honor, I did
2 hold them up for the jury. I was going to publish them to
3 them whenever I was finished.

4 The Court: All right.

5 Ms. Lively: (Continuing)

6 Q Now, Richard, let me ask you this, you'd
7 never met Ms. Gorman so how did it come to be that Cesalee
8 and your child were going to go and stay with her?

9 A Cesalee had called her mom and they had
10 talked a couple of times when she came out to see me and to
11 my knowledge her mother had stated that she had wanted to
12 meet Minor and since they were already in Pensacola why
13 didn't they just come up and stay with them for a few weeks
14 while I finished up school before we were assigned to my
15 primary duty station; and Cesalee and I had discussed it
16 and thought that it was only fair that she got to finally
17 meet her grandson that she hadn't gotten an opportunity to
18 prior to that because of everything that was going on.

19 Q Okay, and when Cesalee and Minor left how
20 did they travel to South Carolina?

21 A I got them a bus ticket to take a bus from
22 Pensacola to South Carolina.

23 Q And when they left do you know how long
24 they would have to travel to get here?

25 A To my knowledge it was just under forty-

Mr. Grimes - Direct Examination by Ms. Lively

141

1 eight hours.

2 Q And did you speak to Cesalee when she got
3 here to make sure that they got here okay?

4 A Every day.

5 Q And while she was here in South Carolina
6 were you able to talk to Minor on the phone?

7 A Yes, any time that I would call to talk to
8 Cesalee I would always get to talk to my son.

9 Q At any time while you were having contact
10 with Cesalee did you have any indication that anything
11 wrong was going on and there were any problems at all?

12 A No, ma'am.

13 Q And the information that you were getting
14 from Cesalee that it lead you to believe that you needed to
15 come to South Carolina for any reason?

16 A No, ma'am.

17 Q So what was your focus at that time
18 regarding your military career?

19 A Finish up with my schooling and get to my
20 primary duty station so that we could finally settle down
21 and have a decent life.

22 Q Okay, and while Cesalee was here in South
23 Carolina did you receive information as to where your
24 destination was going to be?

25 A Yes, ma'am.

Mr. Grimes - Direct Examination by Ms. Lively

142

1 Q And where were you going to be stationed?

2 A As soon as I finished up my second school
3 in Oceana, Virginia, my primary duty station was going to
4 be Beaufort, South Carolina.

5 Q Okay, and how did you feel about that?

6 A Happy, Cesalee and I had discussed it prior
7 to that and I had a choice between Miramar, California and
8 Beaufort, South Carolina, and we decided that what would be
9 best for all three of us would be out here on the east
10 coast where most of her family is.

11 Q Okay, now was there a time whenever you
12 were supposed to reunite with Cesalee and Minor

13 A Yes, ma'am, once I finished up my second
14 school we were supposed to go back to Arizona and pack up
15 all of our things and drive out to South Carolina to
16 Beaufort, move into our house.

17 Q And, Richard, was there a change in those
18 plans?

19 A Yes.

20 Q Well first tell me when the decision was
21 made for Minor to be left here, tell us about that?

22 A We had discussed, once I found out my
23 primary duty station, we had discussed me taking leave to
24 go back and to pack our stuff and to move it out here and
25 get it ready since my school was going to be so short, and

Mr. Grimes - Direct Examination by Ms. Lively

143

1 Minor had a cold and a fever and was having allergic
2 reaction to the ant bites. My wife and I didn't want to
3 risk taking him on the airplane to risk something happening
4 while they were in the air and nothing being able to be
5 done.

6 Q How long of a flight is that from South
7 Carolina to Arizona; do you know?

8 A No, ma'am, I don't, it's over six hours.

9 Q Okay, so what did you decide after his
10 current condition?

11 A Cesalee had talked to her mother about it
12 and her mother said that she would love to have him for the
13 days that we were going to be gone since we weren't going
14 to be gone that long so that she could get to know him
15 better since she hadn't seen him for so long and hadn't met
16 him yet.

17 Q And what was Cesalee going to do?

18 A Cesalee was going to meet me in Arizona to
19 pack our stuff and get everything ready so that once I
20 graduated all we had to go back and do was load it into a
21 truck and drive out here.

22 Q And when were you planning on graduating;
23 do you remember?

24 A No, ma'am.

25 Q Okay, what time frame were you looking at,

Mr. Grimes - Direct Examination by Ms. Lively

144

1 if you recall, that Minor would be left in Julia's care?

2 A No longer than a week.

3 Q And what, if anything, did you and Cesalee
4 decide to do regarding the care of Minor while he was with
5 Julie and her boyfriend Robert?

6 A We were informed that in the State of South
7 Carolina in order for a guardian for a grandparent to be
8 able to take a child to a doctor they had to have a written
9 form of guardianship and we were informed that the minimum
10 allowed by law was for a year, whether it lasted a year or
11 not it didn't matter, it just had to be written up for a
12 year.

13 Q Was this a, what was the actual language of
14 the, the document; do you recall?

15 A It stated that both Cesalee and I agreed to
16 give temporary guardianship to Julia Gorman and Robert
17 Palmer for a year while we went and performed the move so
18 that they could take him to any necessary doctors
19 appointments for any emergency room calls that may have
20 come up.

21 Q Now I'm curious why did you add Mr. Palmer
22 into this?

23 A He was there in the same household.

24 Q Did it seem like the right thing to do at
25 the time?

Mr. Grimes - Direct Examination by Ms. Lively

145

1 A For what was best for my son, yes.

2 Q And once again you stated that you thought
3 it was going to be for about a week?

4 A It was only Cesalee and I talked about it,
5 it was only going to be for about a week before she was
6 going to be back out there with him.

7 Q But that didn't happen, she was gone for
8 more than week, wasn't she?

9 A Yes, ma'am.

10 Q When did she fly to back to Arizona; do you
11 recall when that was?

12 A I don't recall the exact date.

13 Q That's fine, don't worry about it, now,
14 Richard, you said that you would call when Cesalee and
15 Aydain were there together, how about whenever Cesalee was
16 no longer there did you call to check on Minor

17 A Yes, ma'am, when she arrived in, when she
18 left and arrived in Arizona I arrived at the same time and
19 every day we would call and talk to him.

20 Q Were you ever given any information from
21 his care givers that there were any problems?

22 A Yes, ma'am.

23 Q Was there ever any complaints about his
24 behavior?

25 A Not to us.

Mr. Grimes - Direct Examination by Ms. Lively

146

1 Q Was there ever a time when you were unable
2 to contact Julia and Robert regarding Minor

3 A There was one day that Cesalee and I had
4 tried all day long to get a hold of either one of them; we
5 couldn't reach either one.

6 Q When was the next time you spoke to them?

7 A Was after I arrived in back in Oceana,
8 Virginia.

9 Q Tell the jury about what happened when you
10 arrived back in Oceana, Virginia?

11 A I received a phone call on the night of
12 Sunday, July 14th.

13 Q It was actually Monday, the 14th?

14 Ms. Grabert-Lowenstein: Objection, leading.

15 Ms. Lively: Okay.

16 The Court: All right, ask him if he recalls the
17 date?

18 Ms. Lively: (Continuing)

19 Q Do you recall the day of July 14th?

20 A I know it was Sunday night.

21 Q Okay, well tell me what happened when you
22 got a call Sunday night?

23 A I had a call from Julie stating that Minor
24 was on his way to the hospital; they had called the
25 paramedics because he was seizing in the playpen when they

Mr. Grimes - Direct Examination by Ms. Lively

147

1 tried to wake him up for dinner.

2 Q What did you do when you got that call?

3 A I told her to keep me informed and let me
4 know what was going on and that I was going to notify my
5 command that my son was on his way to the hospital and what
6 was going on.

7 Q Richard, when you notified your command
8 what did they do for you?

9 A They were able to calm me down and get me
10 to relax and told me that to be on stand by in case I
11 needed to be out here for anything.

12 Q Were you able to come to South Carolina to
13 be with your son?

14 A After I was called again to be informed
15 that he had the skull fractures and that they were life
16 flighting him to MUSC in Charleston my master gunnery
17 sergeant put me on the next flight out.

18 Q Richard, when you got to South Carolina
19 where did you go?

20 A Straight to MUSC.

21 Q And when you got to MUSC who was there; if
22 you recall?

23 A The only person that was there was Minor
24 in the room at the time.

25 Q And what was his condition at that time?

Mr. Grimes - Direct Examination by Ms. Lively

148

1 A Critical.

2 Q When was Cesalee able to make it to South
3 Carolina; do you recall?

4 A She was there the following day, she was
5 there on Tuesday.

6 Q Had she been in Arizona still?

7 A Yes, ma'am, she was in the process of
8 heading back out to South Carolina to pick Minor up. She
9 was finishing up a few odds and ends that we still had left
10 to do.

11 Q Now, Richard, at any time when Minor was
12 in your care did he have to be treated for seizures or any
13 type of neurological problems?

14 A No, ma'am.

15 Q So when you were at the hospital were you
16 able to give any history or information to the doctors to
17 help them treat Minor regarding the type injuries he had?

18 A No, ma'am, cause I didn't know what was
19 wrong.

20 Q And did you ever talk to Julie or Robert
21 Palmer about what happened with your son?

22 A After I received the phone call stating
23 that he was being life flighted to MUSC that was the last
24 time I heard from Julie. I didn't hear from her again
25 until I ran into her in the hallway at MUSC.

Mr. Grimes - Direct Examination by Ms. Lively

149

1 Q Did you talk to her then?

2 A When I had arrived at MUSC I had informed
3 the doctors and nurses that the only two people that were
4 allowed to see Minor were his mother and me because we
5 were not sure what had happened and until we would figure
6 out what was going on we didn't want anybody to see him
7 without us; and I had informed her of that in the hallway
8 and she, she hugged me and cried and said she wanted to say
9 goodbye because she had to go back home to do something and
10 said that the nurses wouldn't let her back to see him, so I
11 allowed it. I went back with her and she said goodbye.
12 She asked me if Robert could come in and say goodbye as
13 well and I told her no. I told her that he needed to pick
14 her up down the road and that was it. She came in and said
15 goodbye and then she left.

16 Q How much longer after that, or let me back
17 up, because of his condition, Richard, what decision did
18 you and Cesalee have to make?

19 A The doctors told us that his brain had
20 hemorrhaged and because of the bleeding in the brain that
21 it had killed his brain stem and that the only things that
22 were keeping him alive were the machines. Cesalee and I
23 had to make the decision to turn off the machines.

24 Q Richard, before that happened did ya'll do
25 anything for Minor

Mr. Grimes - Direct Examination by Ms. Lively

150

1 A We had Minor baptized.

2 Q Did Julie stay for that?

3 A No, ma'am.

4 Q What day did he die?

5 A July 16th is when we had the machines
6 turned off.

7 Q Do you need some water? Richard, have you
8 talked to Julie or Robert since they left MUSC that day
9 whenever Julie said goodbye?

10 A No, ma'am, I refuse to. I couldn't
11 understand how your son or your grandson could be sitting
12 in the hospital in critical condition and you have
13 something more important to go and do than to be there with
14 him.

15 Q Okay --

16 Ms. Lively: One moment.

17 Q (Continuing) At any time, Richard, did you
18 talk to law enforcement about what was going on?

19 A Yes, ma'am, before I left Oceana, Virginia.
20 I had talked to the doctor in Conway Hospital and asked why
21 he was being life flighted and they told me that he had two
22 skull fractures and that he was unconscious and in a coma.
23 At that point I had called, I believe it was the Conway
24 Police Department, and filed a report with the police
25 because I felt something was wrong.

Mr. Grimes - Direct Examination by Ms. Lively

151

1 Q All right, so you did contact law
2 enforcement?

3 A Yes, ma'am.

4 Q Now, Richard, what decision did you make
5 regarding, regarding what would happen to Minor after he
6 had passed away?

7 A We had decided to donate his organs. We
8 didn't feel that it was fair for other people to have to
9 lose their children just because we did when his organs
10 could go to saving their lives.

11 Q Richard, at any time did you have a
12 conversation with Julie about Minor condition other than
13 when she asked to go in and say goodbye to him?

14 A Before I had asked her what had happened
15 then at first she told she didn't know. After I found out
16 about the skull fractures I asked her again and she, first
17 thing she said ---

18 Mr. Galmore: Objection to hearsay, Your Honor.

19 The Court: This is the defendant?

20 Ms. Lively: Yes, sir.

21 The Court: I'll allow it.

22 Mr. Galmore: Yes, sir.

23 Ms. Lively: Thank you.

24 Q (Continuing) You can say what she told you?

25 A After we found out about the skull

Mr. Grimes - Direct Examination by Ms. Lively

152

1 fractures I had called her on my way out here and I had
2 asked her what had happened and she told me that she didn't
3 know. She said the dog possibly knocked him down but she
4 wasn't sure.

5 Q Were you ever given any other explanation
6 from her?

7 A I wasn't.

8 Q Are you and Cesalee still together at this
9 time, Richard?

10 A We are separated at this time.

11 Q And do ya'll have any more children?

12 A No, ma'am.

13 Q And just for clarification, Richard, have
14 you ever witnessed your child having a seizure?

15 A No, ma'am.

16 Q Had he ever fallen down and gone
17 unconscious?

18 A No, ma'am.

19 Q Foamed at the mouth?

20 A No, ma'am.

21 Q Has he ever even spent the night in a
22 hospital other than when he was born?

23 A No, ma'am.

24 Ms. Lively: Thank you, Your Honor, if I may
25 publish these pictures to the jury?

Mr. Grimes - Cross Ex. by Ms. Grabert-Lowenstein

153

1 The Court: Yes.

2 Ms. Lively: Richard, please answer any
3 questions the defense may have for you.

4 The Court: Who will go first?

5 Cross Examination

6 By Ms. Grabert-Lowenstein:

7 Q Mr. Grimes, do you need a moment? Very
8 sorry for your loss. I do need to ask you a few questions.

9 A Okay.

10 Q You indicated you met Cesalee when you were
11 both sixteen and she was living with her grandmother, how
12 many years was it before you ever met Ms. Gorman?

13 A Approximately one.

14 Q Okay, and I believe your testimony on
15 direct was you met her for five minutes at that time?

16 A Yes, ma'am.

17 Q Okay, now let me take you back to prior to
18 Cesalee becoming eighteen, was that when you had the
19 telephone call, a conversation with her about being put
20 into foster care?

21 A Yes, ma'am.

22 Q Okay, and that was when you met Ms. Gorman;
23 wasn't it?

24 A Yes, ma'am.

25 Q Okay, and would it be accurate to describe

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 154

1 Cesalee's reaction to that as basically being blindsighted?

2 A Yes, ma'am.

3 Q Okay, pretty accurate, okay, and after you
4 graduated high school in 2007, when did you first join the
5 military? I want to make sure we have a accurate
6 chronological.

7 A In the middle of the year of 2007 is when I
8 first enlisted.

9 Q Okay, so you enlisted and then graduated
10 from high school?

11 A Yes, ma'am.

12 Q Okay, and where did you first go to basic?

13 A MCRD, San Diego.

14 Q Okay, and how long were you there?

15 A Three months.

16 Q Okay, and would it be accurate to say you
17 and Cesalee weren't together at that time?

18 A Yes, ma'am.

19 Q Okay, and would it be accurate to say that
20 to your knowledge Ms. Gorman and Cesalee didn't see each
21 other during that time?

22 A Yes, ma'am.

23 Q Okay, after you finished that training
24 where did you go?

25 A I was on thirty days leave and I came back

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 155

1 home for that period of leave.

2 Q Okay, and when you say home is that in
3 Arizona?

4 A Mohave Valley, yes, ma'am.

5 Q Okay, after that thirty day leave where did
6 you go?

7 A I went back to San Diego to Camp Pendleton
8 for marine combat training.

9 Q And for how long?

10 A One month.

11 Q Okay, and approximately where are we date
12 wise for that point?

13 A About March.

14 Q March of --

15 A I believe it was '08.

16 Q '08, okay, and were you and Cesalee living
17 together at that time?

18 A Yes, ma'am.

19 Q Okay, how much longer as of the first of
20 June did you have at Pensacola?

21 A Not very long, I'm not sure the exact time.

22 Q Month, two months?

23 A It wasn't even that, it was just maybe a
24 week or two. I was already about to graduate my school and
25 transfer to Oceana, Virginia.

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 156

1 Q Okay, when did you expect that transfer to
2 take, to take place?

3 A As soon as I graduated, as soon as I
4 graduated ---

5 Q Okay?

6 A --- is when I flew into Oceana.

7 Q Okay, you flew to Oceana once ---

8 A Yes, ma'am.

9 Q Okay, and was Oceana, how long were you
10 going to be in Oceana?

11 A Two weeks.

12 Q Okay, given the fact you didn't know Ms.
13 Gorman and the incident with the foster care did you have
14 any concern about Cesalee leaving Minor with Ms. Gorman?

15 A That was her mother and that was his
16 grandmother, should never have any concern.

17 Q Do you recall on July 19th talking to law
18 enforcement here in Horry County?

19 A Briefly.

20 Q And in that conversation did they ask you
21 concerning how long it had been planned that Minor was
22 going to be in the care of Ms. Gorman?

23 A As far as how long he would be out here?

24 Q Yes?

25 A With her by himself?

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 157

1 Q Yes?

2 A Yes.

3 Q Do you recall what you told them at that
4 time?

5 A I told them it wasn't supposed to be any
6 longer than a week, as soon as we finished up everything
7 we'd be out to get him.

8 Q You didn't tell them that it was September
9 5th after you graduated you guys got everything moved?

10 A No, ma'am.

11 Ms. Grabert-Lowenstein: Your Honor, if I could,
12 and I'll show counsel what I'm going to show Mr. Grimes,
13 that I'm just going to show him this to refresh his
14 recollection, May I approach, Your Honor?

15 The Court: Certainly.

16 Ms. Grabert-Lowenstein: (Continuing)

17 Q Mr. Grimes, I'm going to hand you a
18 transcript and just to yourself, okay, please don't read it
19 out loud. I'd like you to read this page, which for the
20 record is page nine, and then I'll ask you a question.

21 Sir, does that reflect, excuse me, refresh your
22 recollection as to when you and Cesalee expected to pick
23 Minor up?

24 A Yes, ma'am.

25 Q And what was that?

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 158

1 A According to that it said September 5th.

2 Q Okay, and were you being accurate at the
3 time that you spoke to the investigative detective?

4 A No, ma'am, I was distraught and upset and I
5 was trying to be as accurate as I could be but because of
6 the circumstances --

7 Q Did you expect Cesalee to come back to
8 South Carolina and for you to pick both of them or how was
9 that going to work?

10 A Yes, ma'am, she was supposed to after we
11 finished doing what we were supposed to do she was going to
12 come back and be with Minor and we hadn't decided yet
13 whether they were going to stay here or whether they were
14 going to go back to Arizona.

15 Q Okay, isn't it true you told the detectives
16 that Beaufort was on, Beaufort, South Carolina, was on your
17 wish list; did you actually have your orders?

18 A Yes, ma'am.

19 Q Okay, so would I be accurate in saying that
20 you expected Cesalee to have returned to South Carolina in
21 a short time?

22 A Yes, ma'am, once we finished up everything
23 she was coming back.

24 Q And did you also talk to the detectives
25 about the reason that Cesalee, you had flown Cesalee back

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 159

1 to Arizona?

2 A Yes, ma'am.

3 Q And what did you tell the detectives on
4 July 19th of 2008 as to the reason?

5 A That the primary reason was for insurance.

6 Q Okay, and would it be accurate that being
7 the case that Minor didn't have insurance at the time?

8 A No, ma'am.

9 Q Okay ---

10 A It was just to ---

11 Q Military gives you insurance, right?

12 A It was to upgrade the insurance that he did
13 have to a better one.

14 Q During that time were there any phone calls
15 made to the command about the insurance on Minor

16 A As far as what do you mean?

17 Q There not being any and, and a concern
18 about that?

19 A No, ma'am, he was never without insurance.

20 Q I direct, you spoke about calling the
21 police; do you recall what you told the detectives about
22 that?

23 A As when I made the 911 call?

24 Q Yes, when you, when you made the call; do
25 you recall what you told the police at that time?

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 160

1 A I had told them that my son was just life
2 flighted to MUSC, that I wasn't sure what was going on, but
3 I had a feeling that something was wrong.

4 Q Did you express concern about a particular
5 individual during that call?

6 A No, ma'am.

7 Ms. Grabert-Lowenstein: For counsels benefit,
8 actually, Your Honor, before I do, let me just, I'll show
9 counsel the specific page. May I approach?

10 The Court: Certainly.

11 Ms. Grabert-Lowenstein: (Continuing)

12 Q Again, Mr. Grimes, I'm going to hand you
13 what is, what I showed to counsel and what's page three and
14 if you could just read the paragraph that ends where it's
15 got some highlighting?

16 Did you express concern about Ms. Gorman in that
17 telephone call?

18 A At that time, yes, ma'am.

19 Q Thank you, Mr. Grimes. You stated that you
20 and Cesalee are separated?

21 A Yes, ma'am.

22 Q Were you present while she was speaking to
23 the detectives?

24 A No, ma'am.

25 Q Were the two of you together being

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 161

1 interviewed in July of 2008; do you recall?

2 A As far as being interviewed I don't recall.

3 Q Let me, I'm going to just ask you to glance
4 through the transcript and see if that recall, refreshes
5 your recollection as to who was present during the
6 interview? Who was present during the interview?

7 A I'm not sure.

8 Q You don't recall you and Cesalee being
9 together?

10 A At the time of the interview I don't, I
11 remember talking to the detectives at the hospital after
12 she had gotten there but I know I had talked to them before
13 that.

14 Q Okay, well the transcript reflects, does it
15 not, that it was you and Judy Morris, the detectives, and
16 Cesalee?

17 A No, ma'am, it says Mr. Grimes, Detective
18 Weaver, there's one that says Ms. Morris and then the other
19 one says female voice.

20 Q Well later on in the transcript does it
21 indicate that Cesalee was present?

22 A Yes, ma'am.

23 Q Were you present when Cesalee made a
24 comment about meeting somebody on, on match something?

25 A No, ma'am, I don't recall that.

Mr. Grimes - Cross Exam. by Ms. Grabert-Lowenstein 162

1 Q Okay, you are aware that on July 8th Minor
2 was taken to Aynor Medical for a cold and an ant bite?

3 A Yes, ma'am.

4 Q He was taken care of, his needs were met?

5 A Yes, ma'am.

6 Q Okay, now counsel asked you about the well
7 baby check and are you aware that when he was seen at
8 Conway Medical Center for vomiting that they indicated his
9 next series of shots were due?

10 A Yes, ma'am.

11 Q Mr. Grimes, when was it that you and
12 Cesalee did the tough task of burying Minor how long was
13 it after he passed?

14 A I'm not sure, ma'am, because they had to do
15 the autopsy out here and then he had to be flown out to
16 Arizona and I don't know the date that we buried him.

17 Q You don't remember the date?

18 A Not that we buried him.

19 Q You don't remember whether it was thirty
20 days after he passed or not?

21 A No, ma'am.

22 Ms. Grabert-Lowenstein: Mr. Grimes, again I'm
23 sorry for your loss and thank you for answering my
24 questions?

25 The Court: Mr. Galmore?

By Mr. Galmore:

A Something was wrong, my son was in the hospital for an unknown reason with skull fractures and I didn't know why.

Mr. Grimes - Cross Examination by Mr. Galmore

164

1 Q And when did you receive the information,
2 how did you receive the information that your son was in
3 the hospital with skull fractures?

4 A Via telephone.

5 Q From Ms. Gorman?

6 A Yes, sir.

7 Q So she called you and told you that your
8 son was in the hospital?

9 A Yes, sir.

10 Q If you are the responsible party at say a
11 children's sleep over and the kids are over there jumping
12 around and eating pizza and watching movies and stuff and
13 one of the kids falls and injures his arm, as the
14 responsible party for the sleep over what would you do?

15 Ms. Lively: Objection as to speculation and
16 relevance.

17 The Court: I'm going to allow the question.

18 Ms. Lively: Okay, thank you, Your Honor.

19 The Witness: (Continuing)

20

21 A Let the parents know and seek the child
22 help.

23 Q So it would be appropriate to get some
24 medical help for the child?

25 A Yes, sir.

Mr. Grimes - Cross Examination by Mr. Galtmore

165

1 Q To call 911 perhaps?

2 A Yes, sir.

3 Q And it would be appropriate to call the
4 child's parents?

5 A Yes, sir.

6 Q And let them know what's going on?

7 A Yes, sir.

8 (Whereupon, Defendant Gorman's Exhibit Number 1
9 marked for identification.)

10 Mr. Galtmore: May I approach the witness, Your
11 Honor?

12 The Court: Certainly.

13 Mr. Galtmore: (Continuing)

14 Q Mr. Grimes, let me hand you what's been
15 marked for identification purposes as Defense Exhibit
16 Number 1 and ask you if you recognize this document?

17 A Yes, sir, both of them.

18 Q And what does that appear to be, sir.

19 A The one is the drivers license of my wife
20 and the other one is the Tricare card for my son.

21 Q So this card does the Tricare card have a
22 name on it?

23 A Yes, sir.

24 Q And what name is that?

25 A Minor

Mr. Grimes - Cross Examination by Mr. Galmore

166

1 Q And what is Tricare?

2 A Tricare is the insurance that the military
3 has.

4 Q What is the effective date on that
5 insurance card?

6 A The effective date of this one is July 1st,
7 2008.

8 Q Isn't it true that Ms. Gorman had to call
9 your commanding officer in order to get your son insured?

10 A No, sir.

11 Q You deny that Ms. Gorman called your
12 commanding officer about obtaining insurance?

13 A I have no idea if she did or not, sir, that
14 would have to do with him, not me.

15 Q Yes, sir, now you're the person responsible
16 for Minor doctor visits?

17 A As far as what do you mean, as far as
18 taking him?

19 Q Or was Cesalee the person primarily
20 responsible for taking him to the doctor?

21 A Yes, sir, I wasn't around.

22 Q So Cesalee was the person who had this
23 responsibility?

24 A Yes, sir.

25 Q So if I were to tell you that his shot

Mr. Grimes - Cross Examination by Mr. Galtore

167

1 records was four months behind would you say Cesalee is the
2 person responsible for that?

3 A Yes, sir.

4 Q When was the last time that you went with
5 Minor to the doctor's appointment, if you can recall?

6 A It was back in Arizona, I believe it was on
7 my thirty days leave he had a checkup.

8 Q Was this a standard wellness checkup, six
9 months ---

10 A Yes.

11 Q --- one year check up kind of thing?

12 A Yes, sir.

13 Q Do you know how many times Minor went to
14 the hospital, excuse me, to the doctor while he was here in
15 South Carolina?

16 A To my knowledge it was only twice, it was
17 once for the cold and then he was supposed to go back to
18 have his last set of shots and that was, that was it.

19 Q Do you know when the shots were scheduled
20 to be given?

21 A No, sir.

22 Q So as I understand it you completed basic
23 training in San Diego; is that correct?

24 A Yes, sir.

25 Q And then your next duty assignment or

Mr. Grimes - Cross Examination by Mr. Galmore

168

1 training was in Pensacola, Florida?

2 A No, sir.

3 Q No, sir, please explain?

4 A It was Marine Combat Training in San Diego.

5 Q Okay, and then you got, is that when you
6 got the thirty day leave after the Marine Combat Training?

7 A No, sir, after boot camp.

8 Q Okay, so you went to boot camp and then you
9 had a thirty-day leave?

10 A Yes, sir.

11 Q And then you went back to San Diego for
12 M.C.T.?

13 A M.C.T., yes, sir.

14 Q Now after the M.C.T. training where did you
15 go?

16 A Pensacola, Florida.

17 Q Okay, now prior to boot camp where was
18 Cesalee living?

19 A With me.

20 Q Who else was living with you?

21 A My mother, my sister.

22 Q And at that time Cesalee was seventeen; is
23 that correct?

24 A Yes, sir.

25 Q I think you testified at one point that

Mr. Grimes - Cross Examination by Mr. Galmore

169

1 Cesalee lived with her grandmother also?

2 A Before that, yes, sir.

3 Q And I think you testified that Ms. Gorman
4 came out to Arizona with the intention of putting Cesalee
5 in foster care; is that correct?

6 A Yes, sir.

7 Q Was she actually placed in foster care?

8 A Yes, sir.

9 Q So she lived with her grandmother and then
10 she was in foster care and then she left foster care and
11 stayed with you; is that correct?

12 A Just about, yes, sir.

13 Q And then once she moved in with you
14 sometime thereafter ya'll became pregnant?

15 A Yes, sir.

16 Q How long after she became pregnant did
17 ya'll get married?

18 A I'm not sure.

19 Q Well was she showing when --^M

20 A was already born whenⁿ we got
21 married.

22 Q Minor was already born, okay, okay, you
23 said, you met Cesalee in, in school and you all were sixteen
24 at the time?

25 A Yes, sir.

Mr. Grimes - Cross Examination by Mr. Galtore

170

1 Q How long did she live with her grandmother
2 in Arizona?

3 A I'm not sure.

4 Q Okay, do you know how long she was in
5 foster care in Arizona?

6 A Not very long.

7 Q But after that then she came to stay with
8 you and then she had Minor and then you all got married?

9 A Yes, sir.

10 Q After your M.C.T. training in San Diego is
11 that when you went to Pensacola?

12 A Yes, sir.

13 Q And what training were you doing in
14 Pensacola?

15 A My A school.

16 Q What does that mean?

17 A It was Avionics.

18 Q Okay, and how long was you're a school
19 training?

20 A I don't remember exactly because I had to
21 go out to Pensacola and I had to wait there for my class to
22 class out and then go through my class, graduate my class,
23 and then go to Oceana, Virginia.

24 Q Okay, but when you first went to Pensacola
25 Cesalee was staying with your mother in Arizona; is that

Mr. Grimes - Cross Examination by Mr. Galmore

171

1 correct?

2 A No, sir.

3 Q No?

4 A She was staying with her grandmother.

5 Q Okay, did Cesalee have the baby by then?

6 A Yes, sir.

7 Q So when she first had the baby was she
8 staying with your mother?

9 A She was staying with me.

10 Q She was staying with you and your mother?

11 A Yes, sir.

12 Q Okay, and then she had the baby and she
13 moved with her grandmother?

14 A After I had left, yes.

15 Q So she and ^{Minor} stayed with her
16 grandmother?

17 A Yes, sir.

18 Q And then she came out to Florida with you?

19 A Yes, sir.

20 Q But she didn't get to stay with you?

21 A No, sir, she wasn't coming out to stay.

22 Q She was coming to be with you because --

23 A She was coming to see me.

24 Q She was coming to see you and she brought

25 ^{Minor} with her?

1 A Yes, sir.

2 Q How long did Cesalee stay in Florida?

3 A Maybe a week and a half.

4 Q And where did she stay in Florida?

5 A At a hotel.

6 Q Do you remember which one?

7 A No, sir.

8 Q But you think she was there for about a
9 week and a half?

10 A Yes, sir, I got to see her twice.

11 Q And she had ^{Minor} with her?

12 A Yes, sir.

13 Q And that's when you sent her on the
14 Greyhound bus to South Carolina?

15 A After I saw her, yes.

16 Q Now at this time you already been familiar
17 with Ms. Gorman because of the foster care incident,
18 correct?

19 A What do you mean was familiar with her?

20 Q I mean you met Ms. Gorman for that five
21 minutes when she was out there putting Cesalee in foster
22 care?

23 A Yes, sir.

24 Q So when Cesalee says I want to go see my
25 mother in South Carolina were you not concerned?

Mr. Grimes - Cross Examination by Mr. Galmore

173

1 A Why should I be? That's her grandson?

2 Q I agree, I'm not talking about the kid.

3 Did you say, Cesalee, this is the same person that just put
4 you in foster care?

5 A We had discussed it.

6 Q And your decision was to let them go
7 anyway?

8 A Yes, sir.

9 Q Okay, now once Cesalee and Minor came to
10 South Carolina you said you would speak to them on the
11 phone on a regular basis?

12 A Yes, sir.

13 Q And you testified that Minor was saying
14 some words?

15 A Yes, sir.

16 Q And identifying colors and shapes and
17 things like that?

18 A Yes, sir.

19 Q Was he communicating with you on the
20 telephone?

21 A That is what he thought was, yes.

22 Q Okay, was he having a coherent conversation
23 to the extent that a toddler can?

24 A Yes, sir.

25 Q Okay?

Mr. Grimes - Cross Examination by Mr. Galtore

174

1 A As far as sitting still, no.

2 Q Was there ever a time that Minor
3 complained about living in South Carolina?

4 A He was a toddler and he could only say a
5 couple of words, what do you mean by complain?

6 Q I mean did he say, Daddy, I don't want to
7 be here?

8 A No.

9 Q You didn't have an opportunity to visit
10 with Minor while he was here in South Carolina?

11 A No.

12 Q While he was in your care did you ever drop
13 him?

14 A No.

15 Q Did he suffer any injuries that you were
16 aware of?

17 A No, sir.

18 Q What about when he was staying with
19 Cesalee, did she ever drop him?

20 A No, sir.

21 Q She didn't or you don't know?

22 A I don't know.

23 Q How did you decide upon getting Cesalee a
24 Greyhound bus ticket?

25 A It's what we discussed and agreed on.

Mr. Grimes - Cross Examination by Mr. Galmore

175

1 Q During what, I'm sorry?

2 A When we were talking about her coming to
3 South Carolina.

4 Q You said that's what you discussed and
5 agreed on?

6 A Yes, sir.

7 Q Oh, okay, all right, when Cesalee left on
8 July 1st you gave her a airline ticket; is that correct?

9 A When she was on the Greyhound?

10 Q No, when she left South Carolina to go back
11 to Arizona?

12 A Yes, sir.

13 Q And you didn't purchase a ticket for

14 Minor

15 A No, sir.

16 Q And that's because he was sick and you
17 didn't want him flying?

18 A Yes, sir.

19 Q Would it have been possible to purchase a
20 bus ticket for Cesalee and Minor instead of a airline
21 ticket?

22 A Not for that long of a bus ride, that's
23 cruel to do to a toddler.

24 Q So your answer was to leave Minor here and
25 let Cesalee take a plane back to Arizona?

1 A Yes, sir.

2 Q Isn't it true that you were asked to come
3 get your wife?

4 A Not to my knowledge.

5 Q So you don't recall being asked to come get
6 your wife?

7 A No, sir.

8 Q Once you received the call from Ms. Gorman
9 that Minor was being airlifted you said you contacted your
10 command let them become aware of the problem so that you
11 could be released to come down here?

12 A No, sir, I said when I first got the phone
13 call that he was going to the hospital is when I notified
14 my command.

15 Q Okay, in that phone call you said keep me
16 up to speed or something like that?

17 A Told her to let me know what was going on,
18 that I was going to let my command know so that I could be
19 put on standby in case I needed to come down.

20 Q Okay, and then you received a second
21 telephone call from Ms. Gorman?

22 A Yes, sir.

23 Q And that second telephone call was the same
24 day?

25 A The following morning.

Mr. Grimes - Cross Examination by Mr. Galmore

177

1 Q And you said you received the first
2 telephone call on Sunday; is that correct?

3 A Yes, sir.

4 Q And the following morning would be Monday
5 morning?

6 A Yes, sir.

7 Q The second telephone call would have been
8 when she tells you that he's being airlifted to Charleston?

9 A Yes, sir.

10 Q And that is when you contacted, no, that's
11 when you came down here?

12 A Yes, sir, was when he was life flighted.

13 Q Okay, did Ms. Gorman ever tell you that she
14 struck her grandbaby?

15 A No, sir.

16 Q Did she say it was a big accident?

17 A I was told a couple different things.

18 Q Did she tell you it was some kind of
19 mistake, I did it, I'm sorry I did it?

20 A No, sir.

21 (Whereupon, Defendant Gorman's Exhibit Number 2
22 marked for identification.)

23 Mr. Galmore: (Continuing)

24 Q Mr. Grimes, let me hand you what's been
25 marked for identification purposes as Defense Exhibit 2 and

Mr. Grimes - Cross Examination by Mr. Galmore

178

1 ask you if you recognize that document?

2 A Yes, sir.

3 Q And what is that document, sir?

4 A This is the temporary guardianship of
5 Minor , a minor child.

6 Q Is that your signature on that temporary
7 guardianship paperwork?

8 A Yes, sir.

9 Q Where did that paperwork come from?

10 A As far as --

11 Q I guess in the military parents have to do
12 this sort of thing on a regular basis; was that a document
13 that you might have gotten from your commanding officer?

14 A I've never known of anybody in the military
15 to have to do this on a regular basis.

16 Q Okay, okay, so do you know where that
17 document came from?

18 A It was typed up and notarized by Gail
19 Palmer which is Robert Palmer's mother.

20 Q That's correct, who else signed this
21 document?

22 A My wife Cesalee.

23 Q You and Cesalee signed this document and it
24 was notarized by Gail Palmer?

25 A Yes, sir.

Mr. Grimes - Redirect Examination by Ms. Lively

179

1 Q And that document authorizes Julia Gorman
2 and Robert Palmer to tend to Minor medical needs and
3 other needs?

4 A Yes, sir, we covered all bases with this.

5 Q And that's your signature on it?

6 A Yes, sir.

7 Q When you were calling from Oceana, yeah, I
8 think you were in Oceana at the time, when you were calling
9 speaking to Cesalee and Minor did they ever complain about
10 the conditions in the home?

11 A No, sir.

12 Q Did they ever say the home was unkept,
13 dirty?

14 A No, sir.

15 Q Did they complain about liquor bottles
16 laying around, anything like that?

17 A Not to my knowledge.

18 Mr. Galmore: That's all the questions I have,
19 thank you.

20 The Court: Redirect?

21 Ms. Lively: Just one question.

22 Redirect Examination

23 By Ms. Lively:

24 Q Richard, when you would call and get Minor
25 on the phone would you, please, describe to us what the

Mr. Grimes - Recross Exam. by Ms. Grabert-Lowenstein 180

1 conversation was like?

2 A It was always of him getting excited when
3 my wife would ask him if he wants to talk to Dad you could
4 hear him screaming and yelling and laughing in the
5 background and then when she'd give him the phone he'd
6 just, he'd mumble on and on and on and on and he'd laugh at
7 things and you could hear him running around wherever he
8 was at.

9 Q Were any of those conversations in complete
10 sentences?

11 A No, sir, no, ma'am, sorry.

12 Q Okay, that's okay, thank you --

13 Ms. Grabert-Lowenstein: Thank you, Your Honor,
14 just a couple of questions.

15 Recross Examination

16 By Ms. Grabert-Lowenstein:

17 Q Mr. Grimes, prior to receiving a telephone
18 call concerning ^{Minor} being air lifted, when was the last
19 time you had communication with Ms. Gorman?

20 Ms. Lively: Your Honor, I'm just going to
21 object to that being outside the scope of redirect.

22 The Court: Well I think that it's in response
23 to Mr. Galmore.

24 Ms. Grabert-Lowenstein: Yes, it is, Your Honor.

25 Ms. Lively: Okay, thank you.

Mr. Grimes - Recross Exam. by Ms. Grabert-Lowenstein 181

1 The Witness: (Continuing)

2 A The night before when he first was being
3 transported by paramedics.

4 Q From that date how many days had it been
5 since you talked to Ms. Gorman?

6 A Just a couple.

7 Q Could it have been four?

8 A I don't know.

9 Q Did you tell the detectives that it was the
10 10th?

11 A I don't remember if I did or not.

12 Q Was your memory better then?

13 A It was three years ago.

14 Q Okay, okay, you indicated that Cesalee was
15 living in a motel and did she have a car?

16 A She was staying in one and, no.

17 Q Okay, counsel asked you about speaking on
18 the phone with Minor did he seem happy to be speaking to
19 his mom?

20 A What do you mean speaking to his mom?

21 Q Well I mean the kind of reaction that a
22 toddler would have, you know, mom and dad are gone and you
23 get to hear the voice, was it that kind of a situation?

24 A As far as him being happy he got to talk to
25 her?

Mr. Grimes - Recross Exam. by Ms. Grabert-Lowenstein 182

1 Q Yes?

2 A Yes.

3 Q Yes, okay, and was the same way when he
4 talked to you?

5 A Yes, ma'am.

6 Q Okay, there were periods of time would he
7 have that same kind of reaction when you had not seen him
8 for a while and then he got to see you?

9 A There was a lot more physical, yes, ma'am.

10 Q Okay, because you were face to face?

11 A Yes, ma'am.

12 Q Okay, would you, would you then say that
13 that bubbling up that counsel asked you about was partially
14 because there had been a separation between Minor and one
15 of his parents?

16 A As far as being happier?

17 Q Uh-huh?

18 A Yes, ma'am.

19 Ms. Grabert-Lowenstein: Thank you, Mr. Grimes,
20 I have no further questions.

21 The Court: All right, it's been, is that it,
22 counsel?

23 Ms. Lively: Oh, yes, sir, with this witness it
24 is.

25 The Court: Okay, all right, we've been an hour

Ms. Carnaghie - Direct Examination by Ms. Lively 183

1 and a half or just a little over, let's take a break. If
2 you would take the jury back, let them refresh themselves,
3 take the morning break.

4 (Whereupon, the jury retired to the jury room at
5 11:16 a.m.)

6 The Court: We'll be at ease until about 11:30.

7 (Whereupon, a recess was taken and the following
8 takes place on the record after the recess.)

9 The Court: Mr. Ropp, if you would, thank you,
10 bring in the jury.

11 (Whereupon, the jury returns to the courtroom at
12 11:32 a.m.)

13 The Court: All right, we have our jury back in.
14 Ms. Lively?

15 Ms. Lively: Yes, sir.

16 The Court: If you would call your next witness?

17 Ms. Lively: Thank you, the State would call
18 Cesalee Carnaghie to the stand.

19 Cesalee Ann Carnaghie

20 being first duly sworn, testified as follows:

21 Madam Clerk: Please state your full name and
22 spell your last for the Court?

23 The Witness: My full name is Cesalee Ann
24 Carnaghie, it's c-a-r-n-a-g-h-i-e.

25 Direct Examination

Ms. Carnaghie - Direct Examination by Ms. Lively

184

1 By Ms. Lively:

2 Q How old are you now, Cesalee?

3 A Twenty-two.

4 Q And what's your date of birth?

5 A 9-19-1989.

6 Q And are you married?

7 A Yes, ma'am.

8 Q And Mr. Grimes is your husband?

9 A Yes, ma'am.

10 Q What's the status of your marriage right
11 now?

12 A We're separated.

13 Q And do you have any children?

14 A No, ma'am.

15 Q Who is Minor

16 A My son.

17 Q Cesalee, how do you know the defendant
18 Julia Gorman?

19 A She's my mother.

20 Q How do you know the defendant Robert
21 Palmer?

22 A He's her boyfriend.

23 Q Now, Cesalee, where did you grow up?

24 A With my grandparents for the most part.

25 Q What kind of relationship did you have with

Ms. Carnaghie - Direct Examination by Ms. Lively

185

1 your mother growing up?

2 A Not much of one.

3 Q And where do your grandparents live or
4 where were they living when you were little?

5 A I have the ones that were in North
6 Carolina, also the ones that are in California.

7 Q Okay, well tell me which ones had
8 guardianship over you?

9 A My grandmother in Arizona.

10 Q And what's her name?

11 A Judith Morris.

12 Q And she's your grandmother on your mom's
13 side?

14 A Yes, ma'am.

15 Q So that's the defendant Julia Gorman's
16 mother?

17 A Yes, ma'am.

18 Q Okay, now there was some questions earlier
19 and I want to ask you, was there ever a time when you were
20 placed in foster care?

21 A Yes, ma'am.

22 Q Would you tell the jury about that?

23 A I was being a rebellious teenager, my
24 grandmother couldn't handle that. She called my mother; my
25 mother called me angry and threatened to make me a ward of

Ms. Carnaghie - Direct Examination by Ms. Lively 186

1 the court. Basically I told her, I dare you, she came down
2 the next day with CPS.

3 Q So you were admittedly difficult?

4 A Yes, ma'am.

5 Q Okay, now, Cesalee, at that time how old
6 were you?

7 A I believe I was fifteen or sixteen.

8 Q Okay, how old were you when you met
9 Richard?

10 A Fifteen.

11 Q Okay, and when did the two of you become a
12 couple, how old were you when ya'll became a couple?

13 A Sixteen.

14 Q How old were you when you became pregnant?

15 A Sixteen.

16 Q How did your mother, the defendant, feel
17 about you becoming pregnant?

18 A She was angry.

19 Q When was Minor born?

20 A February 16th, 2007.

21 Q Who was with you at the hospital when he
22 was born?

23 A Richard, his mother, his sisters, I believe
24 that was it.

25 Q Where was your mom?

Ms. Carnaghie - Direct Examination by Ms. Lively 187

1 A South Carolina.

2 Q Had the two of you made up, reconciled your
3 relationship by that time?

4 A Yes, ma'am.

5 Q Okay, now, Cesalee, when Minor was born
6 how much did he weigh?

7 A Six pounds, twelve ounces.

8 Q Were, were there any problems with him
9 whenever he was born?

10 A No, ma'am.

11 Q What type of illnesses did he have as a
12 child or as a baby?

13 A Common cold, thrush, that's about it.

14 Q Who was the primary caretaker for Minor as
15 a baby?

16 A Both Richard and I.

17 Q Now was Richard in the military whenever he
18 was born?

19 A No, not yet.

20 Q Okay, when, well let me ask you this, did
21 you ever graduate high school?

22 A Yes, ma'am.

23 Q Okay, and do you remember when that was?

24 A I completed high school November 2006 and
25 had my graduation date May of 2007.

Ms. Carnaghie - Direct Examination by Ms. Lively

188

1 Q All right, now, Cesalee, how were things
2 whenever you were having to care for Minor being as young
3 as you were?

4 A It was difficult, I had absolutely no idea
5 what I was doing.

6 Q And when you had Minor where were you
7 living?

8 A At Richard's mother's house.

9 Q And did you always live with his mother up
10 until the time you actually left to come to South Carolina?

11 A No, ma'am.

12 Q Okay, where were the different places that
13 you and Minor stayed before you ended up coming here to
14 South Carolina, don't include the Pensacola trip, but just
15 when you were in Arizona?

16 A With Judy Morris and also in the apartment
17 that we had started to rent.

18 Q Who's we?

19 A Richard and I.

20 Q Okay, so ya'll had started renting an
21 apartment?

22 A Uh-huh.

23 Q Okay, now, Cesalee, what was your
24 relationship like with your, I guess, was he your husband
25 at that time or your boyfriend?

Ms. Carnaghie - Direct Examination by Ms. Lively

189

1 A Husband at that time.

2 Q Okay, and what was your relationship like?

3 A Pretty good.

4 Q And who was the one who would take care of

5 Minor when Richard wasn't around?

6 A I did.

7 Q Okay, now whenever, when did Richard
8 actually go into the military? Do you remember about when
9 that was or how old Minor was when it happened?

10 A When he enlisted or when he actually left?

11 Q When he had to actually physically leave
12 you when was that?

13 A That was after Minor was born.

14 Q Okay, and whenever he left to do his duties
15 in the military who would take care of Minor

16 A I did.

17 Q Okay, now, Cesalee, when you were caring
18 for Minor did you ever have any problems with him
19 physically?

20 A No.

21 Q Was there ever a time when you had him that
22 he had to be taken to the hospital overnight?

23 A No.

24 Q All right, was there ever a time as a new
25 mother you took him to the E.R. for any reason?

Ms. Carnaghie - Direct Examination by Ms. Lively

190

1 A Yes, ma'am.

2 Q Okay, tell the jury why you would do that
3 or when that happened?

4 A He had a really high fever, I couldn't get
5 it to come down. So I immediately took him to the
6 emergency room after he had had that fever for about an
7 hour and it escalated to even higher and I took him there
8 and they basically gave him a cold compress on his forehead
9 and he was fine to go home.

10 Q Now were you ever in a motor vehicle
11 accident with him in the car?

12 A No.

13 Q Were there stairs in the apartment complex
14 where you lived?

15 A Not inside of my apartment.

16 Q Had you ever fallen down any stairs with
17 him in your arms?

18 A No.

19 Q At any time that he was with you did he
20 have any type of head injuries or concussions?

21 A No.

22 Q Now, Cesalee, when he had that high fever
23 did he suffer from seizures or did he lose consciousness?

24 A No.

25 Q Now, Cesalee, when did Minor start

Ms. Carnaghie - Direct Examination by Ms. Lively

191

1 walking?

2 A He was about ten months.

3 Q And who, were you taking him to the well
4 baby checks?

5 A Yes, ma'am.

6 Q All right, and based upon taking him to
7 those well baby checks did you have any concerns about his
8 development?

9 A I would ask the doctor if he was supposed
10 to doing things that he was doing yet but other than that,
11 no.

12 Q Okay, so you were just, you would talk to
13 the doctor if there were any problems?

14 A Yes, ma'am.

15 Q Okay, were there any problems?

16 A No.

17 Q All right, and whenever Richard came back
18 from, well let me back up, was there a time when he was
19 gone for about a month right before Minor turned or right
20 around the time Minor turned one?

21 A I believe so.

22 Q Okay, and when he came back into town for
23 about a month what did you and Richard end up doing
24 regarding your relationship?

25 A We got married.

Ms. Carnaghie - Direct Examination by Ms. Lively

192

1 Q And when you got married did your mother
2 come?

3 A No.

4 Q Did you tell her you were getting married?

5 A I think so.

6 Q Okay, how often did you talk to your mom at
7 that time, on a daily basis or --

8 A It wasn't on a daily basis, maybe once or
9 twice a week.

10 Q Did she ever tell you how she felt about
11 Richard?

12 A No.

13 Q So when you and Richard got married what
14 were the plans after that point?

15 A A few days later he had to go to one of his
16 schools, Minor and I were going to continue to stay in the
17 apartment.

18 Q All right?

19 A And then we were going to move once he
20 finished all of his schooling.

21 Q Okay, now when was the next time you saw
22 Richard after he had left, after ya'll had gotten married
23 and Minor had turned one?

24 A I think it was when we went to Pensacola.

25 Q Okay, now --

Ms. Carnaghie - Direct Examination by Ms. Lively

193

1 Ms. Lively: Your Honor, if I may approach?

2 The Court: Certainly.

3 Ms. Lively: (Continuing)

4 Q I'm going to show you some pictures that
5 are already in evidence, State's Exhibit 7, 11, 12,
6 actually 1, and then 13, and ask you if you recognize all
7 of these photos?

8 A Yes.

9 Q Okay, now, Cesalee, are those photos an
10 accurate portrayal of you and your small family?

11 A Yes.

12 Q And in those photos that you have, well let
13 me ask you this, when you would take a picture of Minor
14 what kind of toddler was he when you were trying to take
15 pictures of him or do anything like that?

16 A He would pose for that camera.

17 Q He would what?

18 A He would pose for the camera.

19 Q Well was he ever a problem in any way for
20 you?

21 A When he was first born he had colic, he was
22 really fussy a lot, sometimes it got frustrating, so I
23 would have somebody to come and watch him for five or ten
24 minutes while I would step away to regain my calm and then
25 come back.

Ms. Carnaghie - Direct Examination by Ms. Lively

194

1 Q And would you ever complain to anybody
2 about him being fussy or difficult?

3 A No.

4 Q Now, Cesalee, by the time he, did he
5 outgrow the colic?

6 A Yes.

7 Q Okay, so by the time let's say he was one
8 year old were there any, well did he have any type of
9 behaviors or problems that, that you noticed as a parent?

10 A No.

11 Q And let me ask you this, before you came
12 here to South Carolina with Minor how, what was the
13 longest amount of time he had ever been away from you, his
14 mother?

15 A Three or four days.

16 Q So three or four days, and do you remember
17 when that would have been?

18 A Before Richard went to, I believe, boot
19 camp ---

20 Q Okay?

21 A --- we were split up at that point and on
22 the days that he didn't have to work he would have Minor

23 Q Okay, all right, so in any of those times
24 whenever you didn't, he wasn't with you overnight he was
25 with his father?

Ms. Carnaghie - Direct Examination by Ms. Lively

195

1 A Yes, ma'am.

2 Q Was there ever a span of time other than
3 when you left him here in South Carolina that Minor was
4 not with you and/or Richard, his father?

5 A There was a couple when we would have his
6 mother or my grandmother, Judy Morris, babysit him.

7 Q Okay, and what kind of span of time are you
8 talking about that you would be away from him?

9 A About a day.

10 Q Now that one picture that I showed you,
11 first of all let me ask you, the camera that you used was
12 that your camera for these pictures?

13 A Yes, ma'am.

14 Q Okay, and there are some yellow dates on
15 the bottom of the pictures, can you tell me whether these
16 dates are accurate?

17 A They're not going to be accurate.

18 Q Okay, all right, the one that's stating
19 that it was May 17th of 2008, do you remember when this
20 photo was taken?

21 A That was either when we were going to
22 Pensacola or when we were going to Ohio for Christmas.

23 Q Okay, all right. About how old was Minor
24 at that point?

25 A Going to Ohio he was almost a year and then

Ms. Carnaghie - Direct Examination by Ms. Lively

196

1 going to Pensacola he was just over a year.

2 Q Just over a year, okay, so a toddler, now
3 how long were you in Pensacola?

4 A About a week and a half or two weeks.

5 Q Okay, and just tell the jury who was with
6 you?

7 A It was Richard, myself, and Minor

8 Q Okay, and where did you stay when you went
9 to Pensacola?

10 A In a hotel.

11 Q And how much time were you able to spend
12 with your husband while you were there?

13 A He was able to stay on the weekends maybe
14 about two days at a time.

15 Q And did you know that when you went there
16 that he was going to be busy?

17 A I knew he was going to be busy, I just
18 didn't know how busy.

19 Q Okay, and so while you were there with
20 Minor were there any discussions between yourself and your
21 husband about taking a visit somewhere?

22 A Yes.

23 Q Okay, tell the jury about that
24 conversation?

25 A I wanted to visit my mother so that she

Ms. Carnaghie - Direct Examination by Ms. Lively 197

1 could see Minor for the first time. We were already on
2 the east coast so it was a little bit easier instead of
3 trying to make another three thousand flight.

4 Q And so how did you end up getting to South
5 Carolina?

6 A We took a Greyhound.

7 Q How long did it take you to get here on
8 Greyhound?

9 A About a day and a half.

10 Q And how was Minor on that bus ride?

11 A Perfectly fine.

12 Q All right, and do you remember when it was
13 that you actually got here to South Carolina?

14 A No.

15 Q Okay, that's fine, now, Cesalee, before you
16 left to come here to South Carolina what, if any, concerns
17 did you have about coming here with your child to visit
18 your mother?

19 A I had absolutely none.

20 Q Okay, well you talked about how ya'll had a
21 rocky relationship, at the time you came here to South
22 Carolina how was that relationship?

23 A Much better, we were talking, we were being
24 civil to each other every chance that we did speak.

25 Q Were you aware of what her, her living

Ms. Carnaghie - Direct Examination by Ms. Lively

198

1 arrangements were before you got here?

2 A What do you mean?

3 Q Who was she living with?

4 A I knew that she was living with her
5 boyfriend.

6 Q Okay, and were you aware how long they had
7 lived together?

8 A No.

9 Q Okay, had you ever met her boyfriend?

10 A No.

11 Q Did you know anything about him at all?

12 A Uh-uh, just his name.

13 Q Just his name, what's his name?

14 A Robert Palmer.

15 Q So when you get here with Minor tell the
16 jury what Julie's reaction was to your son?

17 A She was happy to see him. She immediately
18 held out her arms to hold him and then he started to get a
19 little fussy so she handed him back.

20 Q And how was Minor in regards to meeting
21 somebody knew or a stranger?

22 A He wasn't too thrilled about meeting
23 strangers.

24 Q Cesalee, where did ya'll go when you first
25 got here to South Carolina?

Ms. Carnaghie - Direct Examination by Ms. Lively

199

1 A We went to Bass Pro to the restaurant.

2 Q Okay?

3 A And then we went to the beach.

4 Q Okay, and when you went to the beach who
5 went with you?

6 A Two of my mom's friends and, of course, my
7 mother and I and Minor

8 Q All right, and when you went to the beach
9 did you actually go out on the beach?

10 A Yes, ma'am.

11 Q And did Minor go on the beach with you?

12 A Yes, ma'am.

13 Ms. Lively: Your Honor, if I may approach
14 again?

15 The Court: Certainly.

16 Ms. Lively: (Continuing)

17 Q I'm going to show you some more photos.

18 I'm going to show you State's Exhibit Number 2 and ask you
19 if you recognize those photos?

20 A Yes, ma'am.

21 Q State's Exhibit Number 3 and ask you if you
22 recognize this one?

23 A Yes, ma'am.

24 Ms. Grabert-Lowenstein: Your Honor, I'm sorry?

25 Ms. Lively: I'm going to bring them all over to

Ms. Carnaghie - Direct Examination by Ms. Lively 200

1 you once she's done that if that's okay.

2 Ms. Grabert-Lowenstein: I appreciate it, thank
3 you.

4 Ms. Lively: (Continuing)

5 Q State's Number 5?

6 A Yes, ma'am.

7 Q Number 6?

8 A Yes, ma'am.

9 Q Number 8?

10 A Yes, ma'am.

11 Q Number 9?

12 A Yes, ma'am.

13 Q And then 10?

14 A Yes.

15 Q So you recognize all of these?

16 Ms. Lively: Your Honor, the State would move to
17 introduce Exhibits, let me clear for the record, 2, 3, 5,
18 6, 8, 9, and 10 into evidence at this time?

19 The Court: Counsel?

20 Ms. Grabert-Lowenstein: No objection on behalf
21 of Mr. Palmer.

22 Mr. Galtore: No objection, Your Honor.

23 The Court: Without objection.

24 Ms. Lively: Thank you, Your Honor.

25 (Whereupon, State's Exhibits Numbers 2, 3, 5, 6,

Ms. Carnaghie - Direct Examination by Ms. Lively 201

1 8, 9, and 10 entered into evidence.)

2 Ms. Lively: (Continuing)

3 Q Now, Cesalee, I'm going to pull out just a
4 couple of them, first of all State's Exhibit Number 10,
5 okay, when was this picture taken?

6 A The day we arrived.

7 Q The day you arrived?

8 A Yes, ma'am.

9 Q Okay, and where were you on that day in
10 this picture?

11 A That's at the wading pool at the beach.

12 Q At the beach, okay, how did Minor react to
13 the beach?

14 A Fearless.

15 Q Fearless, I'm going to show you State's
16 Number 8, who is in this photo?

17 A Myself and my son.

18 The Court: Ms. Lively, could I see your
19 photographs before we go further?

20 Ms. Lively: Yes, sir.

21 Q (Continuing) Now State's Number 8 you
22 stated was you and Minor

23 A Yes.

24 Q On the beach?

25 A Yes.

1 Q Okay, and was this the same day or a
2 different day?

3 A It's the same day.

4 Q Well in one he's got on a blue bathing suit
5 and in the other one he's got on a yellow?

6 A All right, I'm mistaken, that is definitely
7 not the same day.

8 Q Okay, how many times did ya'll go to the
9 beach?

10 A I don't remember to be honest.

11 Q That's fine, that's fine, but obviously
12 from what you're saying is you went and you took your child
13 to the beach?

14 A Yes.

15 Q Okay, how were things going with your
16 mother and ^{Minor} and Palmer at this time?

17 A Really good.

18 Q Really good?

19 A They sat down and they played with him. My
20 mom would actually sit down and have him sit in the other
21 chair at the table and feed him dinner, feed him breakfast.

22 Q And how were you doing in regards to things
23 going on between you and your mother?

24 A I was amazed, we didn't fight, we didn't
25 argue, everything that had happened in the past between us

Ms. Carnaghie - Direct Examination by Ms. Lively 203

1 was as if it just didn't happen.

2 Q Okay, and how was she towards your son?

3 A Really good.

4 Q How was Mr. Palmer towards to your son?

5 A Just as good.

6 Q Just as good, okay?

7 Ms. Grabert-Lowenstein: I'm sorry, Your Honor,
8 could she repeat both of those answers, I didn't hear?

9 The Court: Just as good.

10 Ms. Grabert-Lowenstein: Just as good, okay.

11 Ms. Lively: (Continuing)

12 Q Now there's a picture here State's Number 5
13 of you in a pool with Minor was that taken here?

14 A No, ma'am.

15 Q All right, so this was before you got to
16 South Carolina?

17 A Yes.

18 Q Okay, and once again this one doesn't have
19 a date on it, does it?

20 A No.

21 Q All right, well let me show you 9, I'm
22 sorry, 2, 3, 6, and 9, are all these from when you were
23 here at your mother's, just flip through them real quick?

24 A Yes.

25 Q Will you tell the jury which one of these

Ms. Carnaghie - Direct Examination by Ms. Lively 204

1 photos was the last one you took of Minor before you left?

2 A The top one.

3 Q The top one, and what is that exhibit
4 number?

5 A Six.

6 Q Okay, so this was the last photo that you
7 took of Minor correct?

8 A Yes.

9 Q And how was he feeling?

10 A He was groggy, he just wanted to be with
11 his mom.

12 Q Cesalee, when did he get sick?

13 A Not too long after we arrived in South
14 Carolina.

15 Q And what kind of symptoms was he having?

16 A At first I thought that it was just his
17 allergies bothering him because of all the different
18 climate changes ---

19 Q Okay?

20 A --- but then it progressed to coughing so I
21 scheduled him a doctor's appointment.

22 Q All right, and did you see a doctor with
23 your son?

24 A Yes.

25 Q All right, and was it at the E.R. or was it

Ms. Carnaghie - Direct Examination by Ms. Lively

205

1 at a doctor's office?

2 A It was at a doctor's office.

3 Q Do you remember the name of that doctor?

4 A No.

5 Q All right, and when you went to the doctor
6 did you have information in regards to any insurance or
7 care for your child?

8 A What do you mean?

9 Q Was he insured?

10 A Yes.

11 Q Okay, and I'm going to show you what's
12 already in evidence as Defense Exhibit Number 1; do you
13 recall providing this information to the doctor who saw
14 Minor

15 A Yes.

16 Q Okay, now, Cesalee, when you took Minor to
17 the doctor the first time do you remember about when that
18 was?

19 A No.

20 Q All right, what, why did you take him to
21 the doctor that first time?

22 A He was playing outside and set on an ant
23 hill ---

24 Q All right?

25 A --- and got bit by ants.

1 Q All right, and was this the same time when
2 he, was he still having the allergy issues?

3 A Yes.

4 Q Okay, so when you went to the doctor that
5 time how far ahead of the time was that before you actually
6 left?

7 A To go back home?

8 Q Exactly, do you remember how close in time
9 it was that you went to the doctor and then you left?

10 A No.

11 Q Okay, all right, when you went to the
12 doctor what ended up happening with the doctor at that
13 visit?

14 A He had a hard time getting Minor to sit
15 still.

16 Q Okay?

17 A He prescribed him I believe it was a
18 steroid cream to make the ant bites go away and the
19 allergic reaction from it, and also a cough syrup to make
20 the cold go away.

21 Q When you left there did he still have a
22 fever or was he better or what was the circumstance at that
23 time?

24 A He still had a fever.

25 Q And after that visit what, if anything, did

Ms. Carnaghie - Direct Examination by Ms. Lively 207

1 you decide in regard to going back to Arizona in regards to
2 your son?

3 A I didn't want to take him on the plane and
4 risk that fever getting any higher.

5 Q How long of a plane ride was it whenever
6 you actually ended up going back to Arizona?

7 A It was about a six hour flight..

8 Q So who, who began the discussion about
9 Minor possibly not going on that flight?

10 A I did.

11 Q How did it come up -- I'm sorry?

12 A I had talked to my mom about it and she had
13 mentioned to me that because it's a higher elevation that
14 his fever can go up and possibly sky rocket and have
15 nothing to do so then we further discussed leaving her
16 temporary guardianship as well as Robert.

17 Q Okay, and at that time who in the household
18 at your mom's was working?

19 A I believe it was just my mother.

20 Q Okay, and Mr. Palmer what was he doing
21 during the day; do you recall?

22 A Looking for jobs.

23 Q Looking for jobs, okay. So whenever you
24 made the decision, or you discussed the decision, to leave

25 Minor what did you do in order to make sure that he could

1 be cared for while you were gone?

2 A The plan was to send my mom, I left my mom
3 with some money.

4 Q Okay?

5 A I think I did, and then the plan was if it
6 took longer than we expected we were going to continue to
7 send money so that way she could pay for diapers and food
8 for him.

9 Q Okay, and what kind of documents did you
10 leave with your mom so that she could care for him or
11 Robert if he did?

12 A Temporary guardianship.

13 Q Okay, who prepared that document for you?

14 A Gail Palmer.

15 Q And how old were you at this time, Cesalee,
16 when all this was going on, it would have been July of '08?

17 A 18.

18 Q Okay, and had you ever signed a temporary
19 guardianship before?

20 A No.

21 Q Did you know what one was?

22 A Yes.

23 Q Okay, and why did you sign this temporary
24 guardianship?

25 A So they could seek Minor medical

Ms. Carnaghie - Direct Examination by Ms. Lively 209

1 attention, continue to take him to the doctors if he needed
2 to go.

3 Q Okay, I'm going to show you what's already
4 in evidence as Defense Number 2 and is this the temporary
5 guardianship for Minor

6 A Yes.

7 Q Okay, is that the one that you signed back
8 in July of 2008?

9 A Yes.

10 Q All right, and is your signature, you said
11 you signed, it's actually on this document, correct?

12 A Yes.

13 Q All right, now if you could, please, tell
14 me what does it tell you about traveling, the ability for
15 them to travel with your son? What did it authorize them
16 to do in regards to travel with your son; can you read that
17 and tell me?

18 A Out loud?

19 Q Yes, ma'am?

20 A "The power to travel with Richard during
21 the period of guardianship including foreign travels."

22 Q Okay, and what about the sentence above
23 that?

24 A "The power to travel with Richard to visit
25 them in South Carolina and to rejoin me at my home."

Ms. Carnaghie - Direct Examination by Ms. Lively 210

1 Q And to rejoin you at your home, and who is
2 Richard in that particular document?

3 A Minor

4 Q That's Minor okay, so Minor legal name
5 is what?

6 A Minor .

7 Q Minor

8 A Yes.

9 Q Okay, so that authorization even gave your
10 mother or Robert the ability to bring him back to you in
11 Arizona?

12 A Yes.

13 Q Okay, now how long is this guardianship
14 for; how long was it to be valid?

15 A One year.

16 Q One year, okay, why were you going to leave
17 your son for one whole year, Cesalee?

18 A That wasn't the plan.

19 Q What was the plan?

20 A To pack everything up so we could move and
21 then as soon as we arrived at the duty station, unloaded
22 the house, I'm sorry, unloaded all of the furniture and
23 everything we were going to go and get him so that way
24 everything was all set up for him when he got there.

25 Q Okay, and the duty station was going to be,

Ms. Carnaghie - Direct Examination by Ms. Lively

211

1 is where?

2 A Beaufort, South Carolina.

3 Q So you were going to be back in South
4 Carolina and get your child then?

5 A Yes.

6 Q Did you give your mother or Robert any idea
7 as to when that might be?

8 A I said hopefully no longer than two weeks.

9 Q Were you able to give them an exact time?

10 A No, ma'am.

11 Q When you left how did you actually leave;
12 was it by bus, car, or plane?

13 A Airplane.

14 Q And at that time --

15 Ms. Lively: If I may approach, Your Honor?

16 The Court: Yes.

17

18 Ms. Lively: (Continuing)

19 Q Who purchased your ticket?

20 A Richard.

21 Q I'm going to show you State's Exhibit
22 Number 15 and ask you if you recognize this document?

23 A Yes, ma'am.

24 Q Okay, and what is that?

25 A That's my plane ticket?

Ms. Carnaghie - Direct Examination by Ms. Lively 212

1 A All right, and when were you going to fly
2 out of South Carolina, Cesalee?

3 A July 2nd.

4 Ms. Lively: Your Honor, the State would move to
5 introduce State's Number 15 into evidence at this time?

6 Ms. Grabert-Lowenstein: No objection on behalf
7 of Mr. Palmer.

8 Mr. Galmore: No objection.

9 The Court: Without objection.

10 Ms. Lively: Thank you.

11 (Whereupon, State's Exhibit Number 15 entered
12 into evidence.)

13 Ms. Lively: (Continuing)

14 Q Now, Cesalee, when was this ticket
15 purchased; do you remember?

16 A It was either just days before, if not from
17 the day before.

18 Q Okay, and if you were going to take ^{Minor}
19 with you was it going to cost you the same amount as it
20 would for your adult ticket?

21 A No, there wouldn't have been a charge
22 because he was going to be sitting on my lap.

23 Q At that time how old was he?

24 A Fifteen months.

25 Q All right, now, Cesalee, after you left how

Ms. Carnaghie - Direct Examination by Ms. Lively

213

1 often would you call your mother to check on your son?

2 A Daily.

3 Q Daily, at any time in those conversations
4 did you have any concerns about the care of your son?

5 A No.

6 Q At any time were you told of any accidental
7 injuries or anything at all in regards to Minor

8 A No.

9 Q Before you left had he been involved in any
10 type of an accident, falls, or any type of injuries?

11 A There was one but he wasn't injured.

12 Q Okay, tell the jury what that was?

13 A He was in his stroller.

14 Q Okay?

15 A We were going down the stairs ---

16 Q All right?

17 A --- the front wheel decided to do some odd
18 twist number, Minor had a hold of the side of the stroller

19 ---

20 Q Okay?

21 A --- held on really, really tight and when
22 it tipped over. He didn't, his head didn't even touch the
23 ground.

24 Q Okay, was he ejected from the stroller?

25 A No.

Ms. Carnaghie - Direct Examination by Ms. Lively 214

1 Q Did you have to seek medical attention for
2 him?

3 A No, I watched him to make sure he wasn't
4 acting lethargic or anything.

5 Q Okay, and whenever you, did you ever see
6 their pet, Julie and Robert's pet while you were there?

7 A Yes.

8 Q Okay, what kind of pet did they have?

9 A I think it's an English Bulldog.

10 Q All right, and how did Minor react to the
11 English Bulldog?

12 A He loved that dog.

13 Q Were you ever concerned about the dog being
14 around your child?

15 A No.

16 Q What kind of a home did Julie and Robert
17 live in?

18 A What do you mean?

19 Q Was it an apartment, a house, trailer, what
20 was it?

21 A Single wide trailer.

22 Q A single wide trailer, and how big was that
23 trailer, how many rooms did it have?

24 A Two bedrooms, one bathroom.

25 Q Okay, and where did you and Minor stay

Ms. Carnaghie - Direct Examination by Ms. Lively

215

1 whenever you were there?

2 A In the spare bedroom closest to the living
3 room.

4 Q The spare room closest to the living room,
5 okay. Do you remember the details of that home; could you
6 recall what it looked like and everything like that?

7 A Yes.

8 Q All right, and was it a nice ---

9 A Yes.

10 Q --- home, okay, it was nice; and was there
11 anything, like for instance like baby fix the house so that
12 there aren't sharp corners and things like that, were you
13 concerned about anything in that house that could be
14 dangerous to your child?

15 A No.

16 Q All right, were there toys there?

17 A Yes.

18 Q Where did he sleep when he stayed there?

19 A He slept in the playpen in the spare
20 bedroom and when he wasn't feeling good and I couldn't get
21 him to go to sleep he slept with me.

22 Q Okay, and what kind of a playpen was it?

23 A A foldable one.

24 Q A what?

25 A A foldable one.

1 Q A fold one, kind of like a pack and play?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes.

5 Q Okay, now, Cesalee, when you were in that
6 home how difficult was it for you to know who was there and
7 be able to get somebody's attention if you needed it?

8 A It wasn't difficult at all.

9 Q Explain that to me.

10 A You could hear practically everything in
11 that house, anything that went on, if somebody was walking,
12 if somebody was talking.

13 Q When ^{Minor} was playing in the house could
14 you hear him?

15 A Yes.

16 Ms. Lively: Your Honor, if I may?

17 The Court: Certainly.

18 Ms. Lively: (Continuing)

19 Q Now, Cesalee, I've, have you seen this
20 before?

21 A No.

22 Q Okay, have you, do you recall the
23 dimensions or I should say how the lay out of the home was?

24 A Yes.

25 Q All right, and in regards to the dimensions

Ms. Carnaghie - Direct Examination by Ms. Lively 217

1 and the layout of the home do you recall where everybody's
2 room was and where you and Minor were staying?

3 A Yes.

4 Q Okay, and does this look a fair and
5 accurate representation of the layout of the mobile home
6 that your mother and Robert Palmer were living?

7 A Yes.

8 Q Okay, is there in, on this, this document
9 that looks like it changed since the time that you were
10 there?

11 A No.

12 Q Do you believe it to be a fair and accurate
13 representation of their home?

14 A Yes.

15 Q Okay --

16 Ms. Lively: Your Honor, the State would move to
17 introduce number 16 into evidence at this time.

18 The Court: Ms. Grabert-Lowenstein?

19 Ms. Grabert-Lowenstein: Your Honor, I believe
20 that we're not going to have any objection. I would ask if
21 we could put on the record who prepared it and how the
22 dimensions came about.

23 Ms. Lively: Well, Your Honor, if I need to do
24 that I'll have to have a different witness to actually
25 provide that information.

Ms. Carnaghie - Direct Examination by Ms. Lively. 218

1 The Court: I think she's saying she would not
2 have any objection by simply telling us --

3 Ms. Grabert-Lowenstein: That is what I'm
4 saying.

5 The Court: --- by whom it was prepared.

6 Ms. Lively: Oh, okay, that's fine.

7 Ms. Grabert-Lowenstein: I just need to proffer.

8 Ms. Lively: Yes, one of the investigators in my
9 office did it.

10 The Court: And is it to scale?

11 Ms. Lively: Yes.

12 The Court: Do you have any objection?

13 Ms. Grabert-Lowenstein: I don't with that
14 information, thank you, Your Honor.

15 The Court: Mr. Galmore?

16 Mr. Galmore: Your Honor, no objection.

17 The Court: All right, thank you very much,
18 without objection.

19 Ms. Lively: Thank you.

20 (Whereupon, State's Exhibit Number 16 entered
21 into evidence.)

22 Ms. Lively: (Continuing)

23 Q Okay, and I'm not going to ask you about
24 the specific measurements. I just want to show for the
25 jury, if you would, Cesalee, and I'll try to point for you,

Ms. Carnaghie - Direct Examination by Ms. Lively

219

1 okay, all right, now which bedroom, and they're labeled,
2 which bedroom was the one that you were staying in with

3 Minor

4 A Bedroom two.

5 Q Bedroom number two, okay, so right here?

6 A Yes, ma'am.

7 Q Whose was the master bedroom?

8 A My mom and Robert's.

9 Q Okay, and this big area right here the
10 living room area, where did ya'll spend most of your time?

11 A In the living room in the middle of the
12 floor.

13 Q Okay, when you were talking a minute ago
14 about the stroller and the stairs, which stairs are you
15 referring to that the stroller went down?

16 A The front stairs.

17 Q The front stairs so right here?

18 A Yes.

19 Q Okay, once again Minor never came out of
20 that stroller; was that your testimony?

21 A Yes, ma'am.

22 Q Okay, now, Cesalee, after you left, after
23 you left and went to Arizona you said you talked, you
24 called every day. What was Minor reaction to you when
25 you would call?

Ms. Carnaghie - Direct Examination by Ms. Lively 220

1 A He'd just keep talking his toddler talk.

2 Q Okay, and what kind of talking was he
3 doing, was it in full conversation or sentences; what kind
4 of talking are we, are you trying to describe to us?

5 A The distinctive words then, but it wasn't
6 full sentences, all the rest of it was just basically baby
7 babble.

8 Q Baby babble. Now, Cesalee, at any time
9 were you given information that ^{Minor} had been to the
10 doctor or there were any problems with his health?

11 A No.

12 Q When, if ever, did you learn that he had
13 been taken to the E.R. while here in South Carolina before
14 the 14th?

15 A I have just recently found out.

16 Q And when you would call your mom would you
17 ask how he was feeling?

18 A Yes.

19 Q And what was her response whenever you
20 would ask this question?

21 A He was doing just fine.

22 Q When, if ever, did your mom complain about
23 his behavior?

24 A I don't recall her ever complaining to me
25 about it.

Ms. Carnaghie - Direct Examination by Ms. Lively

221

1 Q Now, Cesalee, was there ever a time right
2 before the 14th, I know, the weekend before we've heard
3 about what was going on with Minor had you talked to your
4 mom?

5 A No, I couldn't get a hold of her.

6 Q Would you say that louder, please?

7 A No, I couldn't get a hold of her.

8 Q You couldn't get a hold of her. How about
9 Richard, were ya'll together or were ya'll both trying to
10 get in contact with her?

11 A Yes.

12 Q So what did you do?

13 A I kept calling.

14 Q That weekend before the 14th when was the
15 first time that you actually got a hold of your mom and
16 able to talk to her?

17 A I don't know.

18 Q Who called you or did anybody call you to
19 tell you what had happened to Minor on the 14th?

20 A Richard called me after he found out.

21 Q When, if ever, did your mom or Robert call
22 you to tell you what had happened?

23 A Never.

24 Q After Richard told you what happened to
25 Minor what did you do?

1 A I got angry.

2 Q Did you know, how much information did you
3 have at that point?

4 A At that point all I knew was that he had
5 skull fractures and we don't know how he got them.

6 Q When, if ever, did you talk to your mom
7 after the 14th?

8 A When I arrived at MUSC.

9 Q At MUSC, how many times did she call you
10 before you saw her at MUSC about what had happened to

11 Minor

12 A None.

13 Q Did Mr. Palmer call you?

14 A No.

15 Q Who called you other than Richard to tell
16 you your son was in critical condition?

17 A Just Richard and when Julie would contact
18 Judy, Judy would relay the memo to me.

19 Q Who's Judy?

20 A Judy Morris.

21 Q Where was Judy Morris?

22 A In Arizona with me.

23 Q Okay, did you try to call your mom?

24 A Yeah.

25 Q And what happened?

Ms. Carnaghie - Direct Examination by Ms. Lively 223

1 A She'd either ignore the call or she'd push
2 the end button and never even answer the call.

3 Q Now, Cesalee, when you got to, when were
4 you able to actually get to your son's bedside?

5 A The day after he arrived at MUSC.

6 Q Okay, and why was there a delay there?

7 A I didn't have the money to buy a plane
8 ticket and I was trying to figure out how I was going to
9 get there.

10 Q Okay, and at that time who, if anybody, was
11 already there with Minor do you know?

12 A Just Richard and my mother as far as I
13 knew.

14 Q All right, so when you got to MUSC tell the
15 jury what you observed?

16 A I arrived there, I asked Richard where my
17 mom was. She refused to come down until I called her and
18 told her to come down here and then we talked. She
19 mentioned something about between all of the animosity
20 that's been created this isn't about us, this is about
21 Minor I don't remember the rest of that conversation.

22 We went upstairs, I saw Minor hooked up to his tubes and
23 the life support. The first words out of my mouth was
24 that's not my kid and I turned around to regain my
25 composure.

Ms. Carnaghie - Direct Examination by Ms. Lively

224

1 Q Why did you think it wasn't your kid?

2 A My kid is not a lifeless body.

3 Q Cesalee, what were you thinking in regards
4 to how this happened to your child?

5 A I don't want to think my mom did it.

6 Q Were you given any type of explanation as
7 to how this had happened to your child?

8 A No.

9 Q Who, if anyone, did you ask what could have
10 happened to your son?

11 A I spoke to the doctor.

12 Q Why didn't you ask your mom?

13 A I couldn't bring myself to really talk to
14 her at that point.

15 Q I thought you said that your relationship
16 with her was good when you were in South Carolina?

17 A It was but at that point I didn't know who
18 did anything and I didn't want to get lied to if it was
19 her.

20 Q Now, Cesalee, I'm going to back up for a
21 minute and ask you if you remember anything at all that
22 happened while you were in South Carolina before Minor
23 went to the hospital any time that you and your mom fought
24 or had a disagreement?

25 Mr. Galtmore: Objection, relevance.

Ms. Carnaghie - Direct Examination by Ms. Lively

225

1 Ms. Lively: It goes to their state of mind,
2 Your Honor.

3 The Court: I'm going to allow it.

4 Mr. Galmore: Your Honor, she's talking about
5 any time previously we have, what, a month and a half?

6 Ms. Lively: You want me to narrow it?

7 Mr. Galmore: I've stated my objection, Your
8 Honor.

9 The Court: Okay, all right, I'm going to allow
10 it.

11 Ms. Lively: Thank you, Your Honor.

12 Ms. Lively: (Continuing)

13 Q Did you understand my question?

14 A No, do you mind repeating it?

15 Q Any time before ^{Minor} before you left
16 when you were staying with your mom did ya'll even have a
17 disagreement or anything at all, an argument?

18 A I don't think so.

19 Q So when you now back at MUSC you said there
20 was a statement about animosity; can you explain that
21 statement to me about what animosity there might be?

22 A I have absolutely no idea; I didn't
23 understand why she was saying that to begin with.

24 Q Okay, now, Cesalee, I have to ask you, what
25 decision did you and Richard come to after the consultation

Ms. Carnaghie - Direct Examination by Ms. Lively

226

1 with the doctors?

2 A To donate his organs to other children and
3 to pull the plug.

4 Q When did he die, Cesalee?

5 A July 16th.

6 Q What did you do for him before he died?

7 A I had him baptized.

8 Q Where was your mother when this took place?

9 A She had already left.

10 Q Why didn't you invite her?

11 A I did invite her, I begged her.

12 Q Well tell us about that, what happened?

13 A I told her what we were doing, told her I'd
14 like for her to be there. She said that she had other
15 things ---

16 Mr. Galmore: Objection, hearsay, Your Honor.

17 The Court: This is a statement by the
18 defendant.

19 Ms. Lively: By the defendant, Your Honor.

20 The Court: I'm going to allow it.

21 Ms. Lively: Thank you.

22 Q (Continuing) Go on, Cesalee, what did she
23 say?

24 A She said that she had other things that she
25 had to do. I told her what's more important the other

Ms. Carnaghie - Direct Examination by Ms. Lively

227

1 things or your dead grandson. She apologized, said she
2 would stay, she left anyway.

3 Q Now, Cesalee, after she left have you had
4 any contact with your mother since that time?

5 A No.

6 Q Whenever after the baptism when did you
7 actually have Minor funeral; do you recall?

8 A I don't remember the exact date.

9 Q Why did you have to wait?

10 A We had to wait on the autopsy.

11 Q At that time were you involved with law
12 enforcement?

13 A I think so.

14 Q Okay, I know there was a lot going on, but
15 do you remember being interviewed by law enforcement at any
16 time after Minor died?

17 A I honestly don't remember if I was or
18 wasn't.

19 Q Cesalee, did you do anything at all to hurt
20 your child?

21 A No.

22 Q Did you love your child?

23 A Yes.

24 Q Did you leave him with your mother because
25 you didn't want him?

Ms. Carnaghie - Direct Examination by Ms. Lively

228

1 A No.

2 Q Was there any time when Minor would
3 intentionally hurt himself?

4 A No.

5 Q Had you ever seen him pinch himself?

6 A No.

7 Q How about, when you said that he was a
8 typical toddler and he runs around and everything, was
9 there ever a time when he would either hit you or bite you?

10 A When he was teething.

11 Q Okay, now when you first ran into your mom
12 at MUSC and Richard was there, did you have a conversation
13 with your mom about what was going to happen if anybody
14 were to get in trouble for what happened to Minor

15 A Yes.

16 Q What kind of conversation, what brought up
17 that conversation and who was there?

18 A I don't remember who was there, except for
19 my mom and I. I had made the comment of basically getting
20 the death sentence would be too easy, yes, jail is a luxury
21 but at least they get somewhere to rot.

22 Q You said that to your mom?

23 A Yes.

24 Q How did she respond?

25 A I don't remember her response.

Ms. Carnaghie - Direct Examination by Ms. Lively 229

1 Q Cesalee, I think there's one more photo
2 that I forgot to show you and then I'll let the defense ask
3 you some questions. I'm going to show you State's Number
4 4; do you recognize that?

5 A Yes.

6 Ms. Lively: Your Honor, we'd move to introduce
7 State's Number 4 into evidence?

8 The Court: May I see it, please?

9 Ms. Lively: Oh, yes, sir.

10 The Court: All right, have you shown it to
11 counsel?

12 Ms. Lively: Yes, sir, I have.

13 Ms. Grabert-Lowenstein: Number is that,
14 counsel?

15 Ms. Lively: This is number 4.

16 Ms. Grabert-Lowenstein: Thank you.

17 Ms. Lively: And the last of that set.

18 The Court: Any objection, Ms. Grabert-
19 Lowenstein?

20 Ms. Grabert-Lowenstein: Not on behalf of Mr.
21 Palmer, Your Honor.

22 The Court: Mr. Galmore?

23 Mr. Galmore: No, sir, no objection.

24 (Whereupon, State's Exhibit Number 4 entered into
25 evidence.)

Ms. Carnaghie - Cross Ex. by Ms. Grabert-Lowenstein

230

1 Ms. Lively: (Continuing)

2 Q Cesalee, how would you describe you and
3 Minor in that picture?

4 A It's his first carousel ride, he absolutely
5 loved it.

6 Q What kind of things did you do with your
7 son as a mother?

8 A Take him to the park, take him swimming,
9 get him out of the house, that way he had something to do
10 instead of being cooped up inside all day.

11 Ms. Lively: One moment -- Cesalee, thank you,
12 please answer any questions the defense has for you, okay.

13 The Court: Ms. Grabert-Lowenstein?

14 Ms. Grabert-Lowenstein: Thank you, Your Honor.

15 Cross Examination

16 By Ms. Grabert-Lowenstein:

17 Q Cesalee, we're sorry for your loss. I need
18 to ask you a few questions. Now when you first met Richard
19 you were living with your grandmother?

20 A Yes.

21 Q How long, from what age to what age did you
22 live with your grandmother?

23 A Fifteen off and off on until I was about
24 eighteen.

25 Q Okay, and that would be Judy Morris?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 231

1 A Yes, ma'am.

2 Q Okay, you came by bus and did something
3 happen to your luggage?

4 A Yes, it got lost.

5 Q Okay, and did the Palmer family gather up
6 some things for both you and Minor

7 A Yes.

8 Q They were warm, they were welcoming to the
9 two of you?

10 A Very.

11 Q And that included Robert, correct?

12 A Yes.

13 Q Okay, and during the time that you were in
14 the house there was no concerns about Robert taking care of
15 Minor you said on direct he was as good as your mother
16 with taking care of him?

17 A Yes.

18 Q Okay, did you ever meet Dylan, Robert's
19 son?

20 A I think once.

21 Q Okay, did you ever see Dylan and Minor
22 interact, ever had that occasion?

23 A I don't remember to be honest.

24 Q Okay, he was five at the time?

25 A I think so.

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 232

1 Q Okay, you also discussed that you had been
2 placed in foster care or at least the threat was done by
3 your mom Julia Gorman; would it be accurate to say that you
4 were blind sided by that decision?

5 A Yes and no, I guess I brought it on to
6 myself for that by daring her to do it..

7 Q Okay, did, did that cause some pretty hard
8 feelings between the two of you?

9 A Yes.

10 Q Okay, would it be accurate to say that the
11 relationship you had with your mother did not teach you to
12 be a mom? You said it was difficult; you didn't know what
13 you were doing?

14 A It didn't necessarily teach me to be a mom
15 but it taught me to be independent.

16 Q Okay, but I guess what I'm asking is did it
17 help instill maternal instincts and help you to deal with
18 things? You said sometimes it was frustrating, you know,
19 you were young; would that, would that be accurate?

20 A Yes.

21 Q How long before you left Pensacola had it
22 been the longest since you had spoken to your mom before
23 the decision was made to come to visit?

24 A Maybe a day or two.

25 Q Okay, and you, you came, you arrived, and

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein .233

1 when you left you thought everybody was going to be fine
2 with Minor

3 A Yes.

4 Q Okay, now why did you leave?

5 A I had to go home to pack so we could move
6 back to, so that Richard and I could move to South
7 Carolina.

8 Q Okay, and do you remember being interviewed
9 by the police on July 19th of 2008?

10 A I don't remember the police but I remember
11 DSS.

12 Q Okay, was there a time that a Detective
13 Weaver with Judy Morris, Richard, and you being present
14 spoke to all of you?

15 A I think so.

16 Q Okay, do you recall making any comment
17 about meeting somebody on Match?

18 A What is Match?

19 Ms. Grabert-Lowenstein: May I approach, Your
20 Honor?

21 The Court: Yes.

22 Ms. Grabert-Lowenstein: And this is for counsel
23 verification page six, that I'm going to be showing the
24 witness.

25 Q (Continuing) To yourself, Cesalee, I'd like

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein

234

1 you to read the highlighted portion?

2 A I don't know what Match is, I might have
3 mistyped something.

4 Q Could it be like Match.com?

5 A I've never even been on Match.com.

6 Q While you were here did you meet someone
7 and that caused an issue between you and, and Robert?

8 A I'm sorry, if I had gone on there?

9 Q No, did you meet someone while you were
10 here, specifically a male, and did that cause an issue
11 between you and Robert?

12 A Yes.

13 Q In fact you described it here as a bru-ha-
14 ha; would that kind of be an accurate description of it?

15 A More so of a conniption fit.

16 Q Well I mean it was your, it was, I'm sorry,
17 excuse me, conniption fit that was your words, correct?

18 A Yes.

19 Q Okay, now you mentioned that when Minor
20 got fussy on an occasion your mother gave him back to you?

21 A Yes.

22 Q Okay, and is it accurate that there were,
23 there were times while you were here, there was the cold,
24 he didn't feel good?

25 A Yes.

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 235

1 Q Okay, the first time that he saw the doctor
2 the day before you left, if you recall?

3 A I don't remember what day his --

4 Q Okay, just the records from Aynor Family
5 Medical --

6 Ms. Grabert-Lowenstein: If I could approach,
7 Your Honor?

8 The Court: Yes.

9 Ms. Grabert-Lowenstein: (Continuing)

10 Q Just, Cesalee, if you could just take a
11 look through these and tell us if that reflects your
12 recollection?

13 A Yes.

14 Q The first appointment that's reflected in
15 there was July 1st and you took him to that appointment,
16 correct?

17 A Yes.

18 Q How did you know to go to Aynor Family
19 Practice?

20 A I had called the insurance company and
21 asked them which designated practioners we had in the area.

22 Q If I could approach and show you what
23 counsel has shown you before is Defense 1, can you tell
24 what the effective date is on that insurance card?

25 A July 1st.

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 236

1 Q Okay, that's when Minor become, became
2 covered by insurance, correct?

3 A When the new insurance began.

4 Q Okay, so he was covered before you left?

5 A He was covered before I left.

6 Q Was Minor typical of a toddler when it
7 would not feel good get a little fussy?

8 A Yes.

9 Q Okay, now do you know where he got the ant
10 bite?

11 A In the back yard.

12 Q Okay, now this trailer was not in a trailer
13 park, correct?

14 A No.

15 Q It was out in the country?

16 A Yes.

17 Q It was on a big piece of land, correct?

18 A Yeah.

19 Q Okay, and did you ever, ever go outside
20 there with Minor

21 A Yes.

22 Q Did he enjoy playing out there?

23 A Yes.

24 Q Was there a trampoline?

25 A I don't remember if there was a trampoline.

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 237

1 Q Okay --

2 Ms. Grabert-Lowenstein: If I could have just a
3 moment, Your Honor, the State has the picture? May I
4 approach?

5 The Court: Certainly.

6 Ms. Grabert-Lowenstein: (Continuing)

7 Q Cesalee, do you recognize what is depicted
8 in the State's Exhibit 30 that's been marked?

9 A It looks like a trampoline.

10 Q Okay, do you recognize the rest of the
11 landscape?

12 A I recognize this part right here.

13 Q You recognize that part?

14 A Uh-huh.

15 Q Okay, this is about a quarter of an acre
16 type of thing, it's a big piece, isn't it? You need to
17 give an audible response.

18 A Yes..

19 Q Okay, thank you --

20 Ms. Grabert-Lowenstein: Just if I could --

21 Ms. Lively: Your Honor, it's not in evidence.

22 Ms. Grabert-Lowenstein: I'd ask for its
23 admission, Your Honor.

24 Ms. Lively: And that's fine, I actually had it
25 marked for State's exhibit so I guess we'll have to have, I

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 238

1 don't know how you would handle that.

2 The Court: All right, it's Defense Gorman, I
3 mean Defense Palmer 1?

4 Ms. Grabert-Lowenstein: That's fine, Your
5 Honor.

6 Ms. Lively: That's fine.

7 The Court: Okay, any objection?

8 Mr. Galmore: No, sir.

9 Ms. Lively: No, Your Honor.

10 (Whereupon, State's Exhibit Number 30 remarked as
11 Defendant Palmer Exhibit Number 1 and entered into
12 evidence.)

13 Ms. Grabert-Lowenstein: (Continuing)

14 Q Cesalee, would you describe the trailer as
15 being clean?

16 A Yes.

17 Q Okay, and your mom she tries to keep
18 everything clean, doesn't she?

19 A Yes.

20 Q Okay, you said that pretty emphatically,
21 would you describe her as a neat freak?

22 A She's pretty o.c.d. when it comes to
23 cleaning.

24 Q I'm sorry?

25 A She's pretty o.c.d. when it comes to

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 239

1 cleaning.

2 Q Okay, counsel showed you, and it's now been
3 admitted, I believe you said this was the last picture you
4 had taken of Minor

5 A Yes.

6 Q Okay, and you described him as being
7 groggy?

8 A Yes.

9 Q Okay, and you also described him as wanting
10 his mom?

11 A Yes.

12 Q Would you describe that you, the two of you
13 had a close relationship?

14 A My son and I?

15 Q I mean would you and, would you describe
16 your relationship with Minor as being close?

17 A Yes.

18 Q Okay, and you mentioned that there were a
19 couple of times that you had been away from him and Richard
20 wasn't with him, it was a time when both of you were away
21 from him, when you would be then again around him how would
22 he react?

23 A Extra excited that I was home.

24 Q Extra excited, okay, would he hold out his
25 hand?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein

240

1 A Both of them.

2 Q Okay, and would he want to be picked up?

3 A Uh-huh.

4 Q Okay, would he, would he make little
5 sounds?

6 A He'd yell at me until I picked him up.

7 Q How good were his lungs?

8 A A little too good.

9 Q Okay, he would let you know if he wanted
10 that cuddling ---

11 A Yes.

12 Q --- that type of situation, okay, you
13 decided to leave Minor and Robert did not object to that,
14 correct?

15 A Correct.

16 Q And in fact he wanted you to leave him with
17 them?

18 A I believe so.

19 Q Okay, now you mentioned that Minor didn't
20 have any developmental issues?

21 A Correct.

22 Q Do you recall any time where a
23 developmental issue was brought up or would be reflected in
24 his medical records?

25 A There was a couple of times where I had

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 241

1 asked his doctor in Arizona why he was still so tiny.

2 Q I'm sorry, why he was still so tiny?

3 A Uh-huh.

4 Q Kind of a little shaver, wasn't he?

5 A Yeah.

6 Q Okay, and was there a specific time, if
7 you, if you recall, when there was concern about that the
8 fact he didn't wave bye-bye and he had had trouble changing
9 positions from laying on his, on his tummy?

10 A Uh-uh.

11 Q You don't recall that, okay --

12 Ms. Grabert-Lowenstein: If I could approach,
13 Your Honor?

14 Madam Court Reporter: Please say yes or no.

15 Ms. Grabert-Lowenstein: And for the record I'm
16 showing the summary of well baby checks that was supplied
17 by the State.

18 Q (Continuing) Again, Cesalee, if you could
19 just look at this and start there where it says nine
20 months; does that reflect your recollection as to --

21 A Yes.

22 Q Okay, was there concern about those
23 developmental issues?

24 A I had spoken to the doctor about that.

25 Q Okay, sure?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 242

1 A The doctor said that it was fine.

2 Q But you, you were, you were concerned, you
3 were trying to find out?

4 A Yeah.

5 Q Okay, did you take Minor up until the time
6 that he passed away to every well baby check that he was
7 supposed to go to?

8 A If I wasn't the one doing it it was Richard
9 or my mother that was supposed to take him to the one.

10 Q Okay, and there was never a time when you
11 didn't take him back?

12 A What do you mean?

13 Q There was never a time where they
14 recommended taking him back and you didn't?

15 A No.

16 Ms. Grabert-Lowenstein: And again if I may
17 approach, Your Honor?

18 The Court: Yes.

19 Ms. Grabert-Lowenstein: (Continuing)

20 Q And just ask you to, well just read the
21 entire page to yourself; does that reflect your
22 recollection?

23 A Yes.

24 Q Did you take him for that three week follow
25 up?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 243

1 A I wasn't there for that three week follow
2 up.

3 Q I'm sorry?

4 A I wasn't there for this three week follow
5 up.

6 Q Okay, was he treated for thrush?

7 A Yes.

8 Q How old was he?

9 A Maybe a few months.

10 Q I'm sorry?

11 A Maybe a few months.

12 Q A few months, okay, and did anyone explain
13 to you what thrush is?

14 A Yes.

15 Q What is it?

16 A A yeast infection in the mouth.

17 Q Okay, kind of referred to as hoof and
18 mouth?

19 A I've never heard it referred to as that.

20 Q Okay, and did anybody explain to you how a
21 child comes to get that?

22 A The doctor said it's very common, can come
23 from the formula.

24 Q Okay, dirty bottles, that type of thing?

25 A He had said that, too, but I told him that

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 244

1 I made sure that every bottle that he ever used was always
2 clean.

3 Q Now let's go back to when you left when was
4 the first time, you got back to Arizona on August 2nd,
5 correct? I'm sorry, July 2nd, excuse me?

6 A Yes.

7 Q Okay, when was the first time you talked to
8 your mom after you arrived back in Arizona?

9 A I think I called her that day that I
10 arrived to let her know that I landed.

11 Q And how long, let me rephrase, how often
12 would you speak to her?

13 A Daily.

14 Q Daily --

15 Ms. Grabert-Lowenstein: If I could have just a
16 moment, Your Honor?

17 Q (Continuing) Were there times when you
18 didn't talk to her daily?

19 A There was one, Richard and I were packing.

20 Q Okay?

21 A I lost track of the time and by the time I
22 realized what time it was it was too late to call cause
23 everybody would have been asleep.

24 Q Okay, so and, and prior to the 14th when
25 was the last time you had spoken to your mom?

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein 245

1 A It was a day or two prior.

2 Q Okay, could it have been as much as four
3 days?

4 A I would say three at the most. I would say
5 three at the most.

6 Ms. Grabert-Lowenstein: May I approach, Your
7 Honor?

8 The Court: Certainly.

9 Ms. Grabert-Lowenstein: (Continuing)

10 Q If you could just read the highlighted
11 areas and tell me if that refreshes your recollection? How
12 long before the 14th?

13 A Looks like four.

14 Q Four days?

15 A Yeah.

16 Q Okay, did that concern you?

17 A Yes.

18 Q Okay, and would it be accurate that neither
19 you nor Richard were able to get a hold of her?

20 A Yes.

21 Q Okay, and you did not, you did not leave at
22 the same time as Richard did when you learned that Minor
23 had been flown to MUSC?

24 A No.

25 Q Was the reason that there was a delay in

Ms. Carnaghie - Cross Ex. By Ms. Grabert-Lowenstein

246

1 Minor burial was because of having to finish up the
2 autopsy?

3 A Yes.

4 Q Okay, and that was the only thing you were
5 waiting on?

6 A Yes.

7 Q Do you recall how many days it was from
8 when you had to make that very tough tragic decision before
9 you buried him?

10 A It was between a month and two months.

11 Q Okay, were you concerned that having Minor
12 in the household would add financial stress on your mom?

13 A I did, that's why I offered to leave her
14 money that I had and also to send money.

15 Q So that was a concern?

16 A Yes.

17 Q How does your mother handle stress?

18 A Not very well.

19 Q Okay, keep things bottled up, from your
20 experience?

21 A Yes.

22 Q From your experience does sometimes that
23 bottle get uncorked?

24 A Yes.

25 Q What happens when it becomes uncorked?

MMs. Carnaghie - Cross Examination by Mr. Galmore

247

1 A She's gone into a fit of rage, storming
2 around. She had slammed the door before, she'd go outside
3 but she never really, she never really had her fits of rage
4 in front of me.

5 Q I'm sorry?

6 A She never really had her fits of rage in
7 front of me; she would walk out and do it basically behind
8 closed doors.

9 Q But you knew they were happening?

10 A Yes.

11 Ms. Grabert-Lowenstein: If I could have just
12 one moment, Your Honor?

13 Cesalee, again very sorry for your loss and thank
14 you for answering my questions.

15 The Court: Mr. Galmore?

16 Cross Examination

17 By Mr. Galmore:

18 Q Now, Cesalee, you said that you were living
19 with your grandmother in Arizona when you were fifteen; is
20 that correct?

21 A I believe so, yes.

22 Q Okay, and prior to that where were you
23 living?

24 A With my other grandparents in California.

25 Q And prior to that where were you living?

MMs. Carnaghie - Cross Examination by Mr. Galmore

248

1 A With my mother.

2 Q And where was that?

3 A North Carolina.

4 Q Did your mother send you to live with your
5 grandparents in California?

6 A Yes.

7 Q Was that because you had run away from home
8 in North Carolina?

9 A I don't know the exact reason.

10 Q Did you run away from home in North
11 Carolina?

12 A Yes.

13 Q So you stayed with your grandmother in
14 California then you stayed with your grandmother in
15 Arizona, that would be your maternal grandmother?

16 A Yes.

17 Q Okay, and after staying with your maternal
18 grandmother in California is that when you moved in with
19 Mr. Grimes family?

20 A My paternal grandparents live in
21 California.

22 Q I'm sorry, after you stayed with your
23 maternal grandmother in Arizona, Ms. Morris, after you
24 stayed with her then you moved in with Mr. Grimes family?

25 A Yes.

MMS. Carnaghie - Cross Examination by Mr. Galtmore

249

1 Q Did the foster care come before you moved
2 with Mr. Grimes family or after?

3 A Before.

4 Q Okay, so you stayed with your mother in
5 North Carolina, then you stayed with your paternal
6 grandparents in California; is that right?

7 A Uh-huh.

8 Q Then you stayed with your maternal
9 grandmother in Arizona and then you were in the foster
10 care; is that correct?

11 A Uh-huh.

12 Q And how old were you when you were in the
13 foster care?

14 A Sixteen.

15 Q And how long did you stay in foster care?

16 A I want to say about three or four months.

17 Q And after foster care you stayed with Mr.
18 Grimes mother?

19 A I moved back to my grandmother's house
20 first and then I moved in with them.

21 Q Okay, so how did you get released from
22 foster care?

23 A They said that my temporary being in foster
24 care was up and it was time for me to go back home.

25 Q Okay, so you went home with your maternal

1 grandmother?

2 A Yes.

3 Q And then you moved in with Mr. Grimes?

4 A Yes.

5 Q And that's when you became pregnant?

6 A Yes.

7 Q And how old was Minor when you got married
8 to Mr. Grimes?

9 A Just over a year.

10 Q And were you staying with Mr. Grimes family
11 that entire time during the pregnancy up to one year before
12 you got married?

13 A Yes.

14 Q You didn't move in with anybody else during
15 that period?

16 A No.

17 Q When Minor was first born before you got
18 married you didn't move in with any other person?

19 A When he was first born I was living at
20 Richard's parents.

21 Q So in July 1st, 2008, you took Minor to
22 Aynor Family Practice; is that correct?

23 A Yes.

24 Q And that was for ant bites?

25 A Yes.

MMs. Carnaghie - Cross Examination by Mr. Galtore 251

1 Q Okay, were there any other complaints that
2 were made to the doctor?

3 A He had a cold.

4 Q He had a cold, was there a complaint about
5 he didn't like it when you touched his head?

6 A Yes.

7 Q That complaint was made to the doctor?

8 A Yes, by my mother.

9 Q So your mother told the doctor on July 1st
10 that Minor didn't like having his head touched; is that
11 correct?

12 A Yes.

13 Q Did the doctor prescribe any type of
14 treatment for his head?

15 A Just the cold medicine he said that since
16 it was a cold it's all the mucous all through the face.

17 Q So the doctor heard the complaint about the
18 child's head and said it was a cold?

19 A Yes.

20 Q And you left town on the 2nd; is that
21 right?

22 A Yes.

23 Q When you went to the doctor's office on the
24 1st did you know you were leaving town the next day?

25 A I think we had made that plan to leave that

1 night.

2 Q You made that plan that night after the
3 doctor's?

4 A I think so, I'm not quite sure to be
5 honest.

6 Mr. Galtmore: May I approach the witness, Your
7 Honor?

8 The Court: Yes.

9 Mr. Galtmore: (Continuing)

10 Q Let me hand you what's been marked for
11 identification purposes as State's Exhibit Number 14 and
12 ask you if you recognize this document?

13 A Yes.

14 Q And what is that document?

15 A The temporary guardianship.

16 Q Okay, well let's do it another way, let me
17 hand you the same document which has been marked Defense
18 Exhibit 2 for identification and for Defendant Gorman, what
19 is that document?

20 A It's the same thing.

21 Q It would be the same as State's Exhibit
22 Number 14?

23 A Yes.

24 Q Okay, and that's the temporary guardianship
25 form?

MMs. Carnaghie - Cross Examination by Mr. Galmore

253

1 A Yes.

2 Q What date is that form signed?

3 A July 1st.

4 Q And whose signature is on that form?

5 A Richard's, mine, and Gail Palmer.

6 Q Does that form appear to have been altered

7 in any way from when you initially signed it on July 1st,

8 2008?

9 A No.

10 Mr. Galmore: Your Honor, at this time I would
11 move for State's Exhibit Number 2 for identification
12 purposes Defense Gorman to be admitted as Defense Exhibit
13 Number 1?

14 Ms. Lively: No objection.

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: I'm sorry, Your Honor,
17 no objection on behalf of Mr. Palmer.

18 (Whereupon, Defendant Gorman's Exhibit Number 2
19 entered into evidence.)

20

21 Mr. Galmore: (Continuing)

22 Q Now, Ms. Carnaghie, you said your signature
23 is on this form; is that correct?

24 A Yes.

25 Mr. Galmore: Permission to publish, Your Honor?

- 1 The Court: Yes.
- 2 Mr. Galtore: Thank you.
- 3 Q (Continuing) Now that form is notarized,
4 correct?
- 5 A Yes.
- 6 Q And it's notarized by who?
- 7 A Gail Palmer.
- 8 Q Gail Palmer, who is Gail Palmer?
- 9 A Robert Palmer's mother.
- 10 Q Mr. Palmer's mother?
- 11 A Yes.
- 12 Q Was Ms. Palmer present when you signed your
13 name to this form?
- 14 A Yes.
- 15 Q Was she present when Richard signed his
16 name to it?
- 17 A Richard was out of state.
- 18 Q Did she go out of state to obtain his
19 signature on that?
- 20 Ms. Grabert-Lowenstein: Objection, relevance.
- 21 Mr. Galtore: It seems to be a notarized
22 document where one of the signatories may not have been in
23 the notary's presence.
- 24 The Court: What's the relevance of it?
- 25 Mr. Galtore: I'll move on, sir.

MMS. Carnaghie - Cross Examination by Mr. Galmore

255

1 The Court: All right.

2 Mr. Galmore: (Continuing)

3 Q Now this form was signed on July 1st; is
4 that correct?

5 A Yes.

6 Q And that's the same day that you went to
7 the doctor's office with Minor

8 A Yes.

9 Q Let me hand you what's been marked for
10 identification purposes as Defense Exhibit Number 1 for
11 Defendant Gorman and ask you if you recognize this
12 document?

13 A Yes.

14 Q And what is that document?

15 A My drivers license, Minor insurance
16 card.

17 Q Would that insurance card have been in your
18 possession?

19 A Yes, it should have been.

20 Q I mean it would not have been in Minor
21 possession?

22 A No, it would have been mine.

23 Q And what is the effective date on the
24 insurance card?

25 A July 1st, 2008.

1 Q Is it true that your mother had to contact
2 Mr. Grimes commanding officer in order to get the insurance
3 on Minor

4 A I honestly have no idea.

5 Q So you go to the doctor's office on the 1st
6 and you leave town on the 2nd; is that correct?

7 A Yes.

8 Q Why did you leave town again?

9 A I had to pack so that way we could move to
10 South Carolina.

11 Q Were you asked to leave town?

12 A I wasn't asked.

13 Q Was it suggested that your husband come get
14 you?

15 A I don't think so.

16 Q Did you feel that it was safe to leave your
17 son while he had a cold?

18 A Yes.

19 Q You didn't say to your husband maybe we can
20 change my ticket a couple of days later until he's over
21 this cold and these ant bites?

22 A We had talked about it.

23 Q And you decided against it?

24 A Yes, since it was just a cold we didn't
25 feel the harm.

MMs. Carnaghie - Cross Examination by Mr. Galmore

257

1 Q All right, well let's talk about how you
2 came to town, isn't it true that you came to town on a
3 Greyhound bus?

4 A Yes.

5 Q And you came from Pensacola, Florida?

6 A Yes.

7 Q How long were you living in Florida?

8 A I was visiting Florida for two weeks.

9 Q Two weeks?

10 A At the most, it was a week and a half to
11 two weeks.

12 Q Okay, did you have an apartment in Florida?

13 A No, it was a hotel room.

14 Q A hotel room, do you remember what hotel it
15 was?

16 A No.

17 Q Was it a Comfort Inn maybe?

18 A No, it was a really long name.

19 Q Really long name, was it one of these long
20 term stay hotels, extended stay hotel?

21 A Yes.

22 Q So did you pay by the day or by the week?

23 A I don't know, Richard was doing that.

24 Q Richard was making it, okay, did it have a
25 kitchen in the hotel room?

1 A Yes.

2 Q Did you use the kitchen in the hotel room?

3 A Yes.

4 Q So you cooked for you and your son while
5 you were in Florida?

6 A Yes.

7 Q All right, what date did you come to South
8 Carolina?

9 A I don't remember.

10 Q Does June 1st sound about right?

11 A Maybe.

12 Q Maybe, okay, what date did Richard graduate
13 from this A class down in Pensacola?

14 A That much I don't remember.

15 Q Okay, well why not go back to Arizona from
16 Florida if you had to pack and move?

17 A Because at the time he didn't know when,
18 where his duty station was going to be. He was still
19 waiting on the wish list.

20 Q He still had another class to complete in
21 Virginia?

22 A Yes.

23 Q You didn't go to Virginia and get a hotel
24 room?

25 A No, because he was only going to be there

MMs. Carnaghie - Cross Examination by Mr. Galtore

259

1 for a short period of time.

2 Q Well how long were you in Florida again?

3 A Two weeks.

4 Q Two weeks, okay, now how much when you
5 dropped the baby in the stroller while you were staying at
6 your mother's house in Aynor?

7 A Yes.

8 Q And let me hand you what's been marked for
9 identification purposes as State's Exhibit Number 22 for
10 I.D., and ask you is that the stroller that's in question?

11 A Yes.

12 Q Yes?

13 A Yes.

14 Q Let me hand you what's been marked for
15 identification purposes as State's Exhibit 29 and ask you
16 are those the steps that we're referring to?

17 A Yes.

18 Q Let me hand you what's been marked for
19 identification purposes as State's Exhibit Number 19 and
20 ask you if this is a close up of the steps that we are
21 referring to?

22 A Yes.

23 Ms. Lively: Your Honor, I just object to him
24 publishing until they're actually into evidence.

25 The Court: Correct. Mr. Galtore, those are not

1 in evidence yet.

2 Mr. Galmore: Yes, sir.

3 Q (Continuing) When did this fall in the
4 stroller occur?

5 A I don't remember the exact date.

6 Q Was it the day before you left town?

7 A No.

8 Q Could it have been perhaps a week before
9 you left town?

10 A Could be a week.

11 Q When this fall occurred you said you did
12 not seek medical attention; is that correct?

13 A Correct, because he didn't hit his head at
14 all.

15 Q You didn't feel like he needed medical
16 attention?

17 A No.

18 Q Okay, let me hand you what's been marked
19 for identification purposes as State's Exhibit Number 26
20 and ask you what this picture reflects?

21 A The living room.

22 Q The dog in that picture also?

23 A Yes.

24 Q And what kind of dog is that?

25 A English Bulldog.

MMS. Carnaghie - Cross Examination by Mr. Galmore 261

1 Q Did that dog live in the house with Mr.
2 Palmer and Ms. Gorman?

3 A Yes.

4 Q Did the dog live in the house when you came
5 and stayed for that month or so?

6 A Yes.

7 Q Was the dog staying in the house when you
8 left and went back to Arizona?

9 A I would assume so.

10 Q So to the best of your knowledge when you
11 jumped on that plane on the 2nd that dog was still in that
12 house?

13 A Yes.

14 Q You lived with the dog for about a month,
15 could you tell us approximately how much you think that dog
16 might have weighed?

17 A Thirty, thirty-five pounds.

18 Q Okay, and did the dog play with your son?

19 A Yes.

20 Q The dog was not aggressive towards your
21 son?

22 A No.

23 Q But they played together?

24 A Yes.

25 Q Okay, just so that I'm clear I think would

MMS. Carnaghie - Cross Examination by Mr. Galmore

262

1 it be fair to say that you stayed in Aynor for
2 approximately one month from maybe June 1st to July 2nd?

3 A Yes.

4 Q Okay, and thereafter Minor continued to
5 stay in Aynor while you went back to Arizona; that's
6 correct?

7 A Yes.

8 Q During this one month period that you were
9 there did you witness your mother strike your child?

10 A No.

11 Q Did your mother feed your child?

12 A Yes.

13 Q Did she play with him?

14 A Yes.

15 Q Did she help clean him and clothe him?

16 A Yes.

17 Q She take ya'll to the beach?

18 A Yes.

19 Q Did she tell you you had to go out and find
20 a job?

21 A Her and I both decided on that.

22 Q So it was decided, what, that you would go
23 for a job or you wouldn't go for a job?

24 A That I would.

25 Q So you looked for a job while you were here

MMs. Carnaghie - Cross Examination by Mr. Galmore

263

1 for that one month?

2 A Yes, because at the time I didn't know
3 exactly how long Richard's schooling was going to take.

4 Q Okay, did she watch your son while you went
5 out on occasions?

6 A Yes.

7 Q Did she take you to the Aynor Family
8 Practice on July 1st?

9 A Yes.

10 Q Now you were not living in South Carolina
11 on July 14th, were you?

12 A No.

13 Q And you didn't see anybody strike Minor
14 did you?

15 A No.

16 Q Didn't see your mom put her hands on your
17 son?

18 A No.

19 Q Did you see Mr. Palmer put his hands on
20 your son?

21 A No, I was three thousand miles away.

22 Q Now you made a concern, issue, about Minor
23 having to go to the emergency room on the 7th, I think you
24 said that you weren't made aware of that visit; was that
25 your testimony?

Ms. Carnaghie - Redirect Examination by Ms. Lively 264

1 A Yes.

2 Q Did you ask your mother why your son was in
3 the hospital on the 7th?

4 A I didn't even know that he went.

5 Q Okay, do you know if Minor went for any
6 follow up treatment after the hospital visit on the 7th?

7 A I was recently informed.

8 Q Okay, and the next time you were in South
9 Carolina was when you flew into Charleston on the 17th?

10 A Yes.

11 Mr. Galmore: The Court's indulgence?

12 Q (Continuing) Now you said that you lived in
13 this house for about a month with Minor and Mr. Palmer and
14 Ms. Gorman; is that correct?

15 A Yes.

16 Q During that time was the house appear to be
17 in a safe condition?

18 A Yes.

19 Q Did you observe any liquor bottles laying
20 around?

21 A No.

22 Q Did you observe any cleaning products or
23 poisonous solutions that were within Minor reach?

24 A No.

25 Q Would it be fair to say that the house was

Ms. Carnaghie - Redirect Examination by Ms. Lively 265

1 baby proofed for him being there?

2 A Yes.

3 Mr. Galtore: That's all the questions I have,
4 Your Honor.

5 The Court: Ms. Lively?

6 Ms. Lively: Yes, sir.

7 Redirect Examination

8 By Ms. Lively:

9 Q Cesalee, in regards to the stroller
10 incident when that happened how did Minor react?

11 A He bounced around and smiling and gave me a
12 look and sound of let's do it again.

13 Q No crying?

14 A None at all.

15 Ms. Lively: Okay, thank you. Cesalee.

16 Ms. Grabert-Lowenstein: If I may?

17 Recross Examination

18 By Ms. Grabert-Lowenstein:

19 Q Cesalee, counsel Mr. Galtore asked you
20 about your mom feeding Minor did she ever get frustrated
21 when she was taking care of him?

22 A Not to my knowledge.

23 Q Did you and she ever have a discussion
24 about habits that she wanted you to break, things that,
25 that she didn't like that you were letting him do?

Ms. Carnaghie - Recross Ex. by Ms. Garbert-Lowenstein 266

1 A There was a couple.

2 Q And what were those?

3 A Having to be held all the time, breaking
4 that to maybe holding your hand instead.

5 Q Okay, biting one of them?

6 A No, he only bit when he was teething.

7 Q I --

8 A He only bit when he was teething.

9 Q Okay, ever discussion about head butting?

10 A No.

11 Ms. Grabert-Lowenstein: Thank you, I have no
12 other questions.

13 Mr. Galmore: Very briefly, Your Honor.

14 The Court: Keep it to proper cross exam.

15 Mr. Galmore: Yes, sir.

16 Recross Examination

17 By Mr. Galmore:

18 Q During the stroller incident when Minor
19 fell down the steps did you observe any bleeding?

20 A I checked him to make sure that he wasn't
21 bleeding or grazed or hurt in anyway.

22 Q Did you see any blood?

23 A No.

24 Q Did you see any bruising?

25 A No.

Ms. Carnaghie - Recross Examination by Mr. Galmore 267

1 Mr. Galmore: Thank you very much, ma'am, no
2 further questions.

3 The Court: All right, ladies and gentlemen of
4 the jury, it is about 1:30 now. Let's take our lunch, an
5 hour until, let's come back at 2:45, okay. That will give
6 us an hour and twenty minutes, thank you.

7 (Whereupon, the jury was excused for lunch at
8 1:23 p.m.)

9 The Court: All right, we're at ease until
10 quarter to three.

11 (Whereupon, court was recessed for lunch and the
12 following takes place after the record the lunch break.)

13 The Court: Ms. Lively, are we ready?

14 Ms. Lively: We are, Your Honor.

15 The Court: Bring in the jury.

16 (Whereupon, the jury returns to the courtroom at
17 2:44 p.m.)

18 The Court: All right, Ms. Lively, call your
19 witness.

20 Ms. Lively: Yes, sir, thank you.

21 The Court: Check and make sure these mikes are
22 on. Bobby, check these microphones and make sure they're
23 working. If you have any difficulty hearing now, please,
24 just raise your hand and let me know, okay, and we'll
25 address it. Okay?

Dr. Hutson - Direct Examination by Ms. Lively

268

1 Ms. Lively: Ready, Your Honor?

2 The Court: Yes, we are.

3 Ms. Lively: Okay, the State would call Dr. Jody
4 Hutson to the stand.

5 Dr. Jody Wade Hutson

6 being first duly sworn, testified as follows:

7 Madam Clerk: Please state your full name and
8 spell your last for the Court?

9 The Witness: Full name is, excuse me, Jody Wade
10 Hutson, h-u-t-s-o-n.

11 Direct Examination

12 By Ms. Lively:

13 Q Dr. Hutson, where are you currently
14 employed?

15 A I'm employed for Conway Physicians Group.
16 I'm a family physician and I work at Aynor Family Medicine.

17 Q And Aynor Family Medicine, where is that
18 located?

19 A In Aynor, South Carolina.

20 Q All right, and how many doctors are working
21 in that particular facility?

22 A Just myself and the nurse practitioner.

23 Q All right, and how long have you been in
24 that location?

25 A I've been in Aynor for eight years; we had

Dr. Hutson - Direct Examination by Ms. Lively

269

1 a new office built two years ago.

2 Q All right, and, Dr. Hutson, what are your
3 areas of primary care for the patients that come to see
4 you?

5 A I'm a family physician, I see all age
6 groups from newborns through nursing home.

7 Q Okay, and how many days a week do you work?

8 A Five.

9 Q Dr. Hutson, were you working in your
10 capacity as a family practitioner back in July of 2008?

11 A Yes.

12 Q All right, did you have an opportunity to
13 come into contact with a toddler by the name of
14 Minor

15 A Yes.

16 Q All right, will you, please, tell this jury
17 what you recall when you first met this toddler?

18 A He was brought into me by his mother and
19 his grandmother for a fairly quick visit, acute care visit.
20 He had some ant bites on his legs and his feet. Excuse me,
21 I have a cold, occupational hazard, and he seemed like a
22 normal young boy, toddler, and I remember him with a sippy
23 cup, you know, passing it from hand the hand, calling mama
24 in the room and he had, I believe my note says six ant
25 bites on his feet, feet and his legs, and they also had a

1 complaint of him having some congestion, pulling at his
2 ears, and I felt he had some degree of allergies, seasonal
3 allergies.

4 Q Okay, and whenever you, when you saw these
5 things what all do you do when you first see a child in
6 checking them and what are you looking for?

7 A Well with those complaints, and that again
8 was an acute care visit so it wasn't a full fledged
9 physical at that point in time but, you know, they had
10 complaints of him pulling at his ears and that he was
11 congested and so I, you know, I would examine his ears, his
12 nose, his throat, his, his mouth, his neck, and certainly
13 with the ant bites his skin and that's what was done.

14 Q Okay, were there anything else in regards
15 to the appearance of this child that gave you any concern?

16 A No.

17 Q All right, so from the outside appearances
18 of the toddler based upon, you know, you dealing with
19 children and child development did he look like he was in
20 the right age group?

21 A He appeared small but he didn't look
22 malnourished, no, he just looked like a small boy.

23 Q Okay, he was small?

24 A Uh-huh.

25 Q All right, now, Dr. Hutson, while you were

Dr. Hutson - Direct Examination by Ms. Lively

271

1 there did at any time were there other complaints regarding
2 the child other than the cold and the ant bites?

3 A None that I recall.

4 Q All right, and, and you said the mother and
5 the grandmother were there?

6 A Yes.

7 Q Is that correct?

8 A Correct.

9 Q Could you, you identify who the mother is;
10 do you recall?

11 A She's sitting right there.

12 Q Sitting right there, how about the
13 grandmother?

14 A Back there, I believe.

15 Q That would be the reporter?

16 A Okay, I don't --

17 Q Let me give you a little help here?

18 A I don't see her.

19 Q Okay, first of all the electronics are
20 probably in your way, see anybody you recognize?

21 A Not at the present time, no.

22 Q Okay, do you recall what her name was?

23 A Ms. Julia, I believe it was.

24 Q Okay, that's fine, all right, so Ms. Julia?

25 A Uh-huh.

Dr. Hutson - Direct Examination by Ms. Lively

272

1 Q Now, Dr. Hutson, did you notice anything
2 about the interaction between the biological mother and the
3 grandmother that you recall?

4 A Nothing that I could for sure testify on at
5 the present time, no.

6 Q Okay, now whenever you treated the child
7 you said it was an acute visit, is this one that you kind
8 of work in?

9 A Yes.

10 Q Is that how that happens?

11 A Yes.

12 Q Okay, so what did you do to treat Minor s
13 actual ant bites? Did you make any prescriptions or any
14 suggestions to the parent and the grandmother?

15 A I wrote a prescription for a steroid cream
16 to put on the ant bites. They're, you know, they're very
17 inflammatory and usually I'm sure with us living in South
18 Carolina most everybody has had an ant bite, it kind of
19 sting, burning and itches, so I gave him a steroid cream to
20 rub on that, excuse me again, and then I gave him a
21 prescription for an antihistamine to take for what I
22 thought were allergies and that would also help with some
23 of the itching of the ant bites.

24 Q Okay, and just a moment, do you recall
25 whether he had a fever whenever they brought him in to you?

Dr. Hutson - Direct Examination by Ms. Lively

273

1 A No, I don't believe so.

2 Q All right, and actually I have your records
3 just in case if you need anything to refresh your
4 recollection you can, you can request to look at the
5 records, okay?

6 A Okay.

7 Q Now at that time was there any indication
8 of a follow up visit with you?

9 A Yes, we, we, they came with shot record
10 from the military and since he was sixteen months old he
11 was behind on immunizations so we advised them after he was
12 well from his ant bites and, and to bring him back and we
13 would catch him up on his immunizations, you know, fairly
14 quickly; and I believe an appointment was made about a week
15 after that to do that and then after we got him caught up
16 we would start him off on the normal routine of when we
17 normally see children.

18 Q Okay, was he in any danger at that time by
19 not having the immunizations in place?

20 A No, he would be susceptible to the two
21 immunizations, he had not either one of those not even the
22 original shots. They wouldn't have been boosters. They
23 were going to be original immunizations so he was at a risk
24 for catching any, that would be the measles, mump rubella,
25 and chicken pox shot, the varicella shot.

1 Q Okay, all right, and you were going to
2 catch those up in about a week?

3 A Correct.

4 Q All right, now, Dr. Hutson, did you know or
5 were you aware of what the mother's plans were at that
6 point in regards to staying in South Carolina?

7 A I believe she was leaving town. I don't
8 recall where but she brought in a, she wrote up a health
9 care proxy that we could treat little Minor, her mother
10 and the other gentleman's name was on there that they had
11 the right to bring him in for treatment with us.

12 Q Okay, all right, now, Dr. Hutson, whenever,
13 what was the prescrip -- the other prescription you wrote
14 for the stuffy head?

15 A It's called Clarinex, it is a, and it's
16 similar to Claritin that everybody is probably familiar
17 with. It's a non sedating antihistamine; it's to treat
18 allergies and hives and other allergic responses.

19 Ms. Lively: If I may approach, Your Honor?

20 The Court: Certainly.

21 Ms. Lively: (Continuing)

22 Q I'm going to show you the visit from July
23 1st, '08, and where it says plan, okay, you said Clarinex,
24 what, what was the prescription that you actually wrote?

25 A That's my error, I'm sorry, it's Xyzal,

Dr. Hutson - Direct Examination by Ms. Lively

275

1 yeah, they're very similar antihistamines. It was Xyzal
2 which is similar to Zyrtec, I'm sorry.

3 Q Okay, and so Xyzal which is similar to
4 Zyrtec?

5 A Correct, yeah, yeah.

6 Q All right, and in a child his age and his
7 weight what kind of dosage would be required to help with
8 his symptoms?

9 A We only want to give him the milligram
10 .1.25 milligrams a day which is what I wrote, I wrote
11 Xyzal, it's 2.5 milligrams per teaspoon, I wrote that he
12 should take a half a teaspoon a day.

13 Q Okay, half a teaspoon a day?

14 A Uh-huh.

15 Q Is there a preferred time in which to give
16 the child?

17 A It wouldn't matter.

18 Q It wouldn't matter, okay, and, and what are
19 if there are any side effects that could be associated with
20 this medication?

21 A Number one would be sedation as with any
22 antihistamine, certainly it's much less sedating than
23 Benadryl, we all know from over the counter, but it would
24 be sedation, dry mouth, dry eyes, headache, that sort of
25 stuff.

1 Q Okay, and once again that was for his
2 sinuses?

3 A Exactly, and I wrote that his nose was
4 stuffy and boggy and felt he had some, cause their
5 complaint was he was pulling at his ears in addition and
6 congested and I felt that it was more allergies than
7 anything else.

8 Q Okay, all right, now, Dr. Hutson, when was
9 the next time that you saw Minor do you recall
10 when that was?

11 A I believe it was approximately one week
12 later and that was to do that catch up of immunizations.

13 Q All right, I'm going to show you this just
14 to refresh your recollection as to the exact date whenever
15 he would have come in to see you?

16 A The note says 7-8-08..

17 Q Okay, now, Dr. Hutson, when he came in on
18 7-8 of '08 tell me who brought the child into you at that
19 time?

20 A His grandmother.

21 Q All right, and was anyone else with the two
22 of them?

23 A Not that I recall.

24 Q And whenever the child was brought to you
25 on the 8th what symptoms did he have, if any, from what you

Dr. Hutson - Direct Examination by Ms. Lively

277

1 were treating him for on July the 1st?

2 A The nurse's note says that he had nausea
3 and vomiting on 7-7-08, so the day before, and he had an
4 emergency room visit the evening before we saw him because
5 of that.

6 Q Okay, what about the ant rash or the bite
7 what were the condition of those at that time?

8 A As far as my memory is they were gone and
9 my note says that the skin exam there were no rashes.

10 Q No rashes, okay, that's July the 8th,
11 correct?

12 A Correct, correct.

13 Q Now in regards to the treatment for his
14 allergies on July the 8th of '08 ---

15 A Yes.

16 Q --- do you have any record in there that he
17 was continuing to need care for that?

18 A I do, I do not have anything written to
19 that.

20 Q Okay, all right, and whenever he came in
21 for this particular visit since it was a scheduled visit
22 would it have been a little bit more detailed than the
23 acute visit from the first?

24 A No, it was scheduled but again it was just
25 to catch him up on his immunizations and make sure he was

Dr. Hutson - Direct Examination by Ms. Lively

278

1 well since he had the emergency room visit the night
2 before. We didn't want to give immunizations to a child
3 who would be, you know, acutely ill.

4 Q Okay, and so in your opinion from what you
5 were looking at was he acutely ill?

6 A No, he seemed very well.

7 Q All right, and was he feverish?

8 A No.

9 Q When he was there did you look at his, did
10 you look at his head and his extremities?

11 A Yes.

12 Q All right.

13 A I would have examined him fairly fully
14 because we were going to give him immunizations and I
15 didn't, if he would have had been starting with a viral
16 illness I wouldn't want, those two vaccinations are live
17 vaccines so we wouldn't give them to someone who had an
18 acute illness.

19 Q Okay, and so what did you actually use to
20 look at the child?

21 A I would have used an otoscope to look in
22 his ears, make sure he didn't have any ear infection, my
23 flashlight to look in his throat, make sure he didn't have
24 strep throat or anything in that nature making him vomit,
25 feel of his neck. I would have been holding his head while

Dr. Hutson - Direct Examination by Ms. Lively

279

1 I was looking into his ears, listen to his heart, listen to
2 his lungs, lay him back, listen to his belly, and look at
3 his skin to make sure there's no rash, no viral infection.

4 Q Okay, and was he cooperative during this
5 process?

6 A From my recollection he was, yes.

7 Q And, and whenever you were, you know,
8 looking in his ears and looking in his throat and you said
9 you had to touch his head was there, did he react or was
10 there any concerns that you had there was something else
11 wrong with him?

12 A I, I, no, nothing, excuse me, I had no
13 concerns, no, I don't remember him how he reacted. Most
14 children will pull away while I'm trying to look in their
15 ears and so forth but nothing stands out in my memory that
16 anything was unusual.

17 Q Is there anything in your records from July
18 the 8th, 2008, where you asked, where you recommended
19 continued use of Xyzal?

20 A Nothing there is in my record, no, and I
21 don't recall.

22 Q You don't recall, okay, but if the child
23 was still with a foggy nose and sinus issues would you have
24 put that in your records?

25 A Yes.

1 Q And based upon the information you have
2 from July the 8th, 2008, was that information in your
3 record?

4 A No.

5 Q All right, and again the ant bites they
6 were, the rash was resolved?

7 A Correct.

8 Q Okay, now, Dr. Hutson, did you have an
9 opportunity, well was another visit scheduled for Minor

10 A Yes, I have written there to follow up in
11 two months, that's, he would have been eighteen months and
12 that is a normal routine where we would have done a full
13 developmental assessment. We usually do those at two,
14 four, six, twelve months and then eighteen months so he
15 would have been, we were trying to get him back on schedule
16 for normal health care for a toddler.

17 Q When he was in your care, well let me ask
18 you this, Dr. Hutson, are you a mandated reporter if you
19 believe there's child abuse?

20 A Yes.

21 Q And will you just tell the jury why that
22 is?

23 A I have a legal and moral obligation if I, I
24 mean especially a child who can't protect themselves it's
25 my job to protect them if I even have an inkling that

Dr. Hutson - Direct Examination by Ms. Lively

281

1 something is wrong.

2 Q And on July the 1st, 2008, let's be clear
3 did you ever call law enforcement or DSS about this child?

4 A No.

5 Q All right, so up through the two times that
6 you saw him are you telling us that you had no concerns
7 regarding abuse?

8 A No concerns, no.

9 Q Now, Dr. Hutson, on July the 8th, 2008, was
10 that the last time you saw this child?

11 A Yes.

12 Q Okay, and whenever you saw him on July the
13 8th what would you have done in regards to his clothes?
14 Would he have kept all of his clothes on, would he have
15 been in a diaper, tell us what you normally do in regards
16 to that?

17 A He would have been in a diaper. He may
18 have had a shirt on that I would have lifted up because I
19 examined his skin. I wrote there was no rashes. I would
20 opened his diaper and made sure everything was normal
21 underneath, no rashes.

22 Q And how about the legs, where would you put
23 the actual vaccination shot?

24 A Vaccination shots always go in the outside
25 of the thigh, called the lateral thigh about mid thigh.

Ms. Carmichel -- Direct Examination by Ms. Lively 294

1 Ms. Lively: No, Your Honor, may he be excused
2 from his subpoena?

3 The Court: Mr. Galmore?

4 Mr. Galmore: No objection.

5 The Court: Ms. Grabert-Lowenstein?

6 Ms. Grabert-Lowenstein: No objection, Your
7 Honor.

8 The Court: Doctor, you're excused and released
9 from your subpoena. Witness?

10 Ms. Lively: Thank you, Your Honor, the State
11 calls Martha Carmichael.

12 Martha G. Carmichael

13 being first duly sworn, testified as follows:

14 Madam Clerk: Please state your full name and
15 spell your last for the Court?

16 The Witness: Martha Geneva Carmichael,
17 Carmichael, c-a-r-m-i-c-h-a-e-l.

18 Direct Examination

19 By Ms. Lively:

20 Q Ms. Carmichael, where are you employed?

21 A Horry County 911 dispatch.

22 Q What's your job there?

23 A I'm the training officer and records
24 custodian.

25 Q As a records custodian could you talk a

Ms. Carmichel - Direct Examination by Ms. Lively 295

1 little bit to the jury about how 911, excuse me, 911
2 records are maintained and kept?

3 A Yes, every phone call that comes in on the
4 911 floor and all our radio transmissions are recorded and
5 it's archived on a DVD and by law we're required to
6 maintain it for sixty days.

7 Q Are they kept in what's known as the
8 regular ordinary course of business?

9 A Yes.

10 Q I'm going to show you what's been marked
11 for identification purposes -- if I may approach -- as
12 State's Exhibit Number 36; do you recognize that?

13 A Yes.

14 Q Did you listen to that prior to coming to
15 court today?

16 A Yes.

17 Q Did it appear to be an accurate reflection
18 of a call made on July 14th, 2008, from [REDACTED]?

19 A Yes.

20 Ms. Lively: Your Honor, at this time the State
21 would move seek to introduce this exhibit into evidence.

22 The Court: Objection?

23 Ms. Grabert-Lowenstein: No objection on behalf
24 of Mr. Palmer, Your Honor.

25 Mr. Galmore: No objection, Your Honor.

Ms. Carmichel - Cross Examination by Mr. Galmore

296

1 The Court: Admitted without objection.

2 (Whereupon, State's Exhibit Number 35 entered
3 into evidence.)

4 Ms. Lively: Thank you, Your Honor, may I
5 publish to the jury at this time?

6 The Court: Yes, you may.

7 Ms. Lively: Thank you.

8 (Whereupon, State's Exhibit Number 35 played in
9 open Court.)

10 Ms. Lively: Thank you, Ms. Carmichael. Your
11 Honor, I have no further questions at this time.

12 The Court: Mr. Galmore and Ms. Grabert-
13 Lowenstein?

14 Ms. Grabert-Lowenstein: I have no questions,
15 Your Honor.

16 The Court: Mr. Galmore?

17 **Cross Examination**

18 **By Mr. Galmore:**

19 Q Ms. Carmichael, how long have you been
20 working with the county 911 system?

21 A Nineteen years.

22 Q And I suspect you've taken a lot of 911
23 calls in that time?

24 A Yes.

25 Q Do you generally ask people to provide you

Ms. Carmichel - Cross Examination by Mr. Galmore

297

1 with information on those phone calls?

2 A Yes.

3 Q You ask for medical information when you
4 need it?

5 A Yes.

6 Q Sometimes you have to ask for directions if
7 you don't know where the house is at?

8 A Yes.

9 Q And you asked questions of Ms. Gorman on
10 that tape; is that correct?

11 A I'm the records custodian, I didn't
12 actually take the call.

13 Q Oh, that's not you talking on that tape?

14 A No.

15 Q Oh, okay.

16 The Court: I was wondering when you were going
17 to realize that, Mr. Galmore.

18 Mr. Galmore: Not a problem, not a problem, not
19 a problem.

20 Q (Continuing) Do you know the distance from
21 the nearest fire house to the trailer on Highway 129?

22 A No.

23 Q Did it appear that the questions that were
24 asked were answered appropriately?

25 A To the best of the ability, yes, due to the

Lieutenant Rainbolt - Direct Examination by Ms. Lively 298
1 circumstances.

2 Mr. Galtmore: Yes, ma'am, thank you very much,
3 Ms. Carmichael.

4 A You're welcome.

5 Ms. Lively: Your Honor, we would ask that Ms.
6 Carmichael be excused.

7 The Court: Any objection?

8 Mr. Galtmore: No, sir.

9 Ms. Grabert-Lowenstein: None, Your Honor.

10 The Court: Thank you, Ms. Carmichael, you're
11 excused.

12 Ms. Lively: Lieutenant Timothy Rainbolt.

13 Lieutenant Timothy Russell Rainbolt

14 being first duly sworn, testified as follows:

15 Madam Clerk: Please state your full name and
16 spell your last name for the Court?

17 The Witness: Timothy Russell Rainbolt, r-a-i-n-
18 b-o-l-t.

19 Direct Examination

20 By Ms. Lively:

21 Q Mr. Rainbolt, what is your, your title and
22 occupation?

23 A I'm a lieutenant for Horry County Fire and
24 Rescue.

25 Q How long have you worked for Horry County

Lieutenant Rainbolt - Direct Examination by Ms. Lively 299
1 Fire and Rescue?

2 A Fourteen years.

3 Q And what does the lieutenant position
4 require extra of you?

5 A I'm the shift supervisor and basically
6 tasked with training, paper work of the station to make
7 sure that projects are getting done, mapping, pre, pre fire
8 surveys, things like that.

9 Q Where, what station do you actually, I
10 guess, get calls out of?

11 A I work out of Station 27 right now.

12 Q Where is that?

13 A That's on Highway 310 and Highway 22, the
14 brand new station there in the corn field, two-acre corn
15 field, it's right there on the corner.

16 Q Okay, and is that in Aynor?

17 A Actually it does have an Aynor, it's [REDACTED]
18 [REDACTED] address.

19 Q And how long has been new station been
20 there?

21 A We've been there for almost two years,
22 February will be two years.

23 Q In July of 2008 what station or where was
24 the station you were working at?

25 A I was working at Station 24 which is in the

Lieutenant Rainbolt - Direct Examination by Ms. Lively 300
1 Town of Aynor.

2 Q In the town of Aynor, all right, and I
3 guess that leads up to my next question, were you actually
4 working on the day of July 14th, 2008?

5 A Yes, ma'am.

6 Q And when you were working on that date did
7 you have an opportunity to respond to a 911 call?

8 A Yes.

9 Q Will you, please, tell this jury what
10 information you had in regards to what kind of scene that
11 you were driving in to?

12 A We were, we were dispatched to a medical
13 call at the time and pretty much the, the, can I refer to
14 my notes, if that's okay?

15 Q Anything to refresh your memory will be
16 fine?

17 A Usually when they tone it out they'll tone
18 it out as a, I believe it was toned out as a shortness of
19 breath, I believe, or a seizure, I can't quite recall what
20 it was, but it's respond for a back up as a first responder
21 for the medic unit which has Medic 8 which was coming from
22 their station which is away.

23 Q Okay, so you weren't the medic unit?

24 A No, we were an engine company.

25 Q Okay, and who was on a part of the medic

Lieutenant Rainbolt - Direct Examination by Ms. Lively 301
1 unit?

2 A The medic unit that came was Medic 8 was
3 Erica Rosenthal and Brian Bussa.

4 Q Okay, and who would have been in your, who
5 would have been with you for your first responder?

6 A My engine company that day was Travis Rabon
7 and Ken Norton was riding along, so there was three of us
8 on the engine, and then the tone went out, how our tones
9 drop Engine 9 is a volunteer station, they initially, that
10 area they didn't get out so they tone as well so you will
11 get that first responder response and so we went and then
12 some of their volunteers came by P.O.V., which is their own
13 vehicles. The engine itself did not respond, Engine 9
14 itself did not respond.

15 Q Okay, so after you got the tone about how
16 long was it before you actually arrived on scene?

17 A We were dispatched at 18:07 which is 6
18 p.m., 6:07 p.m., and we arrived on location at 6:13 so
19 that's just about six minutes.

20 Q Who was the first person to go into the
21 home?

22 A That would be me.

23 Q Tell the jury at that time was it, it was
24 July around 6:00 so was it still daylight?

25 A Yes, it was.

Lieutenant Rainbolt - Direct Examination by Ms. Lively 302

1 Q All right, and did you observe any people
2 in the front yard; do you recall?

3 A The only thing I really recall right now
4 for certain was when I made entry into the house a
5 gentleman, who I thought was the father, was holding the
6 patient sitting down on the couch and on the right hand
7 side of the couch and it was a single wide trailer.

8 Q Okay, okay, and whenever you, so whenever
9 you observed this what was the first thing that you, that
10 you're trained to do?

11 A Well as you walk in you're sizing up the
12 scene of what you have and then you're planning accordingly
13 to what your intervention is going to be so you get a
14 little bit of a heads up with the 911 call. It is a
15 medical call so we bring in our medical equipment to, you
16 know, have it with us in case we have to render aid and
17 then as you're walking in you're sizing up what do I have.
18 I initially saw the gentleman setting there holding a young
19 child and the child had a diaper on and so you go up to the
20 gentleman, you go, hey, what's going on, and then they
21 relay to you well this, this is what I have, and then you
22 start asking your questions and then you begin your
23 interventions to help the child or the patient.

24 Q Okay, and so it was a medical call so were
25 you aware as soon as you went into that home who was the

Lieutenant Rainbolt - Direct Examination by Ms. Lively 303

1 person that the call had been made on behalf of? Was it
2 obvious?

3 A Oh, yes, it was obvious that the child was
4 the patient, that's why, why we had to be there was to
5 treat the child, that there was ---

6 Q What did you observe regarding his
7 condition?

8 A He was in a pretty grave condition; he
9 appeared to be having a seizure at the time and it was a
10 priority patient. We, we started rendering aid
11 automatically and while we were giving aid to the patient
12 we started with oxygen and sizing up, you're asking the
13 gentleman questions, hopefully trying to maybe find allude
14 to what, what's triggering the, at that time it appeared to
15 be apparent seizure activity.

16 Q And why do you ask those kind of questions
17 about what possible or is it like cause or mechanism, what
18 you were asking?

19 A Well what you're doing is acronyms or like
20 sample history which is signs and symptoms, allergies,
21 medicines, past, past history, last oral intake, events
22 leaning up and, so there's different acronyms and you
23 basically go like my questions to, to the gentleman was
24 like has the child been sick because in my, my experience
25 kids of that age if they get a spike in fever that fever

Lieutenant Rainbolt - Direct Examination by Ms. Lively 304
1 will seizure so the majority of calls you go to if you have
2 a fever spiked and a seizure presenting you're thinking I
3 probably have this so, of course, you know the questions
4 has the child been ill, has, has he been sick, has he had a
5 fever which the man said, no, no, then what was he doing
6 and they had said that he was at a nap and he had just
7 risen from his nap and this is how they found him in this
8 condition.

9 Q Were any other explanation or information
10 regarding the child's medical history provided to you
11 whatsoever?

12 A Just that, can I refer again?

13 Q Absolutely.

14 A They said he had not been sick and was put
15 down for a nap at 3:30. They found him in the condition we
16 witnessed upon our arrival which was the seizure-like
17 activity, and that's we began placing the child on high
18 fluid oxygen and beginning to set up for an I.V. and that's
19 when Medic 8 arrived and I made the call to Medic 8 we will
20 meet you outside because this child needs to be transported
21 asap to the hospital and obviously the fire engine can't
22 transport to the hospital.

23 Q Okay, and who was in the Medic 8, the
24 actual transport vehicle that came?

25 A That was Erica Rosenthal and Brian Bussa,

Lieutenant Rainbolt - Direct Examination by Ms. Lively 305

1 they were the medic crew from Medic 8.

2 Q And who carried Minor out of the home?

3 A I did.

4 Q And when you carried him out of the home
5 who did you hand him to?

6 A Erica Rosenthal.

7 Q Were his eyes open at that time?

8 A Yes, and they were open to, to me, yes, he
9 was just, just kind of a, I don't know if ya'll have viewed
10 seizures before but you kind of get the kind of a snoring
11 type respirations. You're just kind of making motions like
12 a, it's called tonic-clonic and basically at that time our,
13 our experience is the child needs to get some Valium to
14 take him out of the seizure activity and our engine company
15 doesn't carry that. The medic company does, so it was
16 we'll meet you out there, we'll get him in there and get
17 the I.V. established so we can get that medicine on board
18 which as Erica comes in later will tell you was what
19 happened.

20 Q Okay, and so was that the conclusion of
21 what your job duties were that day?

22 A Yes, once, once we transferred care to, to
23 the Medic Unit I supplied one of my men and I believe it
24 was Ken Norton to drive the Medic Unit so she could have
25 Brian Bussa in the back to help her do patient care so they

Lieutenant Rainbolt-Cross Ex. by Ms. Grabert-Lowenstein 306
1 could have two and I thought was the mother she rode in on
2 Medic 8 sitting up front and we made sure she was situated
3 in the front of the ambulance.

4 Q Okay, all right, so who you believed to be
5 the mother got in the ambulance?

6 A Yes, yes, she actually rode to the hospital
7 with the medic crew in the front seat with the seat belt on
8 per our protocols.

9 Q Okay, all right, and so was that the last
10 thing that you did?

11 A That was it for me and we went back in
12 service.

13 Ms. Lively: Okay, thank you, Lieutenant
14 Rainbolt, answer any questions the defense may have.

15 Ms. Grabert-Lowenstein: Just a couple of
16 questions, Lieutenant.

17 **Cross Examination**

18 **By Ms. Grabert-Lowenstein:**

19 Q Who did you get most of the information
20 from that you were telling us you received?

21 A I was, I was asking basically the gentleman
22 who was holding the child cause he was holding the child
23 when I got there so that's who I was addressing my
24 questions to.

25 Q Did you address any questions to Ms.

Lieutenant Rainbolt - Cross Examination by Mr. Galmore 307

1 Gorman?

2 A I may have, I don't recall. I believe she
3 may have been in the kitchen or not where I was cause when
4 we, where the child was holding we start treating him right
5 there on the floor.

6 Q And when you say the gentleman holding him
7 do you see that person in the courtroom?

8 A I believe it's going to be that gentleman
9 next to your left, I believe, it's hard to tell.

10 Q Do you recall his demeanor, how he was
11 acting?

12 A Kind of calm.

13 Q Was he concerned about what was going on?

14 A Yeah, I would imagine, I mean I don't, not,
15 not like in a panic or frantic or teary eyed or like oh, my
16 gosh, you know, this is something grave going on but just
17 kind of like, yeah, we found him like this when he got up
18 from his nap.

19 Q Trying to keep it together?

20 A Yes, you could say that.

21 Ms. Grabert-Lowenstein: Okay, all right, thank
22 you.

23 A Yes.

24 Cross Examination

25 By Mr. Galmore:

Lieutenant Rainbolt - Cross Examination by Mr. Galmore 308

1 Q Lieutenant Rainbolt, I believe you
2 testified that it took about six minutes for your engine to
3 get to the house?

4 A Yes, sir.

5 Q Okay, and do you know how long it took for
6 Medic 8 to get over there?

7 A I briefly looked at the times and I believe
8 it was the same dispatch time as us and I think that they
9 arrived at 18:20, 6:20, I believe.

10 Q Okay.

11 A They were coming from their station, I
12 believe.

13 Q So they're not stations with, they're not
14 stationed with ---

15 A No, we have Medic 24 that runs our station
16 and I believe they were on another call that's why Medic 8
17 was toned, but in my, in my report, if I can refer to it?

18 Q Yes, sir?

19 A It actual shows Medic 24 being dispatched
20 at 18:20 and getting there at 18:23 and Medic 8 toned at
21 18, 6:07 p.m. and getting there at 6:20, so the second
22 medic unit was toned at 6:20 once Medic 8 went on location.

23 Q Okay.

24 A But they weren't, they weren't utilized
25 cause they, they went back in service at 6:32.

Lieutenant Rainbolt - Cross Examination by Mr. Galtore 309

1 Q Medic 24?

2 A Medic 24 did, yes, sir, Medic 8 once they
3 transported medic unit.

4 Q Now you said you entered into the house and
5 you spoke with the gentleman that was holding the baby?

6 A Yes, sir.

7 Q Did any of your other five men enter the
8 house with you?

9 A Yes, sir.

10 Q Did you see anything out of the ordinary
11 when you entered the house?

12 A Not that, not that I can recall. I just
13 remember walking into the house seeing him set on the right
14 end of the couch. If you know the layouts of most single
15 wides are pretty similar. It's like you have the living
16 room area and then you go to a hallway that's kind of
17 narrow at the end of the living room area so the couch was
18 kind of along that, like if you walked in along that back
19 wall he was on the right side.

20 Q Well let me hand you what's been marked as
21 State's Exhibit 16 for identification and can you point out
22 to the jury what you're talking about?

23 A It would have been right here where the
24 couch was.

25 Q Okay, so you entered in from?

Lieutenant Rainbolt - Cross Examination by Mr. Galtmore 310

1 A Front door, yes, sir.

2 Q Front door section?

3 The Court: Be sure the jury can see now.

4 Mr. Galtmore: Yes, sir.

5 A (Continuing) Were ya'll able to see it?

6 Q When you said you were referring to where
7 the couch was, can you point to it?

8 A I believe it would have been right here on
9 the wall.

10 Q All right, did the house appear to be in
11 some kind of disrepair?

12 A Not that I could recall.

13 Q Okay, did you see blood on the floor or
14 blood on the walls or anything like that?

15 A No, sir.

16 Q Did you see any object that had any blood
17 or hair or skin on it?

18 A No, sir.

19 Q Was there anything such, I guess, vomit or
20 any bodily fluids of any kind that were in the living room
21 area?

22 A Not that I saw.

23 Q Do you recall if there were any broken
24 objects, broken windows, broken plates, dishes, anything on
25 the floor that seemed unusual?

Lieutenant Rainbolt - Cross Examination by Mr. Galtore 311

1 A No, sir.

2 Q Your immediate course of treatment was to
3 give the patient oxygen?

4 A High flow oxygen, yes, sir.

5 Q And to give him an I.V.?

6 A Yes, we started establishing the I.V. and
7 that's when the medic unit arrived and that's when we
8 transferred him to the medic unit for immediate transport,
9 we made that decision.

10 Q Did you see any bruises on the body?

11 A Not that I can recall, when I was sizing
12 him up basically what was standing out to me was the
13 seizure activity and so with the years of experience you're
14 thinking well did she, did the child have a fever, a fever
15 spike and that's where I had asked had he been sick and
16 stuff and he said, no, he had not been sick.

17 Q Yes, but if there, if there were something
18 unusual such as bruising on the body such that it caught
19 your eye you would have written that in a report?

20 A I can't write it on my file report but in
21 the transfer of care it would have been noted to the Erica
22 Rosenthal and it would have been marked on that.

23 Q All right.

24 A These, these reports the different reports
25 are public records so anybody can go to them so for HIPAA

Lieutenant Rainbolt - Cross Examination by Mr. Galmore 312

1 violations I can't write but only pretty generic comments.

2 Q Yes, sir, yes, sir, did, did the child
3 appear to have any broken bones when you, when you went
4 into the house?

5 A Like an obvious deformity?

6 Q Yes?

7 A No, sir.

8 Q Why did you say you addressed the gentleman
9 that, that was holding the child?

10 A Because he was holding the child and that
11 was the patient so with him holding the child he was the
12 one that was there so that's who I spoke with.

13 Q Well it makes sense to talk to that person?

14 A Yeah, he's holding the child so as I even
15 wrote in here I assumed that was the father and I said,
16 hey, you know, and the questions directed what have you
17 got, what's going on with the child, and we went from
18 there.

19 Q And you, you weren't out there at the house
20 to conduct any type of police or DSS investigation, were
21 you?

22 A No, sir, we were actually just toned there
23 for a medical call.

24 Q So you didn't do a walk through of the
25 house or anything like that?

Lieutenant Rainbolt - Cross Examination by Mr. Galtore 313

1 A No, sir, we went in there, we addressed the
2 patient, treated the patient and got him transported to the
3 hospital as quickly as possible.

4 Q Got him on the Medic 8 as possible?

5 A Yes, sir.

6 Q I think you commented that the child was
7 making some kind of noises during the ---

8 A Yeah, usually when there's seizure activity
9 you will get a possible either some respiratory issues
10 going on and he was making kind of those sounds, obviously
11 that's where we were with the oxygen, getting the oxygen on
12 board and a lot of times with the seizure activities you
13 will get a little bit of oxygen deficiency so you want to
14 get oxygen to them.

15 Q Okay, when you looked at this child and
16 gave him an I.V. and gave him some oxygen did you see any
17 apparent injuries to the child's head?

18 A No, nothing that, nothing that stood up
19 like if you're asking like for a deformity, battle signs,
20 bruises, anything like that I did not see at that time.
21 The intervention, like I said I did, is I put a mask on him
22 and we set up an I.V. as we actually prepare an I.V. The
23 I.V. stick was made in the medic unit cause they got there
24 right when we were getting ready to do that so instead of
25 delay transport time we went ahead and began the I.V. in

Lieutenant Rainbolt-Recro. Ex. by Ms. Grabert-Lowenstein314

1 the back because what he needed at that time with what he
2 was presenting was the Valium to take the seizure activity
3 out because that's what we figured at the time he was
4 presenting with.

5 Q Do you know if Medic 8 administered the
6 Valium?

7 A Yes, they did.

8 Q But you weren't riding on Medic 8?

9 A No, sir.

10 Q You were back on your engine?

11 A No, sir.

12 Q And you felt that it was significant enough
13 to assign one of your fireman to drive the ambulance?

14 A Yes, we do that, when we have a significant
15 patient where they need more hands in the back and we have
16 the manpower we definitely give them a hand. We had three
17 riding the engine that day so I gave them one of my mine to
18 drive, yes, sir.

19 Q And is it unusual for a family member to
20 ride in an ambulance also?

21 A No, it's not unusual, it's all in the
22 nature of the call. If, if, you know, it's something that
23 they might be there especially with children, parents are
24 usually going to ride with children.

25 Mr. Galtore: Yes, sir, all right, thank you,

Lieutenant Rainbolt-Recro. Ex. by Ms. Grabert-Lowenstein315

1 Lieutenant, no further questions.

2 A Yes, sir.

3 Ms. Lively: No further questions, Your Honor,
4 may he be excused from his subpoena?

5 The Court: Yes, any objection?

6 Ms. Grabert-Lowenstein: Your Honor, I just have
7 one follow up question if I may?

8 The Court: Yes.

9 Recross Examination

10 By Ms. Grabert-Lowenstein:

11 Q Sir, you indicated you put the oxygen mask
12 on. That was to assist the breathing, that wasn't because
13 he wasn't breathing when you got there, correct?

14 A Yeah, he was breathing, it was to assist
15 the breathing.

16 Ms. Grabert-Lowenstein: No further questions,
17 Your Honor.

18 The Court: All right, you're excused from your
19 subpoena.

20 A Thank you, sir.

21 Ms. Lively: Erica Rosenthal.

22 Erica Rosenthal

23 being first duly sworn, testified as follows:

24 Madam Clerk: Please state your full name and
25 spell your last name for the Court?

Ms. Rosenthal - Direct Examination by Ms. Cote

316

1 The Witness: Okay, full name is Erica Lee
2 Rosenthal, last name is spelled r-o-s-e-n-t-h-a-l.

3 Direct Examination

4 By Ms. Cote:

5 Q Ms. Rosenthal, where are you employed?

6 A Horry County Fire and Rescue.

7 Q And what's your job there?

8 A A firefighter paramedic.

9 Q Can you discuss for the jury a little bit
10 of your background and training as a firefighter paramedic?

11 A I've been practicing as a paramedic for the
12 last four and a half years, roughly, and approximately five
13 years before that was an EMT basic on the national registry
14 level. I've got an associates degree in para medicine.

15 Q Were you working as a firefighter paramedic
16 back on July 14th, 2008?

17 A Yes.

18 Q Did you have reason to respond to [REDACTED]
19 [REDACTED] on that day?

20 A Yes.

21 Q Did you have any information about what
22 type of call you were responding to?

23 A The initial dispatch was for a shortness of
24 breath of a pediatric patient.

25 Q And what time were you dispatched?

Ms. Rosenthal - Direct Examination by Ms. Cote

317

1 Would it help you to refer to your notes for refreshing
2 your memory?

3 A At approximately 6:00.

4 Q Okay, and what time did you arrive at that
5 location?

6 A About 6:20.

7 Q Who else was with you in the, was it Medic
8 8?

9 A Medic 8.

10 Q Is that right?

11 A Yes.

12 Q Who else was with you?

13 A Brian Bussa.

14 Q What sort of scene did you encounter when
15 you arrived at that location?

16 A Prior to arriving on the scene we were
17 notified by the on scene engine company that they had a
18 pediatric seizure and that when we arrived to just prepare
19 for them bringing the child straight to us at the
20 ambulance.

21 Q And so when you arrived is that what
22 happened?

23 A Yes.

24 Q Who brought the child to you?

25 A Lieutenant Tim Rainbolt.

1 Q And what did you do as soon as you received
2 him?

3 A I put the child on the stretcher and
4 continued oxygen administration and then attempted I.V.
5 access.

6 Q Okay, what sort of state was the child in
7 when you arrived?

8 A The child was very lethargic, still
9 seizing.

10 Q And what sort of behaviors was he
11 exhibiting as he was seizing?

12 A He had a right-sided gaze and he was very
13 lethargic.

14 Q Was he posturing at that time?

15 A Yes.

16 Q And will you, please, could you mind, could
17 you mind showing the jury what posturing is, it might look
18 like?

19 A Posturing goes in two different forms where
20 your arms push outward and then the opposite is with your
21 arms inward, the same goes for your legs.

22 Q After you loaded Minor onto the ambulance
23 did anybody else get in the ambulance with you?

24 A Yes.

25 Q Who was that?

Ms. Rosenthal - Direct Examination by Ms. Cote

319

1 A I don't recall who the driver was.

2 Q Okay, and was Mr. Bussa in the back with
3 you?

4 A Yes.

5 Q Treating Minor

6 A Yes.

7 Q Did Minor grandmother get in the
8 ambulance as well?

9 A Yes, she rode in the front passenger seat.

10 Q Were you able to communicate with her while
11 you were treating Minor in the back?

12 A Yes, there's a window that separates the
13 compartment, the patient care compartment from the front of
14 the cab.

15 Q And were you able to ask her questions
16 regarding Minor medical history, anything that he's
17 allergic to, things of that nature?

18 A Yes.

19 Q And did she give you that information?

20 A Yes.

21 Q What did she tell you?

22 A She mentioned that Minor had suffered fire
23 ant bites previously in the week and was treated for that.
24 She mentioned that he had not been sick, he had not struck
25 his head, he had not fallen, and she had not noticed any

Ms. Rosenthal - Direct Examination by Ms. Cote

320

1 fevers earlier on in the week or today.

2 Q Did she tell you when the last time she
3 administered that Xyzal medication?

4 A The day of the injury and that was it.

5 Q Was that the only time that it was given to
6 him?

7 A Yes.

8 Q Was he responding to, was Minor responding
9 to you and your treatment?

10 A No, after he received the initial dose of
11 Valium he, he stopped seizing.

12 Q May I interrupt you, I'm sorry?

13 A Sure.

14 Q Is Valium given, what's the purpose of
15 giving him Valium?

16 A Valium is given as a relaxant and sedative;
17 it's protocol for a seizure patient.

18 Q Okay, please continue, I'm sorry.

19 A It's okay, I forgot your question, I'm
20 sorry.

21 Q What, what types of aid were you
22 administering to him in the back of the ambulance as you,
23 were you taking him to the hospital?

24 A Yes, once we were able to secure the I.V.
25 line and stop his seizing we moved in route to the

Ms. Rosenthal - Direct Examination by Ms. Cote

321

1 hospital. He received the I.V. line oxygen, cardiac
2 monitoring, and then a full physical exam.

3 Q What did you notice or observe in that
4 physical as you did that physical exam?

5 A He had a right-sided gaze, his pupils were
6 dilated but they were responsive. They were sluggish to
7 respond but not uncommon for a seizure.

8 Q Were you able to obtain a blood pressure
9 from him?

10 A No, at that time we did not have pediatric
11 equipment small enough for Minor

12 Q And did you have an oxygen mask placed on
13 him?

14 A Yes.

15 Q That was done, obviously Minor was
16 breathing?

17 A Yes.

18 Q As ya'll were riding to the hospital did
19 Ms. Gorman give you any other information about his general
20 overall demeanor as a child?

21 A Yes, may I refer to this, I noted most of
22 it in the report. I asked, let's see, I asked whether or
23 not he had been sick, whether or not he had fallen, whether
24 or not he had any fevers, and one of her statements to me
25 was that he's been whiny and lethargic since the ant bites

Ms. Rosenthal - Cross Ex. by Ms. Graber-Lowenstein 322

1 previously, and the other statement was, and I'll have to
2 paraphrase it for you, it was three years ago, that she's
3 raised several children in her lifetime and never seen such
4 a bad one.

5 Q And did you note that in your report?

6 A In my verbal report to the physician I did.

7 Q But did you, was it an oversight that you
8 didn't put it down in your report?

9 A I try to only document exactly what I can
10 remember verbatim from a person.

11 Q So that general statement that she made did
12 that stick with you?

13 A Yes.

14 Ms. Cote: Beg the Court's indulgence?

15 Q (Continuing) By the time you got to the
16 hospital what was, what kind of state was he in?

17 A Minor was posturing, he had still been
18 posturing. His right-sided gaze had not changed, his
19 pupils were now more dilated than they previously had been
20 and he was still, still breathing very rapidly as well as
21 his heart rate was elevated.

22 Q When you say the right-sided gaze what does
23 that mean?

24 A Typically when there's a brain injury that
25 occurs your eyes will point to the side of your brain that

Ms. Rosenthal - Cross Ex. by Ms. Graber-Lowenstein 323

1 has been injured.

2 Ms. Cote: Thank you, I have no further
3 questions, please answer any questions the defense may
4 have.

5 Cross Examination

6 By Ms. Grabert-Lowenstein:

7 Q Good Afternoon, ma'am. When you received
8 Minor it was from the lieutenant who just spoke
9 previously, correct?

10 A Yes.

11 Q How was Minor dressed?

12 A I don't recall.

13 Q Do you recall whether he had a shirt on, a
14 diaper?

15 A I believe he had a diaper on, I couldn't
16 tell you what clothing he was wearing, though.

17 Q Okay, he had the oxygen mask to aid in his
18 breathing, once he, you got him into the unit you said you
19 did a physical exam?

20 A Yes.

21 Q Did you note any bruises?

22 A No.

23 Q Any broken bones that were obvious?

24 A There was no obvious deformity to Minor
25 body.

1 Ms. Grabert-Lowenstein: No further questions.

2 Cross Examination

3 By Mr. Galtore:

4 Q So you never entered the home on Highway
5 129?

6 A Correct.

7 Q You pulled into the parking lot or the
8 driveway and that's when Lieutenant, when the Lieutenant
9 brought Minor out to, to Medic 8?

10 A Yes.

11 Q Okay, you said you asked Ms. Gorman some
12 questions and did she answer your questions?

13 A Yes.

14 Q She gave you medical history information
15 about the ant bites?

16 A Yes.

17 Q She told you that he had not been sick?

18 A Correct.

19 Q And that he did not have a fever?

20 A Correct.

21 Q And she also told you that he hadn't fallen
22 and he hadn't struck his head?

23 A Correct.

24 Q Did you see any bruises on his body?

25 A No.

Ms. Rosenthal - Cross Examination by Mr. Galmore

325

1 Q Did you see any cuts on his body?

2 A No.

3 Q And you also said that she made a comment
4 that she's raised many kids and she never saw one as bad as
5 this one?

6 A Correct.

7 Q And you said that comment was not listed in
8 your written report?

9 A Correct.

10 Q Did you put it in any report at all?

11 A My verbal report to the physician.

12 Q Did you follow up with that, well what do
13 you mean, ma'am?

14 A The child began to seize again so, no, I
15 did not.

16 Q Do you know if she was referring to his
17 medical condition or if she was referring to something
18 else?

19 A I don't.

20 Mr. Galmore: No further questions, thank you.

21 Ms. Cote: Your Honor, I have nothing further
22 Ms. Rosenthal. I'd ask that she be excused from her
23 subpoena.

24 Ms. Grabert-Lowenstein: No further questions,
25 Your Honor.

Ms. Milan - Direct Examination by Ms. Lively

326

1 The Court: All right, you're excused, any
2 further need for this witness?

3 Ms. Cote: No, Your Honor.

4 The Court: Mr. Galmore?

5 Mr. Galmore: No, sir.

6 Ms. Grabert-Lowenstein: No, Your Honor.

7 The Court: You're released from your subpoena.

8 A Thank you.

9 The Court: Witness?

10 Ms. Lively: Yes, Your Honor, the State would
11 call Tina Millan to the stand.

12 **Tina Shaw Millan**

13 **being first duly sworn, testified as follows:**

14 Madam Clerk: Please state your full name and
15 spell your last name for the Court?

16 The Witness: Tina Shaw Millan, and that's m-i-
17 l-l-a-n.

18 **Direct Examination**

19 **By Ms. Lively:**

20 Q Tina, where do you work?

21 A I work at Conway Hospital in the emergency
22 room.

23 Q And how long have worked there?

24 A Five years and about six months.

25 Q And what are your specific duties in the

Dr. Cacace - Direct Examination by Ms. Cote

352

1 Ms. Lively: The State is ready, Your Honor.

2 The Court: All right.

3 Mr. Galtmore: Ready, Your Honor.

4 Ms. Grabert-Lowenstein: Ready, Your Honor.

5 The Court: I understand my jury is ready so
6 let's bring them in.

7 (Whereupon, the jury returns to the courtroom at
8 9:30 a.m.)

9 The Court: I see we have everyone back in the
10 court room, all of the jurors and our alternates, and we
11 are ready to proceed. Ms. Lively or Ms. Cote?

12 Ms. Cote: Thank you, Your Honor.

13 The Court: Ms. Cote, the first witness, please?

14 Ms. Cote: Thank you, Your Honor, the State
15 calls Dr. John Cacace.

16 The Court: Come around, Dr. Cacace.

17 Dr. John Cacace

18 being first duly sworn, testified as follows:

19 Madam Clerk: Please state your full name and
20 spell your last name for the Court?

21 The Witness: John Cacace, c-a-c-a-c-e.

22 Direct Examination

23 By Ms. Cote:

24 Q Dr. Cacace, where do you work?

25 A Conway Medical Center.

Dr. Cacace - Direct Examination by Ms. Cote

353

1 Q And what's your job there?

2 A Attending physician in the emergency
3 department.

4 Q How long have been at Conway Medical
5 Center?

6 A Five years now.

7 Q Will you tell the jury a little bit about
8 your background and education?

9 A I'm a southerner, I retract that, I'm a New
10 Yorker. I grew up in New York City, attended Columbia
11 University, went to Mt. Sinai School of Medicine, New York
12 City also, Albert Einstein College of Medicine for
13 residency and surgery and Long Island Jewish Hospital for
14 residency and emergency medicine, and I spent eight years
15 at Yale teaching surgery and emergency medicine prior to
16 coming to Conway.

17 Q Have you ever testified in court before?

18 A Several times, yes, ma'am.

19 Q Do you know how many times?

20 A I would say four, four times.

21 Q Have you ever been qualified as an expert
22 before?

23 A I have.

24 Ms. Cote: Your Honor, at this time the State
25 would seek to qualify Dr. John Cacace in emergency medicine

Dr. Cacace - Direct Examination by Ms. Cote

354

1 and trauma.

2 The Court: Mr. Galmore?

3 Mr. Galmore: No objection.

4 The Court: Ms. Grabert-Lowenstein?

5 Ms. Grabert-Lowenstein: No objection, Your
6 Honor.

7 The Court: Yes, ma'am.

8 Ms. Cote: Thank you, Your Honor. May I
9 approach the witness?

10 The Court: Yes.

11 Ms. Cote: Thank you, I'll show this to counsel.

12 Q (Continuing) Dr. Cacace, I'm showing you
13 what's marked for identification purposes as State's
14 Exhibit 36, I want you to take a look at that and tell me
15 if you recognize that document?

16 A Yes, ma'am, I do.

17 Q And can you tell us what that is?

18 A This is a record from Conway Medical Center
19 with documents involving radiologic studies and nursing
20 notes and my, my notes regarding that day of the incident
21 with the child.

22 Q And is the child Minor

23 A Yes, Minor

24 Q And can you tell us the date of those?

25 A These were done on, the exam date was July

Dr. Cacace - Direct Examination by Ms. Cote

355

1 14th, 2008.

2 Q Are those records and reports kept in the
3 ordinary course of business at Conway Medical Center?

4 A Yes. these are routine records we keep.

5 Q Do they appear to have been altered or
6 tampered with in any way that you can see?

7 A No, they don't appear altered, ma'am.

8 Q Thank you --

9 Ms. Cote: Your Honor, we would seek to enter
10 this exhibit into evidence at this time?

11 The Court: Mr. Galmore and Ms. Grabert-
12 Lowenstein?

13 Ms. Grabert-Lowenstein: Your Honor, we have no
14 objection to the witness referring to them; however,
15 without an actual the caretaker of the records being here
16 we don't know that these, we know they were kept in the
17 ordinary course of business but we don't know anything more
18 than that, but there may be information in there which
19 isn't referred to, we would object to the actual admission
20 of the records but not his referring to them.

21 The Court: Mr. Galmore?

22 Mr. Galmore: I will share in Ms. Grabert-
23 Lowenstein's objection. My concern is that we don't know
24 if it is a complete record. It contains nurses notes; it
25 contains radiology notes; it also contains his notes, but

Dr. Cacace - Direct Examination by Ms. Cote

356

1 we do not have a problem with Dr. Cacace referring to these
2 records.

3 Ms. Cote: Your Honor, it's our position that he
4 was able to testify that they were kept in the ordinary
5 course of business, they appear to be a complete record.
6 They were all records that he referred to in making the
7 diagnosis involving Minor and in treating him.

8 The Court: I will allow that record.

9 Ms. Cote: Thank you, Your Honor.

10 (Whereupon, State's Exhibit Number 36 entered
11 into evidence.)

12 Ms. Cote: (Continuing)

13 Q Now, Dr. Cacace, were you working on July
14 14th, 2008, in the emergency room at Conway Medical Center?

15 A Yes.

16 Q Okay, and did you treat a seventeen-month-
17 old boy named Minor

18 A Yes, I did.

19 Q Okay, do you recall what time he was
20 brought to the emergency room?

21 A I'd have to refer to the documents?

22

23 Q If that will help refresh your memory,
24 please do?

25 A He arrived somewhere around 7 p.m. I would

1 say.

2 Q What do you recall about when you initially
3 responded to Minor

4 A He arrived via EMS through the front door
5 of the E.R. in extremist immediately evident. The child
6 was showing signs of a severe neurologic injury prior to
7 any studies or other than the nurses grabbing me and
8 telling me to attend to the child.

9 Q Was he conscious?

10 A No, ma'am.

11 Q Did he appear to be breathing on his own?

12 A At that time was, yes.

13 Q Did he have an oxygen mask on?

14 A Yes, ma'am.

15 Q What symptoms of neurological distress did
16 you witness?

17 A The child was breathing on his own, however
18 not conscious. The tone of the child that age is critical
19 and the child was exhibiting classical signs of
20 intracranial injury, extensive posturing of the arms.

21 Q Will you demonstrate for the jury what
22 posturing is?

23 A Basically extending the neck out and the
24 arms out like this, twisting the arms inward, it's a very
25 dramatic and classical presentation.

Dr. Cacace - Direct Examination by Ms. Cote

358

1 Q And is that posturing and those symptoms
2 are those symptoms different from what you would see from
3 somebody suffering from epileptic seizure?

4 A Yes, the training to understand the
5 difference isn't really that complicated, This is a
6 posturing that only occurs in intracranial injury, other
7 doesn't appear in stroke or epilepsy seizure.

8 Q And when you see a child that age and in
9 that condition with your experience what typically do you
10 see as the cause of those types of injuries?

11 A It would have to be tremendous force to the
12 skull.

13 Q Do you remember speaking with anybody from
14 the family that evening?

15 A I remember the distressed grandmother.

16 Q And can you describe what her demeanor was
17 like for the jury, how was she acting?

18 A She was very upset, agitated. I needed to
19 take a moment to actually to, take a side moment for a
20 minute just to remind her we were going to do everything we
21 could and that she should stay present but not get in
22 between the care of the staff and the child.

23 Q Did you have to take time out from treating
24 Minor to deal with Ms. Gorman?

25 A Basically a minute or so.

1 Q Were you told anything in regards to a
2 possible cause for his condition or a reason for it in any
3 way?

4 A I recall some conversation regarding the
5 mother of the child having left the infant in the care of
6 grandmom a week prior.

7 Q So when he presented what was the first
8 thing you did to treat his condition?

9 A Immediately bring him to the resuscitation
10 room and secure monitors on him, obtain a chest x-ray, and
11 rapid sequence, rapid sequence intubation to put a tube in
12 the airway to maintain the breathing because of the type of
13 injury suspected the brain swelling that goes on with that
14 would very soon stop his breathing.

15 Q Did you give him any medication at that
16 point?

17 A We routinely do, I'd have to look at the
18 chart again. It's, usually it's Etomidate and
19 Succinylcholine and I'm just trying to verify that, which
20 are medications we use to rapid sequence a child. I'm
21 getting there, Etomidate 3 mg. and decision between
22 Succinylcholine and Vecuronium. Vecuronium actually is a
23 preferred medication for head trauma so I, I chose
24 Vecuronium, so it's equivalent medicine that paralyzes a
25 person so we can pass the tube easily so Etomidate and

Dr. Cacace - Direct Examination by Ms. Cote

360

1 Vecuronium is the answer to your question.

2 Q Okay, thank you. Did you order any
3 radiological studies or head scan performed?

4 A Yes.

5 Q Did you, as part of treating Minor did you
6 review those scans after they were completed?

7 A Immediately, sure.

8 Q And what did you see on those scans?

9 A The scans had evidence of, of gray-white
10 matter junction loss and blood. Basically the brain has
11 little ups and downs and curves and valleys and in the
12 trauma they swell and you lose the distinction of those
13 and intracranial hemorrhage, blood. I'm looking directly
14 at the document right now because I'd like to use the right
15 terminology here, extending along the falx, which is the
16 center part of the skull, left parietal lobe and left
17 frontal lobe parenchymal hemorrhage, that means hemorrhage
18 in the tissue of the brain itself, again the distinction
19 between gray-white matter was suspicious for intracranial
20 edema, swelling of the brain, and skull fractures, which
21 raises the concern of child abuse.

22 Q So these skull fractures that were observed
23 on those scans can you describe anything about that?

24 A They're not, they're not described in this
25 document and what I routinely, my, my usual standard is to

1 identify the sutures, the lines that are normally present
2 in the skull. There are lines that are normal healthy
3 lines of a developing skull that finally fuses and then
4 there are, and those lines usually are a "v" in the back
5 and then a straight line at the top. If lines are
6 different from those it's suspicious for fractures and then
7 there's depression or step offs of the skull which are also
8 suspicious for fractures. The exact details of those lines
9 I don't have.

10 Q Okay, were you, after looking at those
11 scans were you able to come to a conclusion or a diagnosis
12 within a reasonable degree of medical certainty involving
13 Minor condition?

14 A Yes.

15 Q What was that?

16 A Head trauma.

17 Q What level of head trauma are we talking
18 about? I know trauma seems to me that it's pretty serious
19 but what, can you just go into more detail about that?

20 A Some authors, some authors break it down
21 into five categories, obviously minor to severe and the
22 trauma was severe, impending death is what it was
23 concerned.

24 Q Will you talk about the distinction, you
25 mentioned there was a distinction of gray and white matter

Dr. Cacace - Direct Examination by Ms. Cote

362

1 on the brain in the scans, what exactly does that mean?

2 A The gray, the gray and white matter are the
3 different cells, different tissues of neurons and
4 astrocytes. essentially structural and actual brain
5 transmitting wires tissue.

6 Q When you see that type of distinction could
7 that potentially be fatal as well?

8 A The loss of the gray-white matter to be
9 unable to discriminate that is implying edema, edema has no
10 place to go in the skull cause the fixed structure and
11 that's very serious. I thought I was losing the child.

12 Q Were you able to classify the injury within
13 a reasonable degree of medical certainty as these were
14 accidental or non accidental?

15 A I could say that the majority of the cases
16 I've seen like this are not accidental.

17 Q And based on these injuries that Minor had
18 were you able to make a decision regarding his continued
19 care?

20 A Yes, I believe in record time we got in
21 touch with a neurosurgeon at MUSC and helicoptered the
22 child to MUSC for further care.

23 Q Why did you feel that it was necessary to
24 move him to MUSC as opposed to treating him at Conway?

25 A Conway doesn't, you know, Conway is I must

Dr. Cacace - Direct Examination by Ms. Cote

363

1 say a great place, a little advertisement there, and at the
2 same time we don't have a neurosurgeon on staff yet, that
3 may happen some day in the future.

4 Q So did you feel somebody more specialized
5 was necessary to treat Minor

6 A Absolutely.

7 Q Do you know what time he left the hospital,
8 if you'd refer to your notes?

9 A I'd have to go to the notes, at 21:17 he
10 was transferred by helicopter so that would be the, I'm
11 sorry, let me correct that because the final note is 22:33
12 patient left the E.D.

13 Q And when he left were you able to stop his
14 seizures?

15 A The additional medicines that are listed
16 beyond the two I discussed, Ativan, Phenobarbital are
17 medicines for preventing seizure activity. There was some
18 noted and they were easily controlled and then we wanted to
19 protect as much brain tissue as possible in this situation
20 preserve a person.

21 Q So what you gave him was that, I'm just
22 trying to understand, was that more to control his
23 symptoms?

24 A I actually have to honestly say I don't
25 recall. I, I give medications like that in anticipation

Dr. Cacace - Direct Examination by Ms. Cote

364

1 mostly, that's my, my standard. We don't want seizures,
2 the brain has had enough insult already and the traveling
3 time in the helicopter, etcetera, if I have to I would
4 press and think, I'm not sure I recall having seizures on
5 the child actually during the visit; I don't recall that.
6

7 Q You don't recall the seizures?

8 A I don't recall seizures actually, the more
9 I think about it.

10 Q You testified about Minor injuries on
11 the skull and the brain; did you notice any other injuries
12 on him at that time?

13 A I'm looking through notes because off, off,
14 off hand I don't recall other injuries, no, and the seizure
15 that I said I don't recollect I want to, I'm trying to
16 confirm that no one else saw seizure activity, lots goes on
17 during these events, no, I did not recall any other
18 injuries. The problem with if I, should I go on, I was
19 just going to mention just that the problem with seizure,
20 the word seizure sometimes the nurses might call something
21 seizure that is the posturing business so --

22 Q You did say that you saw the posturing of
23 Aydain but that necessarily, doesn't necessarily mean that
24 there was a seizure?

25 A Correct, it's not, it's not seizure and,

Dr. Cacace - Direct Examination by Ms. Cote

365

1 you know, my, my note here, my note contradicts what I'm
2 saying, it says here actively seizing with dysconjugate
3 gaze and that was my initial contact with the patient and
4 you spend seconds with a child and type something into your
5 computer and I would swear to my Almighty God that those
6 posture movements were not seizure activity. That's an
7 incorrect statement there, I don't know how that fouls up
8 the case or anything but ---

9 Q No, no, no, but you, you still stand by
10 that his posturing was indicative of neurological trauma?

11 A Most definitely, and every other piece of
12 evidence I've looked at in the case corroborates that,
13 ma'am.

14 Ms. Cote: Your Honor, if I may approach the
15 witness?

16 The Court: Sure.

17 Ms. Cote: Thank you, show this to counsel, it's
18 marked as State's 37.

19 Q (Continuing) Dr. Cacace, I'm going to show
20 you what's marked as State's Exhibit 37; do you recognize
21 that?

22 A Only, yes, in the, in the preparation for
23 this event I've seen this document before, yes.

24 Q So prior to testifying here today did you
25 review that?

Dr. Cacace - Direct Examination by Ms. Cote

366

1 A I did, yes.

2 Q And can you identify what it is?

3 A It's a medical note from a local Aynor
4 Family Practice.

5 Ms. Cote: If I may approach real quick, I may
6 have given you the wrong thing, I apologize.

7 A Private M.D. as well, sure.

8 Q Was that from Conway Medical Center?

9 A Oh, I'm sorry, yes, that is from Conway
10 Medical Center.

11 Q And like you previously stated, previously
12 stated with your other report is that a report that was
13 kept by Conway Medical Center in the ordinary course of
14 business?

15 A It is a Conway Medical Center document. I
16 apologize not recognizing it sooner, yes, it is.

17 Q And what is the date on that document?

18 A That date is 7, July 7th, 2008.

19 Q And can you tell us the name of the patient
20 on that document?

21 A Minor

22 Ms. Cote: Your Honor, at this time the State
23 would seek to introduce, I believe that was Exhibit 39, 37,
24 I apologize, into evidence at this time.

25 Ms. Grabert-Lowenstein: Your Honor, on behalf

Dr. Cacace - Direct Examination by Ms. Cote

367

1 of Mr. Palmer we have an objection. I believe the evidence
2 will be that this was not a document that Dr. Cacace, that
3 he prepared. he would then have no knowledge of whether
4 it's complete or accurate and have no knowledge of the
5 underlying foundation for the report. It would be hearsay
6 and we would object.

7 The Court: All right, do you take the position
8 there are any subjective opinions in that or, or --

9 Ms. Grabert-Lowenstein: Yes, Your Honor,
10 because he cannot ---

11 The Court: All right, let's send the jury out.

12 (Whereupon, the jury retired to the jury room at
13 9:57 a.m.)

14 The Court: May I see the document, please, Ms.
15 Cote?

16 Ms. Cote: Yes, sir.

17 The Court: Have you had an opportunity to
18 review it, Ms. Grabert-Lowenstein?

19 Ms. Grabert-Lowenstein: I'm sorry, Your Honor?

20 The Court: Have you had an opportunity to
21 review it?

22 Ms. Grabert-Lowenstein: I have, Your Honor, and
23 we've had a copy of that and it is the report from the 7th
24 of July and it was when Minor saw a different doctor and
25 that's the basis of our whole objection is it's hearsay as

Dr. Cacace - Direct Examination by Ms. Cote

368

1 to this doctor. It's not part of the consultation as to
2 the opinion that he just rendered about the injuries and I
3 believe that doctor should be called to testify as to his
4 examination of it. This doctor didn't see Minor on the
5 7th.

6 The Court: This was Dr. Mossey, was it?

7 The Witness: Mark Mossey, Your Honor.

8 The Court: Mark Mossey, okay. The thing that
9 gives me some problems about this particular document I
10 think that it would generally come under business record
11 exception to the hearsay rule, however, that exception has
12 an exception and that would be where there are subjective
13 judgments or opinions set out in the document and I'm, I'm
14 reviewing it here and it would appear that while it
15 contains quite a bit of objective information that was
16 provided it also contains a substantial amount of
17 subjective information or opinions, impressions that the
18 doctor had. What specifically do you object to in this
19 document, Ms. Grabert-Lowenstein?

20 Ms. Grabert-Lowenstein: Your Honor, I, I do
21 object to any of this objective statements made simply
22 because this doctor did not examine Minor on that day,
23 can't lead it, you know, lend itself to his testimony to,
24 to those subjective conclusions and I feel I have to, to
25 preserve the record because this is hearsay.

Dr. Cacace - Direct Examination by Ms. Cote

369

1 The Court: All right, but let me, let me ask
2 Ms. Cote about that. Ms. Cote, would you agree with me
3 that this document does contain subjective findings and
4 opinions by this doctor? At first I thought it was the
5 record of the physician who testified earlier.

6 Ms. Grabert-Lowenstein: No, it's, it's from the
7 follow up visit and, yes, but those, you know, especially
8 when you're talking about the opinions of a professional
9 this doctor can't lay the foundation for those opinions and
10 so, you know, they're getting information in without us
11 being able to cross examine the individual who made those
12 opinions.

13 The Court: And I have an inclination to agree
14 with, with Ms. Grabert-Lowenstein on that point, Ms. Cote;
15 what does the State say?

16 Ms. Cote: Your Honor, first is our position you
17 stated that first comment as a business record exception
18 under hearsay.

19 The Court: It generally meets that exception.

20 Ms. Cote: Yes, sir, I understand and I
21 understand the exceptions to that but the defense was
22 allowed yesterday to cross examine Dr. Hutson on this
23 incident and this particular medical visit that those
24 records are from, so it's our position the door has already
25 been opened. He hadn't seen the child on that particular

Dr. Cacace - Direct Examination by Ms. Cote

370

1 date, the 7th that those records are from. He's already
2 testified about it; he's already testified to his opinions
3 and what he saw in those records and the jury already knows
4 about it and Dr. Cacace looked over and relied on that in
5 forming his testimony today that this is, he's going to
6 continue to testify, Your Honor, but I'm going to ask him
7 regarding ---

8 The Court: Mr. Galmore, is this the record that
9 you referred to when you were cross examining Dr. Hutson?

10 Ms. Cote: Hutson, yes, sir.

11 Mr. Galmore: I don't think I referred to a
12 document. I know that Dr. Hutson had his records from
13 Aynor Family Practice.

14 Ms. Cote: And that, if I may, Your Honor, he
15 asked Dr. Hutson if he had access to Conway Medical
16 Center's document ---

17 Mr. Galmore: Yes, sir.

18 Ms. Cote: --- and asked him if he had access to
19 the hospital visit on the 7th and if he had seen that and
20 what Minor was seen for.

21 Mr. Galmore: That's correct, I did ask those
22 questions.

23 The Court: All right, and I think Ms. Grabert-
24 Lowenstein, you asked some questions concerning that visit
25 as well; did you not?

Dr. Cacace - Direct Examination by Ms. Cote

371

1 Ms. Grabert-Lowenstein: Your Honor, I believe
2 that the way the cross examine went, cross examination went
3 was simply that Dr. Hutson was talking about a day after
4 the 7th having seen Minor and not as to any conclusions
5 that were made on the 7th. It is true that he said I have
6 access to the records as long as it's my patient but as to
7 the specific conclusions --

8 The Court: Can you tell me what you object to
9 in this record? I mean I'm looking at it and it would, it
10 would appear to me that we've talked about every bit of it?

11 Ms. Grabert-Lowenstein: Your Honor, and I, I
12 understand, I understand that. It's the very specific
13 conclusions of the doctor who saw Minor and I, I object to
14 the record coming in. I understand ---

15 The Court: What specifically do you --

16 Ms. Grabert-Lowenstein: You know what we have
17 is a business record but what we also have is a record that
18 contains expert information and we have had no testimony as
19 to how that expert opinion was reached and that's my
20 objection. They want to just put the record in, I would
21 have assumed they were going to call the doctor, you know,
22 if, and that's why I object to the actual record coming in.
23 If Dr. Cacace referred to it, if he is drawing any
24 conclusions and that assist him in doing that but that's
25 one thing, the jury seeing that record without hearing from

Dr. Cacace - Direct Examination by Ms. Cote

372

1 that doctor is another and that's my objection.

2 The Court: I look at it and I look at the
3 doctor's impression and it's just physician on this and he
4 simply says that, and he's quite objective, "vomiting
5 improved, that's an objective finding, patient discharged
6 to home in stable condition with instructions on nausea and
7 vomiting, child one year old or older, follow up by private
8 doctor," that's what he says.

9 Ms. Grabert-Lowenstein: Right, but again
10 they're allowed to get the opinion in that he was fine
11 without bringing in that doctor and, and that I believe is
12 the reason it shouldn't come in. It's those underlying
13 opinions without that doctor being on the stand.

14 The Court: I'm going to allow it. I think
15 we've talked about it ---

16 Ms. Grabert-Lowenstein: Thank you.

17 Ms. Cote: Thank you, Your Honor.

18 The Court: --- enough that and I'm not sure
19 that or satisfied that there is a subjective judgment or
20 opinion in there.

21 (Whereupon, State's Exhibit Number 37 entered
22 into evidence.)

23 All right, let's bring the jury back.

24 (Whereupon, the jury returns to the courtroom at
25 10:07 a.m.)

Dr. Cacace - Direct Examination by Ms. Cote

373

1 The Court: Yes, ma'am?

2 Ms. Cote: Thank you, Your Honor.

3 Q (Continuing) On that Exhibit 37, Dr.

4 Cacace, based on that was Minor seen at the Conway Medical
5 Center emergency room exactly one week before he presented
6 to you?

7 A Yes, it was one week prior.

8 Q And did you review those records from July
9 7th prior to coming here to testify today as an expert?

10 A Yes, I did.

11 Q Do you see on those records was he taking
12 any medications at that time?

13 A He was prescribed Xyzal syrup, I assume by
14 his P.M.D.

15 Q And does it say what the dosage of that
16 was?

17 A Yes, ma'am, it does, it's 2.5 mg. per 5 ml.
18 and taking one and a half teaspoon he would be taking
19 roughly three four mg. at that time.

20 Q And what did he present with on that day?

21 A Vomiting one to two days.

22 Q And was he kept for observation or anything
23 like that, if you can see?

24 A He was not the term, you know, implies
25 admitted to the hospital for twenty-four hours in that he

Dr. Cacace - Direct Examination by Ms. Cote

374

1 was not but essentially, you know, the patients are
2 observed for quite some time, I'm sure most of us have
3 experienced in the E.R. so he spent some time there but and
4 it was observed but, no, he was not admitted to the
5 hospital for observation.

6 Q Was he seen for any of the same symptoms
7 that you saw him for on the 14th?

8 A No.

9 Q As an E.R. physician as well as an expert
10 in trauma and emergency room medicine when you see a
11 patient with the extent of injuries that Minor had would
12 you expect them to be able to be walking around, eating, or
13 functioning?

14 A A week prior or --

15 Q A week prior or --

16 A No, at any, no, really my question was
17 foolish because at the time of the injury that
18 presentation, no, they would not be able to walk around
19 and, you know, conduct any kind of physical activity.

20 Q In your opinion would they be able to eat
21 or walk around earlier that day?

22 Ms. Grabert-Lowenstein: Objection, vague as to
23 time frame.

24 The Court: Rephrase your question.

25 Ms. Cote: Yes, sir.

Dr. Cacace - Cross Ex. by Ms. Garber-Lowenstein

375

1 The Court: In the form of prior to or after
2 injury.

3 Ms. Cote: Yes, sir, I beg the Court's
4 indulgence.

5 Q (Continuing) In your expert opinion, I'm
6 sorry if I was vague, I want to try to be as clear as
7 possible, would a patient with these types of injuries that
8 you saw Minor for, I'm sorry, I'm jumping around a little
9 bit, what you saw him for on the 14th, would he be
10 immediately symptomatic?

11 A With those injuries he'd be immediately
12 symptomatic, yes.

13 Ms. Cote: I have no further questions, please
14 answer any questions the defense may have.

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: Thank you, Your Honor.

17 **Cross Examination**

18 **By Ms. Grabert-Lowenstein:**

19 Q Dr. Cacace, let's get about just the 7th,
20 was that medication that you referred to in direct was that
21 medication that was prescribed by Conway Medical Center or
22 does the note indicate it was prescribed by someone else?

23 A The note, that medication is listed on the
24 home meds and so that clearly means someone else.

25 Q And what was that medication?

Dr. Cacace - Cross Ex. by Ms. Garber-Lowenstein

376

1 A Xyzal.

2 Q What is Xyzal?

3 A I only can tell you that I'm not familiar
4 with the medicine other than I would imagine it's an
5 antihistamine. There are so many of them and there's so
6 many brand names now and so many companies that market
7 antihistamines it's listed here at bedtime for allergies
8 and the only thing that we use for allergies and
9 antihistamine are either histamine one or histamine two
10 blocker, it's one of those, I would put money on that.

11 Q Doctor, you indicated a dosage, was that a
12 dosage that was noted and charged from the doctor's
13 prescription or from some other source?

14 A I believe this part of the document is
15 filled by the triage nurse and that means the information
16 was obtained either from the parents or the computer can
17 generate medical historical facts and automatically include
18 it. I'm not sure which occurred here.

19 Q Okay, so it could have been from the parent
20 and that not be the actual dosage that was given by the
21 doctor?

22 A That's possible.

23 Q Now, Doctor, let's go back to the 14th,
24 July of 2008, you're on duty in the E.R. and would it be
25 accurate to say that your job is to triage the patient, get

Dr. Cacace - Cross Ex. by Ms. Garber-Lowenstein

377

1 them the absolute first care that they need?

2 A I'm sorry?

3 Q No, let me rephrase, I'm sorry, Doctor,
4 that your job is to get the immediate care that they need?

5 A Yes.

6 Q And any other treatment that the E.R. is
7 not equipped to do you don't make the decision about, you
8 just get them to where it needs to be?

9 A These days we make the decision about what
10 type of treatment the child needs, ergo we call the
11 appropriate consultant and I dare say we hit the nail on
12 the head a hundred percent of the time and so I consulted
13 with a neurosurgeon.

14 Q But my point being your care doesn't look
15 towards any future care that may be needed like in hours or
16 days down the road?

17 A I'm sorry, I can't, all I can say is that I
18 was concerned about brain swelling, there would be a
19 possible consideration of craniotomy or brain monitoring, a
20 monitor could be placed. These things the neurosurgeon can
21 handle but they were all running through my mind.

22 Q Okay, right, and, and you then got him to
23 where he needed to be to get that treatment?

24 A And, yes, and that's in the hands of the
25 neurosurgeon, sure to make those decisions.

Dr. Cacace - Cross Ex. by Ms. Garber-Lowenstein

378

1 Q Okay, and, and in making those decisions
2 you take note of everything that you could possibly have to
3 take into account for treatment, correct?

4 A I try my best.

5 Q And that would include any other injuries?

6 A Yes, ma'am, it truly would.

7 Q There's no injuries noted such as bruising
8 in your report; is that correct, Doctor?

9 A I routinely note such things. Let me just
10 make sure but I gather by your question that there's no
11 bruising noted, I don't want to waste any of the court's
12 time, so I would say there, skin exam, sorry, just having
13 trouble finding it, electronic records, no, there was no
14 bruises.

15 Q And, Doctor, there was not total
16 differentiation between gray and white matter, correct?

17 A Correct.

18 Q Am I correct that if there had been total
19 differentiation then there would have been brain death?

20 A No, ma'am, you're not correct.

21 Q Okay, but it would have meant even more
22 severity to the injury; would that be correct?

23 A There should be differentiation between
24 gray and white matter so if there was there would be less
25 severity.

1 Q I'm, I'm sorry, I think I, if there was
2 total differentiation I think I, I misspoke, if there was
3 total differentiation between gray and white matter would
4 that mean death?

5 A I may be misunderstanding and I apologize
6 but we need to see total discrimination between gray and
7 white matter. As it gets blurry and we lose the
8 discrimination between the two there's a problem.

9 Q I'm sorry, I was asking, asking it in the
10 reverse, so when there's no differentiation that is what
11 indicates the severity of the injury?

12 A Yes, ma'am.

13 Q Now you cannot tell us when, when the
14 injury occurred, correct?

15 A I can give you a ball park figure.

16 Q But, but nothing more than that, that would
17 be correct? Okay, and ---

18 A Well substantiated in the literature.

19 Q Okay, but can you tell us any
20 instrumentality that caused the injury?

21 A Usually blunt force.

22 Q I understand that, Doctor, but you don't
23 know exactly what was used or may have been used?

24 A Having seen head trauma for twenty years
25 now usually there evidence of gun barrel, hammer, knife,

Dr. Cacace - Cross Examination by Mr. Galmore

380

1 blunt instrument, and then there's none of that which
2 implies the whole head had a blunt blow to it.

3 Q And, and you can't tell us from your
4 examination of Minor who did it?

5 A Of course not.

6 Ms. Grabert-Lowenstein: No further questions.

7 Cross Examination

8 By Mr. Galmore:

9 Q Dr. Cacace, it was readily apparent to you
10 as soon as you entered the room that this child was
11 suffering from a neurologic injury?

12 A Yes, sir.

13 Q And I think you said that was based on your
14 actually seeing the posturing?

15 A Yes, sir.

16 Q And you saw the fact that he was not
17 conscious?

18 A Yes, sir.

19 Q Did you see any external injuries to the
20 head area?

21 A No, sir.

22 Q Did you see any bleeding?

23 A No.

24 Q Scalp injuries or anything like that?

25 A No.

1 Q And you decided that it was appropriate to
2 run a C.T. scan; is that correct?

3 A Yes, sir.

4 Q Okay, and you reviewed the C.T. scan; what
5 were your findings?

6 A The findings by the radiologist as well as
7 myself cause we, I review these things as well, again if I
8 may, was intracranial hemorrhage with blood extending along
9 the falx, the center portion of the brain, and within the
10 left parietal lobe, left frontal lobe consistent with
11 hemorrhage, parenchymal hemorrhage, that's brain tissue
12 hemorrhage, decreased distinction between gray and white
13 matter which is suspicious for intracranial edema and skull
14 fractures which were not delineated but the radiologist was
15 concerned to remind me that it was possibly non accidental.

16 Q So am I understanding this correctly that
17 there was a skull fracture but there was no external
18 ability to see skull that fracture?

19 A Very often.

20 Q Now you talk about the loss of gray-white
21 matter differential could the loss of gray-white matter
22 differential help us to establish a time frame when the
23 injury was inflicted?

24 A I believe it can, yes.

25 Q I think you talked about you a ball park

Dr. Cacace - Redirect Examination by Ms. Cote

382

1 figure?

2 A Yep.

3 Q Can you give us that ball park figure?

4 A Thirty-six hours.

5 Mr. Galmore: Yes, sir, thank you very much, no
6 further questions.

7 Redirect Examination

8 By Ms. Cote:

9 Q Dr. Cacace, did you have a nurse working
10 with you that night?

11 A Yes.

12 Q Who was that?

13 A That was Tina Millan.

14 Q And do you refer or rely on her notes at
15 all in coming up with your expert opinion?

16 A I depend heavily on the nursing staff at
17 Conway Medical Center, surely.

18 Q I'm going to ask you to refer to Exhibit 36
19 and part of that Exhibit are nurses notes?

20 Mr. Galmore: I would object, Your Honor, this
21 line of inquiry has already been covered by a previous
22 witness.

23 Ms. Grabert-Lowenstein: Join the objection.

24 Ms. Cote: That's correct, Your Honor.

25 The Court: Understand, understand, I think I

Dr. Cacace - Redirect Examination by Ms. Cote

383

1 know where she's going and it was raised on cross so I'm
2 going to allow it.

3 Ms. Grabert-Lowenstein: Thank you.

4 Mr. Galmore: Yes, sir.

5 Ms. Cote: (Continuing)

6 Q And that's page one of four at the bottom?

7 A I'm sorry, I'm so clumsy with these notes
8 here.

9 Q Take your time.

10 A Okay, one of four, yeah, got it.

11 Q Do you see any notation regarding bruising
12 under the heading assessment?

13 A Yes, I do, yes, in fact I now, I'm just
14 human, I am not God, I have great faith in Him, but I will
15 say to you I stand corrected in that, and Tina does this
16 often and as, as well as many of the, the nurses, we work
17 as a team, and they point things out to us, and whether
18 this makes me look like a real fool or not I recall now
19 Tina pointing out to me that the child had bruises on the
20 right hand, right thigh, and left thigh, bruises on the
21 shin bilaterally, scratches on the belly. Tina is
22 obsessive compulsive even more than I and sometimes some of
23 the doctors are annoyed with her but I love her and she
24 corrected me that time and I in the malay did not support
25 the documentation but actually recall the conversation with

Ms. Burke - Direct Examination by Ms. Lively

384

1 her.

2 Ms. Cote: Yes, sir, thank you. I have no
3 further questions.

4 Mr. Galmore: Nothing further, Your Honor.

5 Ms. Grabert-Lowenstein: Nothing further, Your
6 Honor.

7 The Court: Very well.

8 Ms. Cote: Your Honor, we would ask that Dr.
9 Cacace be excused.

10 The Court: Any further need for Dr. Cacace?

11 Mr. Galmore: No, sir.

12 Ms. Grabert-Lowenstein: No, Your Honor.

13 The Court: You're excused, Doctor, and you're
14 released from your subpoena, thank you for coming.

15 A Thank you.

16 Madam Court Reporter: I'll take those.

17 A Yes, ma'am.

18 Ms. Lively: The State would call Pamela Burke
19 to the stand.

20 Pamela Burke

21 being first duly sworn, testified as follows:

22 Madam Clerk: Please state your full name and
23 spell your last name for the Court?

24 The Witness: Pamela Burke, b-u-r-k-e.

25 Direct Examination

Dr. Roberts - Direct Examination by Ms. Lively

401

1 The Court: She's there.

2 Ms. Lively: Okay.

3 The Court: Let's just have her sworn.

4 Ms. Lively: Yes, sir.

5 (Whereupon, the jury returns to the courtroom at
6 11:00 a.m.)

7 Dr. Donna Ray Roberts

8 being first duly sworn, testified as follows:

9 Madam Clerk: Please state your full name and
10 spell your last name for the Court?

11 The Witness: My full name is Donna Ray Roberts,
12 my last name is spelled r-o-b-e-r-t-s.

13 Direct Examination

14 By Ms. Lively:

15 Q Dr. Roberts, where are you currently
16 employed?

17 A The Medical University of South Carolina.

18 Q And what are your duties at the, at MUSC?

19 A I'm an attending neuro-radiologist.

20 Q Okay, and what is a neuro-radiologist?

21 A What I do is look at images of the brain
22 and spine, both in adults and children.

23 Q Okay, and how long have you been a neuro-
24 radiologist?

25 A I've been a neuro-radiologist at MUSC for

Dr. Roberts - Direct Examination by Ms. Lively 402

1 five years and in fellowship for two years before that.

2 Q All right, and are you board certified?

3 A I am board certified and I also have an
4 additional certificate in neuro-radiology from the American
5 Board of Radiology.

6 Q All right, and, Dr. Roberts, will you give
7 the jury the benefit of your educational background?

8 A Yes, I went to Clemson University and
9 graduated in computer engineering. I went to the
10 University of Colorado and got a masters degree in
11 biomedical engineering. I went to medical school at the
12 Medical University of South Carolina. I then completed a
13 five-year residency in radiology at the Medical University.
14 I then did a two-year fellowship in neuro-radiology at the
15 University of California in San Francisco.

16 Q And once again how long have you actually
17 worked in the field of neuro-radiology?

18 A Between the fellowship and being an
19 attending seven years.

20 Q Okay, and in regards to neuro-radiology
21 have you ever testified in court?

22 A Yes, I have.

23 Q Okay, have you ever been qualified as an
24 expert before?

25 A Yes, I have.

Dr. Roberts - Direct Examination by Ms. Lively

403

1 Ms. Lively: Your Honor, at this time the State
2 would move to enter Dr. Donna Roberts as an expert in
3 neuro-radiology.

4 The Court: Mr. Galmore?

5 Ms. Grabert-Lowenstein: No objection, I'm
6 sorry, Your Honor, on behalf of Mr. Palmer.

7 Mr. Galmore: No objection, sir.

8 The Court: Very well, she's so admitted.

9 Ms. Lively: Thank you.

10 Q (Continuing) Now, Dr. Roberts, did you have
11 an opportunity to become involved in a case of a young
12 seventeen-month-old toddler by the name of Minor
13 ?

14 A Yes, I did.

15 Q Okay, please tell the jury how you became
16 involved in this particular case?

17 A You asked me to review some images, some
18 C.T. scans of the brain.

19 Q Okay, and what information did you have
20 prior to contact by me as to what had happened to this
21 child?

22 A I had no information before you contacted
23 me.

24 Q Okay, and were you there whenever the
25 images were done for this child on July the 15th, 2008?

Dr. Roberts - Direct Examination by Ms. Lively

404

1 A No, I was not.

2 Q Okay, all right, so when you came in to
3 review this case were you seeing everything for the first
4 time?

5 A Yes.

6 Q Okay, now what information was provided to
7 you for you to render an opinion?

8 A I was given the C.T. scan of the brain
9 performed at Conway Hospital on July 14th, 2008. I was
10 also given the C.T. scan of the brain performed at the
11 Medical University on July 15th, 2008. I've also reviewed
12 additional records such as the autopsy report. I've seen
13 some pediatrician visit clinic notes and I saw the EMS
14 report.

15 Q Okay, and based on all the information that
16 you had do you believe you've got a full picture in order
17 to provide or render an opinion for this jury here today?

18 A Yes, I do.

19 Q Okay, and in preparation for your testimony
20 here today in order to further aid the jury did you prepare
21 anything for them to actually view while you testify?

22 A Yes, a PowerPoint slide.

23 Q Okay, and what does this PowerPoint slide
24 show for the jury?

25 A It, it's images that were part of the C.T.

Dr. Roberts-- Direct Examination by Ms. Lively

405

1 scans performed both at the Medical University and at
2 Conway Hospital.

3 Q Okay, and why is the PowerPoint helpful for
4 you as a radiologist to be able to have the jury understand
5 what you're saying?

6 A As a radiologist my job is to interpret
7 images and so it would be useful for me to show the jury
8 what I'm seeing.

9 Q Okay, and is it difficult for a layperson
10 to look at an image like a Cat scan or MRI and know what it
11 is that they're looking at?

12 A It can be, yes.

13 Q Okay, all right, now the images that you're
14 going to provide to us those images were done by whom?

15 A One of the C.T. scans was performed at
16 Conway Hospital and the other one was performed at the
17 Medical University.

18 Q Okay, now, Dr. Roberts, after you looked at
19 all of this information have you consulted with any of the
20 other people who had contact with Minor while he
21 was actually being cared for at MUSC?

22 A I have spoken with Dr. Schandl and Dr.
23 Abel.

24 Q And who's Dr. Schandl?

25 A She's the pathologist.

Dr. Roberts - Direct Examination by Ms. Lively

406

1 Q She performed the autopsy?

2 A Yes.

3 Q And who is Dr. Abel?

4 A She is the forensic pediatrician.

5 Q Okay, all right, and so after you received
6 all of this information and reviewed the, the images before
7 we get to the PowerPoint what, what injuries did you
8 actually see on this child?

9 A The injuries that I saw on the C.T. scans
10 were blood around the brain. I saw severe swelling of the
11 brain. I saw a loss of the gray-white differentiation
12 which indicates to me dead brain tissue, and I saw severe
13 fractures.

14 Q Are you aware in, in any of the subjective
15 history of this child whenever you're looking at these
16 scans, would that matter, like stories as to possible
17 mechanisms of the injuries?

18 A My findings and interpretation are based
19 solely on the images.

20 Q Okay, so your observation is objective?

21 A Yes.

22 Q Okay, okay?

23 A Excuse me.

24 Q Sure, now, Dr. Roberts ---

25 The Court: Bobby, could you help Dr. Roberts

Dr. Roberts - Direct Examination by Ms. Lively

407

1 with some water; you got it there, Doctor?

2 Ms. Lively: (Continuing)

3 Q Dr. Roberts ---

4 The Court: Do you need the screen down?

5 Ms. Lively: Yes, sir, Your Honor.

6 The Court: Ladies and gentlemen of the jury,
7 we're going to try to operate this PowerPoint with the
8 lights no dimmer than they are now so that you can see the
9 witness. If you have difficulty seeing it or if there's a
10 glare or whatever would you, please, raise your hand and
11 let me know, okay. Can everyone see that fairly clearly?
12 If Ms. Lively will stay out of the way you can, okay, very
13 well.

14 Ms. Lively: Yes, sir, thank you.

15 (Whereupon, Dr. Roberts' PowerPoint presentation
16 is played for the jury.)

17 Ms. Lively: (Continuing)

18 Q Now, Dr. Roberts, you told us that you
19 reviewed the images for Minor will you, please,
20 tell us what is portrayed in this particular image that
21 we're seeing right here?

22 A Yes, these are pictures from the C.T. scan
23 that was performed at MUSC on July 15th, 2008, and this is
24 a 3-D reconstruction of the bones of the skull of Minor

25 In this picture you see here this big bone in the

Dr. Roberts - Direct Examination by Ms. Lively

408

1 front is the frontal bone; these are the eye sockets, and
2 this is the opening for the nose and this line right here
3 that goes from side to side is called the coronal suture
4 and sutures are the places where the bones of the skull
5 come together; and in newborns they're open but as the
6 child gets older they start to fuse together to the solid
7 skull of a normal older child or an adult; and in the case
8 of Minor because of his age they were not
9 completely fused, however, on the C.T. scans -- if you'll
10 scroll it a little bit, please -- as I scroll around to the
11 side of the head --

12 Q Is that it?

13 A One more, please, however, his sutures are
14 not fused but they were separated unnormally widened and
15 that indicated separation of the bones of the skull, the
16 frontal bone from the two bones on the side of the head
17 called the parietal bones.

18 Q Dr. Roberts, let me stop you right there,
19 what can cause the separation of the suture in the skull?

20 A What can cause it is a traumatic force or
21 else swelling of the brain.

22 Q All right, thank you, all right, and then
23 you've noted the fractures here. Will you explain what,
24 what type of fractures we're seeing here?

25 A Right, so this again here is the coronal

1 suture and then this bone on the side of the head, the left
2 side of his head, is called the parietal bone and this line
3 here is abnormal. This is a fracture, and if you scroll
4 some more for me, please, as we scroll around, if you could
5 continue to scroll, you can see that the fracture line
6 extends to the back of the head and it separates this
7 parietal bone into multiple pieces.

8 Okay, could you scroll some more, please? As we
9 get around to the back of the head these are also sutures
10 but again where the sutures here come together they're
11 slightly separated.

12 Q And in the images that you actually saw
13 before you made this reconstruction what are those
14 fractures called; what is the technical term for them this
15 side of the head?

16 A The technical term for it is comminuted
17 fracture.

18 Q Okay, and a comminuted fracture just tell
19 the jury what a comminuted fracture is?

20 A It just means that the bone is separated
21 into multiple pieces.

22 Q Okay, and what type of trauma would need to
23 or force would need to be inflicted on a person in order
24 for a comminuted fracture to take place?

25 A It would take severe traumatic force to

Dr. Roberts - Direct Examination by Ms. Lively

410

1 create these type of fractures.

2 Q Okay, thank you, if you'll continue.

3 What's the next thing we're looking at?

4 A If you could scroll some more for me,
5 please? As we scroll around to the right side of the head
6 this is right parietal bone -- and if you'll continue to
7 scroll -- and again we see multiple lines going through the
8 right parietal bone which are fractures separating the
9 right parietal bone into multiple pieces.

10 Q And, and once again in regards to these
11 fractures we're seeing on this side of his, his skull would
12 that also require tremendous amount of force?

13 A Yes, it would -- continue to scroll, please
14 -- and again on the right side this is the coronal suture
15 again and you can see separation of the frontal bone from
16 the parietal bone. Can you just scroll?

17 Q And once again these are scans from where?

18 A These scans are from MUSC.

19 Q Okay, now what are we seeing here, Dr.
20 Roberts?

21 A So what we're seeing here are pictures from
22 the C.T. scan that was obtained on Minor at Conway
23 Hospital on July 14th of 2008.

24 Q And before we get into some of the other
25 pictures, how important was it for you to have the scans of

Dr. Roberts - Direct Examination by Ms. Lively 411

1 the patient that were taken immediately upon entry of the
2 E.R.?

3 A It was very important because I was able to
4 see the state of his brain at the time or very close to the
5 time of injury.

6 Q Okay, and, and I know you're going to talk
7 about this, but what was the state of his brain that you
8 observed in those C.T. scans from Conway E.R.

9 A I think the most concerning thing for me
10 was that there was loss of distinction between the white
11 matter that's in the middle part of the brain and the gray
12 matter or the cortex on the outside of the brain.

13 Q Okay, and as a neuro-radiologist and within
14 a reasonable degree of medical certainty was this a
15 critical and grave condition for this child?

16 A It was a condition that I would expect no
17 meaningful recovery.

18 Q Thank you. I'm go to go ahead then.
19 Please explain to us some of the other images that you've
20 provided for the jury?

21 A Okay, this is a side view of the head which
22 was part of that C.T. scan, and I don't know if you can see
23 with the lighting in here, but the fractures can again be
24 seen through the parietal bones, the bones on the side of
25 the head, and the next set of pictures from the C.T. scan

Dr. Roberts - Direct Examination by Ms. Lively

412

1 that I'm going to show you are images that start at the top
2 of the head and extend down to the bottom of the head so
3 we're just going to kind of scroll from the top of the head
4 down to the bottom of the head, and I've also included a
5 C.T. scan of a normal seventeen-month-old child just to use
6 as a comparison and that's on the left side and this is the
7 scan of Minor on the right side.

8 Q Give me just a minute, let me see if I can
9 mess with the brightness on this just a second?

10 A Candice, I think it might be okay when we
11 scroll further down.

12 Q Okay, I'll just leave it alone then, thank
13 you, Dr. Roberts. All right, continue to explain what it
14 is that we're seeing.

15 A Okay, if you could scroll some down for me,
16 please, a little bit more, please, okay. So we've started
17 at the top and now this is still pretty close to the top
18 and this is a normal for comparison. On this side you can
19 see, and we'll be able to see a little bit better as we
20 scroll down, but there are areas here that are very bright
21 on the scan and you can see it a little bit more on this
22 side than which is the left side than you can see it on the
23 right side and those bright areas represent fresh blood and
24 that's because fresh blood on a C.T. scan is white so, and
25 if you could scroll down. As, as we scroll down you can

Dr. Roberts - Direct Examination by Ms. Lively

413

1 continue to see more fresh blood going around the brain.

2 Q Dr. Roberts, let me ask you real quick just
3 to kind of put it in layman's terms, in the normal for
4 comparison brain what are those squiggly looking lines that
5 we're seeing; is that what you're talking about the
6 differentiation of gray-white matter?

7 A It is, and if we could scroll down I
8 actually have, I show that indicate a little bit better.
9 These are, these areas again are indicating the fresh blood
10 around the brain. If you could scroll ---

11 Q I'm sorry, what I was going to ask you is
12 that can you give us your opinion as a neuro-radiologist
13 within a reasonable degree of medical certainty as to
14 whether or not there was any old injury or old blood on his
15 brain?

16 A I wouldn't be able to tell that.

17 Q Okay, all right. So based upon the images
18 that you're looking at right now what did it appear, was it
19 an acute injury meaning a recent injury or an old injury?

20 A This is an acute injury, a recent injury.

21 Q Thank you, okay, if you'll continue,
22 please?

23 A If you could scroll down, continue to
24 scroll down, please, we're again just seeing the blood
25 around the brain. Continue to scroll down, please, okay,

Dr. Roberts - Direct Examination by Ms. Lively

414

1 and so I'm not sure it's projecting very well, but in this
2 normal brain here you can see an area that's dark in the
3 center of the brain and that's called the white matter and
4 then outside of that there's an area that's just slightly
5 brighter and that's called the gray matter or cortex.
6 That's the part of our brain that let's us think, let's us
7 feel, let's us talk, see, move, and basically the part of
8 our brain that makes us human and that's the gray matter,
9 and you can see the difference between the white matter and
10 the gray matter in the normal brain. I've kind of got it
11 indicated by a squiggly yellow line, however, in the case
12 of Minor brain I do, I do not see that
13 differentiation. You can't see a distinction between the
14 gray matter and the white matter. There's, there's that
15 loss of distinction and that to me indicates dead brain
16 tissue and it's a very ominous sign, we call it the big
17 bright brain sign and to me it indicates no chance of
18 meaningful recovery.

19 Q Okay, and once again when was the, what's
20 the date of this particular C.T. scan?

21 A July 14th, 2008.

22 Q And the information you had was this the
23 first scan that was done of Minor

24 A Yes. If you could continue to scroll down,
25 please. On this next slide I'm indicating severe brain

Dr. Roberts - Direct Examination by Ms. Lively

415

1 swelling and basically if you look at the normal brain you
2 can see that the brain doesn't go, the white part out here
3 is the skull and the brain doesn't go all the way out to
4 the skull. There are infoldings of the brain that you can
5 see but in the case of Minor you cannot see that
6 because the brain is so swollen that it extends all the way
7 out to the skull and that indicates severe brain swelling.

8 Q And when a patient has severe brain
9 swelling like that are they, in your experience are they
10 able to walk, eat, breathe, function?

11 A The findings on the C.T. scan would
12 indicate to me that the patient would not be able to walk,
13 eat, function normally.

14 Q All right, thank you, continue?

15 A If you could scroll please, just continue
16 to scroll, again this bright area is blood around the
17 brain, so continue to scroll down, again blood around the
18 brain, and if you could just continue to scroll on down to
19 the bottom, this is basically showing that there's blood
20 around the entire brain.

21 The Court: Do you need the lights back up?

22 Ms. Lively: Yes, sir, Your Honor, please.

23 The Court: Mr. Ropp?

24 Ms. Lively: (Continuing)

25 Q Now, Dr. Roberts, were, have you ever

Dr. Roberts - Direct Examination by Ms. Lively

416

1 worked in a hospital where you dealt with pediatric
2 patients?

3 A Yes.

4 Q Okay, and where was that?

5 A I deal with pediatrics patients at the
6 Medical University of South Carolina and I've also served
7 as an attending neuro-radiologist at St. Jude Childrens
8 Hospital.

9 Q Okay, and will you, please, tell the jury
10 typically in a small child at Minor age what type of
11 fractures, if any, would you expect to see from a fall or
12 bumping of the head?

13 A Well that would depend on the type of fall,
14 if it was a fall from a two or three story window then I
15 would expect to see the type of fractures that I see on the
16 scan of Minor s. If it was a fall from standing I
17 wouldn't expect to see a fracture at all.

18 Q Okay, to give you a hypothetical if a child
19 were to be knocked down by a large dog or pet could that
20 cause the kind of complex fractures we see in Minor

21 ?

22 A A fall from standing I would not expect to
23 see a fracture.

24 Q Well, Dr. Roberts, in your experience would
25 you expect to see this type of a fracture if the child were

1 to fall out of a stroller?

2 A No, I would not.

3 Q Okay, and why is that?

4 A Because these type of fractures indicate to
5 me that it required severe force to create them.

6 Q And you've mentioned, well let me ask you
7 this, when you've seen a patient with these type of complex
8 and severe fractures what is the normal history that would
9 you get in your experience?

10 A The most common indication and where I've
11 seen these type of fractures is in a patient following a
12 motor vehicle accident.

13 Q And you'd already testified regarding the
14 gravity of what you saw from Conway E.R., in your opinion
15 as a neuro-radiologist did he have any chance of recovery
16 from those injuries?

17 A In my opinion he would not have a chance
18 for meaningful recovery.

19 Q Now, Dr. Roberts, one of the things in
20 radiology that you do, well let me ask you, is one of the
21 things you do as a radiologist is to try and determine the
22 timing of fractures and injuries to a particular patient?

23 A Looking at the images I can have an
24 indication of the timing.

25 Q Okay, and, and how can you do that, what do

Dr. Roberts - Direct Examination by Ms. Lively 418

1 you look for in regards to radiological exams to, to be
2 able to try and tell whether it's a fresh injury, old
3 injury, healing injury, that type of thing?

4 A I can look at the, the, the, the, what the
5 blood looks like, that gives me an idea of if it's a new or
6 old injury. I can look at the state of the brain and
7 determine if it's a new or old injury and I can look at the
8 fractures and see if there's any evidence of healing.

9 Q And let's talk about the blood. I think
10 you've already testified that within a reasonable degree of
11 medical certainty can you tell this jury whether or not the
12 blood was acute or old?

13 A I can say there's acute blood there; I
14 can't say if there's old blood there or not but there is
15 definitely acute blood there.

16 Q Definitely acute recent blood?

17 A Yes.

18 Q Okay, now let me ask you in regards to the
19 fractures that you saw on the C.T. scan, was there any
20 indication of healing on those fractures?

21 A I saw no indication of healing.

22 Q And in regards to the status of the brain
23 or the appearance of the brain that you saw from July 14th
24 from Conway E.R., based upon the state of the brain that
25 you saw would a person who had this kind of injury be able

Dr. Roberts - Direct Examination by Ms. Lively

419

1 to function or would they have been immediately
2 symptomatic?

3 A A person with this type of injury would be
4 immediately severely symptomatic.

5 Q Okay, and will you, please, tell the jury
6 what type of immediate symptoms you would expect to see
7 based upon your experience as a neuro-radiologist?

8 A The type of symptoms I would expect to see
9 is an alteration or loss of consciousness, alteration in
10 breathing, likely seizures, a child would not be able to
11 walk, move, play with toys, eat.

12 Q Would it be possible for their, for the
13 child or patient to foam at the mouth?

14 A Yes.

15 Q What type of seizures would you expect to
16 visually see of that particular patient? Okay, well let me
17 ask you, what type of body movement could you expect to see
18 from a child suffering seizures from a traumatic brain
19 injury?

20 A Well I would say that from the state of the
21 brain I would not see purposeful body movements.

22 Q Okay, and I know in your job as a neuro-
23 radiologist you're very confined in regards to the
24 objectiveness of your opinion; would that be a fair
25 statement?

Dr. Roberts - Direct Examination by Ms. Lively

420

1 A Yes.

2 Q Okay, but I, I do need to ask you whether
3 or not you can tell us if it would be reasonable under the
4 circumstances to expect this child could have been injured
5 a day before he showed up at the E.R.?

6 A I don't, in, in my opinion a child with
7 this type of brain injury cannot be functioning normally
8 for any period of time.

9 Q And functioning normally once again was
10 that what you were testifying earlier eating, moving,
11 playing?

12 A Exactly, yes.

13 Q If I provided you with history that he had
14 eaten that day and was up that day and then became
15 symptomatic around 4:00 would that sound reasonable?

16 A I would not ---

17 Ms. Grabert-Lowenstein: I'm going to object
18 that there's facts that aren't in evidence in that
19 hypothetical.

20 Ms. Lively: It's just a hypothetical, Your
21 Honor:

22 The Court: I understand, I'm going to allow it.

23 Ms. Lively: Thank you.

24 Q (Continuing) All right, if I provided you
25 with a history that the child had eaten that day earlier in

Dr. Roberts - Direct Examination by Ms. Lively

421

1 the day and had been up that day and then became
2 symptomatic around 4:00 would that seem reasonable?

3 A It would not seem reasonable to me that a
4 child could eat and be up after suffering this type of
5 trauma.

6 Q Okay, so when trauma was inflicted is it
7 your opinion within a reasonable degree of medical
8 certainty that he would have been unconscious, seizing, and
9 critical?

10 A He would have been acutely symptomatic.

11 Q Okay, acutely means immediately?

12 A Immediately, yes.

13 Q Thank you. What do fractures indicate to
14 you in regards to a mechanism of injury; does it have to
15 be, tell me if you know?

16 A I can't tell the mechanism of injury. I
17 can just say that it was some type of severe force.

18 Q Okay, all right, would it indicate that the
19 brain, I mean the skull, had actually come into contact
20 with an object; can you say that?

21 A Yes.

22 Q Okay, and in regards to that with the brain
23 coming into contact with the object, can you tell us or do
24 you feel comfortable telling us in your expertise why there
25 might not be any type of outside indication of impact?

Dr. Roberts - Direct Examination by Ms. Lively

422

1 A Sometimes particularly if the force is a
2 blunt force on a wide surface there cannot be, there can be
3 times when there is not external evidence of injury.

4 Q Okay, and what about the particulars of a
5 child's skull, how absorbent is that skull to force?

6 A A child's skull is more compliant than in
7 an adult skull.

8 Q Okay, so would it be, in your experience
9 would it be unusual for there to be no outside indication
10 of an actual traumatic force on the scalp of a child with
11 having these type of fractures?

12 A No.

13 Q No, okay, and once again why is that?

14 A Because at times if a surface, for example,
15 is a large surface and it's a blunt force it can be the
16 potential that there would not be external injury.

17 Q Okay, would the skull absorb that force?

18 A Yes.

19 Q However, what do the fractures indicate?

20 A That even though the skull was compliant
21 the force had to be very severe in order to, to cause it to
22 break into multiple pieces.

23 Q And this force based upon what you saw with
24 Aydain was it on both sides of his head or could you give
25 us that opinion?

1 A There were fractures on both sides of the
2 head but I can't give an opinion as to what caused them.

3 Q Okay, can you give us your opinion within a
4 reasonable degree of medical certainty as to whether or not
5 you believe the fractures and the subdural hematoma, which
6 is the bleeding on the brain, would have occurred at the
7 same time?

8 A Yes, they both seem to be at the same age.

9 Q Okay, so they're both the same age in your
10 opinion?

11 A Yes.

12 Q Can you tell us or think of any naturally
13 occurring condition that could result in what we saw Minor
14 suffering from?

15 A No, I cannot.

16 Q Would it be possible in your opinion for
17 the child to have inflicted these injuries on himself?

18 A No.

19 Q When you're presented with a child who
20 doesn't have a history of a motor vehicle accident or
21 falling from a two story building or some other traumatic
22 event what conclusion do you normally come to in your
23 opinion as an expert?

24 A In my opinion that there was some type of
25 severe force that caused this whether it be a motor vehicle

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 424

1 accident, dropped from a two story building, or
2 intentionally applied.

3 Q Okay, but you just don't know; is that
4 correct?

5 A Right.

6 Q Okay --

7 Ms. Lively: One moment, Your Honor?

8 The Court: Certainly.

9 Q (Continuing) And one just to clarify, Dr.
10 Roberts, if you don't mind, do you remember talking about
11 the sutures of a child ^{Minor} age, correct?

12 A Yes.

13 Q All right, now in the images that you
14 showed us there was quite a bit of separation, we discussed
15 that, correct?

16 A Right.

17 Q Now when you see that in a child his age is
18 there any type of normal diagnosis that you expect to see
19 something like that happen with a child since they're not,
20 it's not fused bone yet?

21 A If the brain were to swell for whatever
22 cause that could cause the sutures to separate.

23 Q Okay, but when you're seeing the fractures
24 along with the brain swelling is that a normal occurrence
25 for a child this age for their sutures to be so separated

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 425

1 with all the injury that you saw with him?

2 A To me it just indicates the sutures are
3 separated, could either be due to the force itself that
4 separated them or due to the brain swelling that I also see
5 on the images.

6 Q Okay, but ---

7 A Or both.

8 Q Okay, or both, so it's all inclusive, the
9 force, the fractures, the swelling, all of it could
10 contribute to sutures separating?

11 A Yes.

12 Ms. Lively: Thank you so much, Dr. Roberts,
13 please answer any questions the defense may have.

14 The Court: Ms. Grabert-Lowenstein?

15 Ms. Grabert-Lowenstein: Thank you, Your Honor.

16 Cross Examination

17 By Ms. Grabert-Lowenstein:

18 Q Dr. Roberts, you mentioned that one of the
19 examples where you've seen these types of injuries is
20 children in car accidents and there's a period of time from
21 the time of the accident till they get to the E.R.; would
22 that be an accurate statement?

23 A Yes.

24 Q Okay, and is that when you would first have
25 knowledge of their symptoms?

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 426

1 A Yes.

2 Q Okay, what's the average amount of time
3 that that takes, you know, in terms of transport or when
4 you would have seen those children?

5 A I can give, I cannot give an accurate
6 answer to that question, but I would think that it would
7 happen rather quickly.

8 Q When you say quickly could it be fifteen
9 minutes to a half an hour or to an hour?

10 A I would assume so.

11 Q Okay, and so it would be reasonable to
12 think that if a child was transported by emergency medical
13 personnel at six and was breathing on their own did show
14 other symptoms but that there may have been some period of
15 time before that that the injury occurred? If the injury
16 didn't occur like within fifteen minutes or something like
17 that because they're breathing on their on; would that be
18 accurate?

19 A I'm not sure I understand the question.

20 Q Okay, counsel asked you about 4:00, my
21 question to you is that if the patient is breathing, the
22 child is breathing and breathing on their own at say 6:00
23 then there, there had to have been some period of time
24 before that that injury occurred before those symptoms
25 showed up? Could there have been a period of time say a

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 427

1 half an hour, forty minutes?

2 A Yeah, I think I can't answer, I can't give
3 you an exact time of when, when a patient nba, would stop
4 breathing on their own, you're using that breathing on
5 their own.

6 Q Would you say that within an hour would be
7 a limit to where these injuries could have happened, that
8 they could have happened within that time?

9 A To me these injuries appear to be acute in
10 such that the patient would be acutely symptomatic. I
11 can't give you an exact minute or time period but acutely
12 symptomatic.

13 Q If there was evidence that the child was
14 checked on at about 4:30 and they were sleeping fine then
15 you, if, if the injuries had happened prior to that would
16 you expect symptoms to be seen?

17 A Yes, I would.

18 Q You wouldn't expect the child to just be in
19 there normal so if that's what reported then they wouldn't
20 be normal, the injuries occurred some time after that?

21 A Well if the child was functioning normally
22 I would have expected that the injury occurred after that.

23 Q And functioning normally could mean
24 sleeping normally? I realize it's difficult but is in
25 essence what you're saying is that when you do have a child

Dr. Roberts - Cross Exam. by Ms. Grabert-Lowenstein 428

1 that is functioning normally those injuries had to happen
2 some time after they were functioning normally?

3 A Yes, I can say that.

4 Q In your estimation can you give us a time
5 frame that these had to happen during?

6 A I can't give an exact time frame.

7 Q We know they didn't happen the day before?

8 A Yes.

9 Q And likely not say twelve hours before?

10 A If I'm given the history that the child has
11 been eating, moving then I would not expect that they had
12 happened before that.

13 Q So if they had eaten breakfast, had eaten
14 lunch, or put down for a nap, you wouldn't expect that if
15 they had been injured prior to, to that time?

16 A Yes.

17 Q You've already covered this somewhat but
18 can you tell us anything about the mechanism for the
19 injury?

20 A I can't tell the exact mechanism from the
21 images but it would had to have been some type of severe
22 force.

23 Q Okay, could that be like somebody coming up
24 and hitting the child on both sides out of frustration?

25 A If it was a severe force.

Dr. Roberts - Cross Examination by Mr. Galtore

429

1 Q And obviously you can't tell us who, you're
2 not, you're not here to answer that part of the equation,
3 are you, Doctor?

4 A No, I'm not.

5 Q Okay --

6 Ms. Grabert-Lowenstein: And if I could have
7 just one moment but I don't believe that I'm going to have
8 any other questions.

9 No further questions.

10 The Court: Mr. Galtore?

11 Mr. Galtore: Thank you, sir.

12 Cross Examination

13 By Mr. Galtore:

14 Q Good morning, Dr. Roberts.

15 A Good morning.

16 Q Is it correct to say that you were brought
17 onto the case as a consultant?

18 A As an expert witness.

19 Q As an expert witness, yes, ma'am, you never
20 actually treated Minor

21 A No, I did not.

22 Q Okay, but you reviewed the C.T. scans both
23 from Conway Hospital and from MUSC and you reviewed his
24 medical file from Conway Hospital as well as the EMS report
25 and the medical files from MUSC; is that correct?

Dr. Roberts - Cross Examination by Mr. Galmore

430

1 A I did not review the complete file, just
2 some files, I mean some notes, but not the complete file.

3 Q Yes, ma'am, let me ask you about the suture
4 separation. Were the sutures separated by the force or by
5 the swelling?

6 A I wouldn't be able to tell.

7 Q Okay, there was swelling of the brain in
8 this case?

9 A Yes, there was.

10 Q Was there a difference in the amount of
11 swelling from the C.T. scans done at Conway Hospital and
12 the C.T. scan done at MUSC?

13 A There was about the same amount of
14 swelling.

15 Q So there was no increase in swelling
16 overnight or anything like that?

17 A No.

18 Q Can you give us any information about the
19 rate of swelling in this case, how quickly the brain would
20 have swollen?

21 A No.

22 Q I guess I'm trying to figure out is it
23 possible for the swelling on the brain to, well it's
24 possible for it to cause a suture separation; is that
25 correct?

1 A Yes.

2 Q Is it possible for the swelling on the
3 brain to exacerbate the fractures?

4 A The swelling would not cause the fractures.

5 Q No, I did not say cause, said exacerbate?

6 A I'm not sure what you mean by exacerbate.

7 Q Okay, if there was a small fracture and
8 there was swelling could the swelling result in increasing
9 the size of the fracture?

10 A I would not expect it to extend the
11 fracture.

12 Q Okay, but it could cause the suture
13 separation?

14 A Yes.

15 Q Were there any injuries to Minor neck?

16 A I did not have images of the neck.

17 Q Okay, you can't answer that question?

18 A I cannot.

19 Q Could you tell us if Minor hit something
20 or had been hit by something?

21 A I couldn't tell.

22 Q Looking at these, at these fractures you're
23 not able to say if perhaps he was impacted into a wall or
24 table or something or if an object hit him such as a two by
25 four?

Dr. Roberts - Cross Examination by Mr. Galtore

432

1 A No, I can't.

2 Q You indicated that there was a loss of
3 gray-white differential; is that correct?

4 A Yes.

5 Q Are you able to give the jury a time of
6 injury based on the amount of gray-white differential that
7 you were able to see?

8 A What I can say is that I would not expect a
9 child with this loss of gray-white differentiation to
10 function normally.

11 Q Can you give us any information about the
12 rate of loss of gray-white differential?

13 A On the first C.T. scan that was provided to
14 me from Conway Hospital there was complete loss of gray-
15 white differentiation throughout the upper part of the
16 brain.

17 Q Well I guess the question is how long does
18 it take to reach a point of complete loss?

19 A It can happen, it can happen very quickly;
20 the brain only needs to go a few minutes without oxygen or
21 blood.

22 Q So just looking at the gray-white
23 differential are you able to tell us when at a specific
24 time when these injuries were inflicted?

25 A I can't give a specific time.

1 Q Can you give us a general estimate?

2 A I would not expect the child to be
3 functioning normally with loss of gray-white
4 differentiation.

5 Q Well looking at the injuries, the
6 fractures, I think you said that Minor would have been
7 immediately symptomatic; is that correct?

8 A Yes.

9 Q Based on looking at the fractures are you
10 able to give us an estimate of when these injuries would
11 have occurred?

12 A I can't tell at what time the injuries
13 would have occurred.

14 Q Okay, with the injuries that he received
15 what type of symptoms would he have?

16 A I would expect a child to have some type of
17 altered or loss of consciousness, shallow breathing, not
18 functioning normally, not eating, not playing with their
19 toys, not moving.

20 Q Is it possible that the child might appear
21 to be asleep?

22 A I guess I would need to know if the child
23 was unconscious or asleep.

24 Q Well if the child were unconscious is there
25 anything that a person could, could know by looking at the

Dr. Roberts - Cross Examination by Mr. Galmore

434

1 child to tell whether that child was symptomatic or
2 unconscious or asleep?

3 A I think a pediatrician would be able to
4 answer that better.

5 Q Okay, can you tell us how many impacts to
6 the skull took place in this case?

7 A I can't.

8 Q When you looked at the C.T. scans were you
9 able to see any evidence of any old fractures?

10 A I didn't see any evidence of old fractures.

11 Q Could this have been a case where there was
12 perhaps a series of smaller injuries that led to these
13 fractures?

14 A To me it looked like that there was such
15 severe force by the, the, the fact that the fractures were
16 comminuted that it would cause so much injury to the brain
17 that the patient would be acutely symptomatic.

18 Q An acutely means what for the jury again?

19 A Immediate.

20 Q In your medical opinion would it be
21 possible that these injuries would have been inflicted
22 perhaps three days before this child reported to the
23 hospital?

24 A No.

25 Q Would it be possible that these injuries

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 435

1 were inflicted two days before the child reported to the
2 hospital?

3 A No.

4 Q It's your, would it be, is it possible that
5 these injuries were inflicted some time during the day that
6 this child reported to the hospital?

7 A Yes.

8 Q Okay. let me put it in context, I'm not
9 trying to confuse you. If we had testimony that EMS was
10 contacted at 6 p.m. on Monday is it your testimony that
11 these injuries would have had to have occurred some time on
12 Monday?

13 A Yes.

14 Q Could the fractures to the head have been
15 caused by shaking the baby?

16 A No.

17 Q Can you tell us if the fractures to the, to
18 the skull are intentional or accidental?

19 A I can't tell.

20 Q Did the police ask you to go to the home to
21 see if there was any object or surface that could have
22 caused these injuries?

23 A No.

24 Q Did the Solicitor ask you to go to the home
25 to see if there was an object or surface that could have

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 436

1 caused these injuries?

2 A No.

3 Q Did anybody bring you any object to ask you
4 is this object consistent with something that would have
5 caused these injuries?

6 A No.

7 Q So you weren't presented with a two by four
8 and asked is this what did it?

9 A No.

10 Q And you cannot tell us who inflicted these
11 injuries?

12 A No.

13 Mr. Galmore: Thank you very much, Dr. Roberts.

14 The Court: Ms. Lively?

15 Ms. Lively: I wasn't going to redirect unless
16 Ms. Grabert-Lowenstein had questions.

17 The Court: Okay.

18 Ms. Grabert-Lowenstein: I have some cross based
19 on Mr. Galmore's, just briefly.

20 Recross Examination

21 By Ms. Grabert-Lowenstein:

22 Q Doctor, what time was the C.T. scan taken
23 at Conway Medical Center?

24 A I don't recall the time.

25 Q Okay, in terms of if it could have been

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 437

1 caused by the shaking, if that shaking was violent and
2 threw the child into something or where the child was hit
3 into an object could it have caused those injuries?

4 A There had to have been some type of impact.

5 Q And, and that shaking could have caused
6 that?

7 A The impact.

8 Q You can't tell us what initial symptoms
9 would have been shown because you weren't there when he
10 became symptomatic? You can't tell us like what what
11 series of symptoms happened?

12 A I was not there when he was symptomatic.

13 Q Okay, if a child was breathing, sleeping
14 normally, and had functioned normally prior to 4:30 p.m.
15 would it be your testimony that those injuries had to
16 happen some time between then and when he became
17 symptomatic at 6?

18 A My testimony is that the child would have,
19 the forces were so severe that the child would have been
20 acutely or immediately symptomatic.

21 Q You're not saying that they had to have it
22 just absolutely immediately but that it would have been
23 very soon after the injury?

24 A Yes.

25 Q Okay, possible that say half an hour, forty

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 438

1 minutes could have passed?

2 A I can't give an exact time.

3 Ms. Grabert-Lowenstein: Thank you.

4 The Court: Ms. Lively?

5 Ms. Lively: Yes, Your Honor, we've already
6 published the actual PowerPoint to the jury, however, I'd
7 like to have this marked and put in as State's Exhibit
8 Number 38?

9 The Court: What do you have there?

10 Ms. Lively: It's just the print out of the
11 PowerPoint, Your Honor.

12 The Court: All right.

13 Ms. Lively: And like I said the defense was
14 provided prior to ---

15 Mr. Galmore: No objection.

16 Ms. Grabert-Lowenstein: I don't then have an
17 objection. I'd just like to see it again.

18 The Court: All right, without objection. Do
19 you propose to submit that as one exhibit?

20 Ms. Lively: Yes, sir, I think it's easier to do
21 that.

22 The Court: Are they numbered by any chance?

23 Ms. Lively: I'm sorry?

24 The Court: Are they numbered by any chance?

25 Ms. Lively: No, sir, they are not, they're

Dr. Roberts - Recross Ex. by Ms. Grabert-Lowenstein 439

1 paper clipped together but we can get a large stapler and
2 put them together for the benefit of the evidence.

3 The Court: How would you like them, Ms. Babb?

4 Madam Court Reporter: Stapled together.

5 The Court: All right, we can have that done
6 during the next break.

7 Ms. Lively: Okay, thank you, Your Honor.

8 Madam Court Reporter: It's Exhibit 56, Your
9 Honor.

10 The Court: Number 56.

11 Ms. Lively: 56, thank you, Your Honor.

12 (Whereupon, State's Exhibit Number 56 marked and
13 entered into evidence.)

14 Ms. Lively: That was all I have for Dr.
15 Roberts, Your Honor, if she may be excused from her
16 subpoena.

17 The Court: Any objection.

18 Mr. Galmore: No, sir.

19 The Court: Any objection?

20 Ms. Grabert-Lowenstein: No, Your Honor.

21 The Court: Dr. Roberts, thank you, you're
22 excused and released from your subpoena.

23 Ms. Lively: The State is going to call Dr.
24 Cynthia Schandl next, Your Honor.

25 Ms. Grabert-Lowenstein: Your Honor, if we could

Dr. Schandl - Direct Examination by Ms. Lively 457

1 objections to Ms. Graham telling the jury since they're in
2 their chambers that they're excused for lunch until quarter
3 of two?

4 Ms. Lively: That was going to be my question,
5 so you're not going to bring them back out?

6 The Court: Do you have any problems with that,
7 Ms. Grabert-Lowenstein?

8 Ms. Grabert-Lowenstein: No, Your Honor.

9 The Court: For the Deputy just tell them, that
10 saves us from bringing them in.

11 Ms. Lively: That's fine.

12 The Court: Okay, we'll do that, we're at ease.

13 Ms. Lively: Thank you.

14 (Whereupon, Court was recessed for lunch and the
15 following takes place on the record after the lunch
16 recess.)

17 The Court: Bring the jury in.

18 (Whereupon, State's Exhibit Number 62 marked for
19 identification.)

20 (Whereupon, the jury returns to the courtroom at
21 1:42 p.m.)

22 The Court: All right, if you would swear
23 Dr. Schandl.

24 Dr. Cynthia Anna Schandl

25 being first duly sworn, testified as follows:

Dr. Schandl - Direct Examination by Ms. Lively

458

1 Madam Clerk: Please state your full name and
2 spell your last name for the Court?

3 The Witness: Cynthia Anna Schandl, s-c-h-a-n-d-
4 l

5 Direct Examination

6 By Ms. Lively:

7 Q Dr. Schandl, where are you currently
8 employed?

9 A I'm employed at the Medical University of
10 South Carolina in Charleston, South Carolina, in the
11 Department of Pathology and Laboratory Medicine, the
12 Medical and Forensic Autopsy Section.

13 Q Okay, and, and what is your formal title?

14 A I am a forensic pathologist and associate
15 professor.

16 Q And how long have you been a forensic
17 pathologist, Dr. Schandl?

18 A I've been employed on faculty as a forensic
19 pathologist since 2004.

20 Q How many autopsies have you performed since
21 2004?

22 A Over two thousand.

23 Q And, please, describe to the jury exactly
24 what pathology means?

25 A Pathology the word means the study of death

Dr. Schandl - Direct Examination by Ms. Lively

459

1 so ology for the study of and path as of death of disease
2 and in that death and disease processes includes injuries,
3 includes natural disease processes. It's a whole range of
4 things, so in order to become a pathologist one first
5 trains to become a doctor so you go through medical school.
6 After you've done your bachelor's degree you go through
7 medical school to train to be a doctor, and then after
8 getting your medical degree you go on to train in the field
9 of pathology; so again the study of death and disease,
10 which I did my training at the Medical University of South
11 Carolina and that training, the further training after
12 medical school is called a residency;, and I trained in
13 anatomic pathology and clinical pathology which are two
14 different main branches of pathology. There's a lot of
15 overlap but basically covering the range again of. of
16 disease processes. and also during my training I did an
17 additional year which is called a fellowship year in
18 specifically the field of forensic pathology; and following
19 all of those training years there are board examinations by
20 the American Board of Pathology in those areas of pathology
21 that one is trained; so I have taken and passed board
22 examinations through that body, the American Board of
23 Pathology in anatomic pathology, clinical pathology, and
24 forensic pathology.

25 Q Okay, so you're board certified in all

Dr. Schandl - Direct Examination by Ms. Lively

460

1 three of those areas of pathology?

2 A Yes, ma'am.

3 Q Okay, and is that certification still
4 current and you're still actively practicing as a
5 pathologist; is that correct?

6 A Yes, ma'am.

7 Q All right, now, Dr. Schandl, all of those
8 things that you were just now discussing basically
9 describes your educational background as well as your hands
10 on experience in pathology; is that correct?

11 A Yes.

12 Ms. Lively: Okay, Your Honor, at this time the
13 State would offer Dr. Cynthia Schandl as a, an expert in
14 forensic pathology?

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: No opposition, Your
17 Honor, on behalf of Mr. Palmer.

18 Mr. Galmore: No objection, Your Honor.

19 The Court: All right, very well, she's so
20 admitted.

21 Ms. Lively: Thank you, Your Honor, thank you.

22 Q (Continuing) Now, Dr. Schandl, were you
23 working at, in your field of forensic pathology in the, at
24 MUSC on or about July of 2008?

25 A Yes, ma'am.

Dr. Schandl - Direct Examination by Ms. Lively

461

1 Q Okay, and did you have an opportunity to
2 come into contact with, well let me back up, how do you get
3 a particular case assigned to you; how does that happen?

4 A So there are several forensic pathologists
5 that work in the section. We take turns basically what we
6 call on service, so whoever is on service for that day or
7 that week will be contacted by the different county
8 coroner, so since the State of South Carolina has a coroner
9 system in most areas it is the county coroner who
10 determines in their locality, their place, which
11 individuals and which cases need to come to us for an
12 autopsy; so the cases are referred to us from counties all
13 over South Carolina. The coroner will generally call us
14 and let us know what information they have about the case
15 and let us know that, that we're going to have a case, so
16 that's how cases are referred to us and as far as who's on
17 service that day that just depends on, on our schedule
18 which is revolving.

19 Q Okay, and were you contacted regarding the
20 need for an autopsy to be performed on a child back in July
21 of 2008?

22 A Yes, ma'am.

23 Q And who was it that actually contacted you,
24 which coroner; do you recall?

25 A I have the paper work in front of me, I can

1 certainly check.

2 Q Okay?

3 A This case was referred to us by Mr. Robert
4 Edge, the Horry County Coroner.

5 Q Now when, when the coroner contacts you
6 what type of information is normally relayed regarding the
7 need for the autopsy?

8 A Well some of the information surrounding
9 the circumstances, whatever might be known at the time.
10 It's always an ongoing investigation when we're getting the
11 case, or not always but often; so we have what is called an
12 information form that sort of directs us to take down the
13 information that we're going to need including their name,
14 the date of birth, the date and time of death, any
15 circumstances again that they're aware of surrounding the
16 death; so those are the kinds of information that we, we
17 get from the coroner, when they know that information.

18 Q Okay, and did some of that, you say
19 sometimes it's during an ongoing investigation, is
20 sometimes the information provided to you given to you in a
21 very general form as in we believe this or so far we know
22 this?

23 A Yes, ma'am.

24 Q Okay, all right, and forensic pathology
25 what is your goal in regards to going in during the

Dr. Schandl - Direct Examination by Ms. Lively

463

1 autopsy, what kind conclusion are you attempting to reach?

2 A Well it's going to depend on the type of
3 case, but overall in every case our goal is to determine
4 the cause of death, so did the person die because they had
5 a heart attack or did the person die because they were
6 shot, that's cause of death, and in addition to that we
7 also try to determine a manner of death.

8 The manner of death is one of five things in our
9 state. It can be homicide, suicide, accident,
10 undetermined, or natural, so those are our five choices; so
11 that's the other main component that we are tasked with.
12 Depending upon the type of case we're also trying to
13 document injuries, document disease processes. In some
14 cases we're trying to determine identification, so it
15 really depends upon the case. But, but the, the bottom
16 line is that we're trying to determine the cause of death
17 and the manner of death.

18 Q Okay, and do you, how objective is your
19 perspective on how you look at the body as it's presented
20 to you?

21 A Well the objectivity comes from the fact
22 that basically we're dealing with, with factual information
23 so regardless of what we are told on the front end of the
24 case I, I have to come to the case just to look at the case
25 itself. So the way that, that an autopsy flows after the

Dr. Schandl - Direct Examination by Ms. Lively

464

1 case is referred to us the, the body is brought up to the
2 autopsy suite, initial photographs are taken how that body
3 comes to us, so whether they're dressed or undressed we, we
4 capture that.

5 At that point the clothing, if there is clothing,
6 will come off, and then we capture what's called the
7 external examination where we're looking at identifying
8 features, how tall the person is, how much they weigh, do
9 they have scars, do they have tatoos, what's the color of
10 their hair, their eyes, those sorts of things, are there
11 any signs of injury to the outside of the body, to the
12 skin, to anything else that we can see externally; so
13 that's another part of the autopsy and we are, yes, we're
14 also documenting that photographically and on diagrams so
15 as I go it's sort of a layer by layer approach.

16 Q Okay, and was this approach used in regards
17 to the autopsy of Minor

18 A Yes, ma'am.

19 Q Okay, and. Dr. Schandl, will you, please,
20 tell the jury what day you actually performed the autopsy
21 on this child?

22 A Yes, the autopsy was performed on July 19th
23 of 2008.

24 Q And other than the information that, that
25 the Coroner Robert Edge provided to you what other records,

Dr. Schandl - Direct Examination by Ms. Lively

465

1 if any, did you review prior to beginning the autopsy?

2 A I can't tell you exactly what I reviewed
3 prior to the autopsy because I don't remember, but the
4 child was, was an MUSC patient before he died and I do have
5 access to those records, at least what is available at that
6 time. They have most of them electronically so I presume
7 that I was able to review those records prior to, to
8 looking at the body.

9 Q Okay, now you, you just basically started
10 to describe to the jury where you start in regards to an
11 autopsy, will you, please, describe to the jury in regards
12 to the specifics with Minor did you begin with an
13 external observation of any particular things that you
14 might notice or injuries that you might document in this
15 particular case?

16 A Sure, so in looking at, at this child,
17 Minor is how I have his name in my file, he
18 had several bruises to different parts of the body so those
19 are things again that I'm seeing outside; so I, I make a
20 document of those before we do touch the body in any other
21 way, so there were several bruises to the shoulder, to the
22 legs. There was nothing, no cuts to the body. There were
23 no, there was no broken skin what we might call
24 lacerations; so like for example if you hit a cantaloupe
25 with a, with a hammer you're going to break the skin of

Dr. Schandl - Direct Examination by Ms. Lively

466

1 that cantaloupe, there was, there were no findings like
2 that on this child on the external examination, so just,
3 just some bruising here and there.

4 Q And, and, and in regards to the bruising
5 how was that documented for a record in this particular
6 case?

7 A In my cases I like to document in, in at
8 least two different ways and in this one as well by
9 photographs; so taking photographs of, of the child,
10 overall photographs as well as some more close up
11 photographs of bruises and other things that I'm seeing,
12 and in addition to photographs I also draw them on what we
13 call a body diagram which is just a little tracing in this
14 case of a small child and then I put a little circle here
15 for what might be a bruise and I'll mark it and measure it
16 and put the measurements down, so a diagram and pictures.

17 Q Okay, and did you, once again you did that
18 in this particular case as well?

19 A Yes.

20 Ms. Lively: And may I approach, Your Honor?

21 The Court: Yes.

22 Ms. Lively: (Continuing)

23 Q I'm going to show you what's been marked
24 for I.D. State's Exhibit Number 62 --

25 Ms. Lively: Let me show it to defense counsel

Dr. Schandl - Direct Examination by Ms. Lively

467

1 first.

2 Q (Continuing) All right, I'm going to hand
3 you now what's State's I.D. Number 62 and ask you if you
4 recognize those two pages?

5 A The, yes, I do.

6 Q Okay, is that, are those two pages the
7 diagrams that you documented certain findings you had on
8 the decedent Minor

9 A Yes, they're photocopies of those.

10 Q Okay --

11 Ms. Lively: Your Honor, at this time the State
12 would move to introduce 62 into evidence?

13 Ms. Grabert-Lowenstein: No objection on behalf
14 of Mr. Palmer.

15 Mr. Galmore: No objection, Your Honor.

16 The Court: Without objection.

17 Ms. Lively: Okay, thank you, Your Honor.

18 (Whereupon, State's Exhibit Number 62 entered
19 into evidence.)

20 Ms. Lively: (Continuing)

21 Q Now, Dr. Schandl, just, I won't get into
22 your findings on the second page yet, but just to go ahead
23 and state what is the second page documenting?

24 A The second page that I have here is, shows
25 the surface of the brain from different perspectives.

1 Q Okay, and once again that's where you
2 documented your findings related to that particular organ;
3 is that right?

4 A That's correct.

5 Q Okay, now you already testified that on the
6 outside you looked for things that you're documenting such
7 as injury or lacerations and that type of thing, correct?

8 A Yes.

9 Q And after you've done all of that on the
10 external examination of the body then tell the jury what
11 your next step is?

12 A So after the external examination we go to
13 what people commonly consider the autopsy which is the
14 internal examination where we go beneath the skin and look
15 at the organs and tissues underneath; so during this
16 examination we're going to look at, in this case it's a
17 little bit different because he was an organ donor so some
18 of his organs went to other people, but generally speaking
19 we're going to look at each organ looking for any kind of
20 injury, any kind of disease process both with our eyes so
21 looking at the organ itself; and then cutting it to look at
22 it more closely and then also taking sections, what we call
23 sections, to look at under the microscope so that we can
24 also see if there are any disease processes that we're not
25 seeing with our eyes that would be smaller than we can see

Dr. Schandl - Direct Examination by Ms. Lively

469

1 with our eyes so looking in the microscope, so all those
2 different components we do with each organ system and that
3 would include the brain and in people who haven't donated
4 organs the heart, the lungs, and all the organs.

5 Q Does the ---

6 Ms. Grabert-Lowenstein: Your Honor, I'm sorry,
7 I don't mean to interrupt, counsel, but could we approach,
8 we need to put something on the record.

9 (Whereupon, a bench conference was held off the
10 record in the presence of the jury, but out of the hearing
11 of the jury and the court reporter.)

12 The Court: Take the jury out.

13 (Whereupon, the jury exits the court room at 1:55
14 p.m.)

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: Your Honor, I just feel
17 like we need to put on the record the juror who is our
18 foreman was dozing at the very least and during probably
19 the entirety of Dr. Schandl's testimony. I'm just
20 concerned we need to put that on the record to see if
21 there's an issue or if he's made aware of it then, you
22 know, if he can stay awake, but I felt like I needed to, to
23 put that on the record and have it documented.

24 The Court: What do you suggest?

25 Ms. Grabert-Lowenstein: I'm sorry?

1 The Court: Are you asking for any type of
2 relief?

3 Ms. Grabert-Lowenstein: Your Honor, if, what I
4 would ask if we, if we note it again that we ask him if
5 there's a medical issue or something. I can understand
6 it's after lunch and all of that but we need a jury that is
7 listening to all the testimony and I didn't want to get
8 like, you know, thirty minutes into it and have him still
9 be dozing, that's our concern so I think what, if I could
10 ask the Court to watch it and if we need to make him aware
11 of it then take action at that point would be my
12 suggestion.

13 The Court: My concern is bringing it to his
14 attention now and that points a finger back at you.

15 Ms. Grabert-Lowenstein: And I, well and, Your
16 Honor, I don't, I don't want that done. I need to protect
17 my client, that's my I'm ---

18 The Court: That's what I'm doing.

19 Ms. Grabert-Lowenstein: Right.

20 The Court: And we have just started this
21 testimony, in fact we haven't even gotten into any
22 findings. I didn't notice if the juror was or not, I was
23 paying attention to Dr. Schandl. He was in my general
24 peripheral view but I did not notice. I usually watch
25 jurors for that purpose. Let me hear from the State.

Dr. Schandl - Direct Examination by Ms. Lively

471

1 Ms. Cote: Your Honor, I actually noticed that
2 he was dozing as well. It caught my attention because I
3 thought he was taking notes because he appeared to be
4 looking down and so I began watching him. His head was
5 down for a good portion of Dr. Schandl's testimony. He
6 appeared to be waking himself up but he was the only one.
7 All the other jurors appeared to be fully paying attention
8 to her testimony but he was definitely in and out as far
9 as that's how it appeared to me, but I hadn't noticed it
10 before this witness.

11 Ms. Grabert-Lowenstein: I hadn't noticed it
12 either. If we could just watch it, Your Honor, and then
13 maybe bring it to his attention.

14 The Court: Well perhaps going in and out will
15 refresh the jury, we will keep an eye towards that. If it
16 develops I will, I would not have any choice but to remove
17 him; is that what you want me to do at this juncture?

18 Ms. Grabert-Lowenstein: It's not what I want
19 you to do at this juncture, Your Honor. I just want us to
20 watch it and I appreciate you letting it, you know, letting
21 us put it on the record bringing it to your attention and
22 watching it. I think that would be sufficient.

23 The Court: All right, we will, I'm just a
24 little fearful that if we come in and question the juror
25 about it we may be pointing a finger at you.

Dr. Schandl - Direct Examination by Ms. Lively

472

1 Ms. Grabert-Lowenstein: I agree, Your Honor.

2 The Court: So perhaps we'll see if this issue
3 resolves itself, okay.

4 Ms. Grabert-Lowenstein: Thank you, Your Honor.

5 The Court: You think that's the best way to
6 handle it, Ms. --

7 Ms. Grabert-Lowenstein: I think it is, Your
8 Honor, I really do.

9 The Court: Mr. Galmore?

10 Mr. Galmore: Yes, sir, Your Honor, I think it's
11 probably best just to monitor the jurors in general to see
12 if it happens again.

13 The Court: All right, and, and I'm, the reason
14 I'm willing to do that is because Dr. Schandl is just
15 getting cranked up. She's basically given her, her
16 qualifications and is developing her methodology but she
17 hasn't gotten into any of her findings and let's, let's
18 just see what, what happens, okay.

19 Ms. Lively: Yes, sir.

20 (Whereupon, the jury returns to the courtroom at
21 2:04 p.m.)

22 The Court: I'm sorry, we had to take a little
23 quick break. I would admonish you all that this is very
24 important testimony, as is every person who testifies in
25 this court, please try to remain alert and attentive to

Dr. Schandl - Direct Examination by Ms. Lively

473

1 this witness and all other witnesses.

2 Ms. Lively: (Continuing)

3 Q Thank you, Your Honor. Now once I think we
4 had talked about the external information that you
5 documented regarding Minor and then you were moving
6 on into the internal organs. What I was about to ask you
7 was you mentioned that the child had been an organ donor,
8 does that in any way affect your ability to still do what's
9 required of you as a forensic pathologist?

10 A In this case, no, no, ma'am.

11 Q And why is that?

12 A Well in this case this child was in
13 hospital for a time before he died and in this case
14 injuries were documented clinically before he died and
15 again in this case it was very clear that injuries
16 clinically were only to the head and not to the rest of the
17 body.

18 In addition in all cases that come to us after
19 organ donation organs will not be taken if they have any
20 damage to them, so all of those things put together make me
21 very confident that this child having been an organ donor
22 was not in any way detrimental to my examination.

23 Q Okay, so tell the jury, please, where you
24 start in regards to the internal autopsy?

25 A Generally we start at the chest and then

Dr. Schandl - Direct Examination by Ms. Lively

474

1 the abdomen which is what we did in this case. Again since
2 this little boy was an organ donor some of the organs were,
3 were missing at the time of the autopsy, was able to
4 examine his lungs. I was able to examine his prostate and
5 his testes and his gastrointestinal tract, his thyroid, and
6 his brain. Those were the main organs that I was able to
7 look at.

8 Q And before we get to above his neck, okay,
9 before we get to the brain, will you, please, tell this
10 jury whether or not you had any findings regarding those
11 other body parts or internally that was abnormal or
12 concerning to you?

13 A There was, was no evidence of any, any
14 significant injury below the neck. The, when the, when I
15 weighed the lungs they seemed a little bit heavy and after
16 further analysis it did turn out that he had just a little
17 bit of an infection in his lungs, which I find not abnormal
18 at all, not abnormal whatsoever in an individual who is on
19 life support. An individual is on their back in a, in a
20 position that puts them at risk to get a pneumonia so I did
21 not find that abnormal; it's just another finding that I
22 had, but otherwise, no, ma'am.

23 Q Okay, and you're required to document all
24 your findings whether they're, you believe them to be
25 injury, disease, or an artifact that may be being kept

Dr. Schandl - Direct Examination by Ms. Lively

475

1 alive?

2 A Yes, yes, I consider that part of my job.

3 Q Okay, thank you, now, Dr. Schandl, moving
4 above now from the neck and above, please tell the jury how
5 handle that part of your examination of the, of the child's
6 head?

7 A So the first again is the external exam,
8 which we've already gone over, and I mentioned that I
9 didn't see anything on the surface of the scalp to lead me
10 to any sort of conclusions; so at that point we have to
11 look beneath the skin and in order to do that we have to
12 what we call reflect the scalp, which is the skin covering
13 the skull, reflect the scalp forward so that we can see the
14 bone underneath, and so that's what we did in this case and
15 what we do in every case that we're doing a complete
16 autopsy on when we're looking at the head and the brain, so
17 the first thing that we do is to then reflect the scalp.

18 We'll look at the scalp, the underside of the
19 scalp, as well as the surface of the skull for any
20 injuries. In this case there was very patchy light
21 bleeding around those structures covering the skull but
22 much more striking was the fact that there were fractures
23 to the skull and these fractures extended on both sides of
24 the head in this side of, this area of the skull on both
25 sides of the head which we call the parietal skull so the

1 left parietal skull and the right parietal skull.

2 In addition looking at the surface of the skull
3 so we have a little bit of bleeding, we have these
4 fractures. What we're also seeing is when a child is, is,
5 is as small as this one is the bones of the skull are not
6 used, so there's several different bones that make up your
7 skull, and as you get older the bones fuse together so it
8 becomes one bone, but anyone who's touched a baby's head
9 they know that they have soft spots and so those are
10 marking the places in between the bones of the skull so
11 babies and toddlers they have these various bones are still
12 separate; so the other thing that I saw when I was looking
13 at the surface of the skull was that the skull itself
14 appeared to be somewhat enlarged. If you think of a
15 balloon getting bigger enlarged in that way, so the skull
16 was enlarging in this way and those areas where those bones
17 go together were starting to separate, so this was telling
18 me at least superficially looking just again at the surface
19 of the skull, that I have blunt force trauma to both sides
20 of the head, cause I have fractures on both sides, and is
21 telling me that there has been some swelling of the brain
22 between the time of the injury and when I'm seeing the
23 child, so those are the things that I saw again looking
24 externally at the surface of the skull.

25 Q And in regards to externally you've done a

Dr. Schandl - Direct Examination by Ms. Lively

477

1 really good job describing it but is there, did you
2 document and do you have any pictures with you that would
3 help the jury to understand exactly what you're trying to
4 explain to them in regards to the way the skull looked to
5 you?

6 A Yes, just like every other part of the
7 autopsy I'll diagram the find, if there are any, findings
8 on, on the surface of the skull and the scalp, both by
9 diagram and by photography, so, so that, that was also done
10 in this case.

11 Q And would that assist you, Dr. Schandl?

12 A Yes, ma'am.

13 Ms. Lively: If I may approach, Your Honor?

14 The Court: Yes.

15 Ms. Lively: Your Honor, may I ask that the
16 witness be allowed to step down. I'll make sure she stands
17 in front of the microphone ---

18 The Court: Yes, please.

19 Ms. Lively: --- for the court reporter. Will
20 you step down, please, Dr. Schandl?

21 Q (Continuing) And I'm going to hand you
22 what's been marked and is in evidence as State's Exhibits
23 57, 58, and 59, and if you would, please, if you'll step
24 here to the microphone and I know this is, and they're in -
25 --

Dr. Schandl - Direct Examination by Ms. Lively

478

1 Mr. Galmore: Your Honor, for the record I want
2 to renew our previous objection.

3 The Court: Correct.

4 Ms. Grabert-Lowenstein: I'll join that for the
5 record.

6 The Court: Noted.

7 Ms. Lively: Thank you, Your Honor.

8 Q (Continuing) Now, Dr. Schandl, if you
9 would, please, publish the, or show to the jury, Number 57
10 and, and describe to the jury what it is reflected on that
11 particular photo? ' If you want me to hold the other two
12 while you do that I'll do that, that might help you?

13 A Okay, so what I, what I have is a black and
14 white photograph as opposed to a color photograph of the
15 right side of, of the child's head. Again we're looking at
16 the head, the surface of the skull, so the, the scalp has
17 been reflected and what you see in this picture is the
18 surface of the skull, and may I publish?

19 Q Yes, please.

20 A So, so this is again the right side of the
21 head on this side and this is the middle of the, of the
22 head. Here's the middle, this is the right side. These
23 lines here are the fracture on the right side. As you can
24 see there it is extending outward.

25 Q If you could back up just a tad?

Dr. Schandl - Direct Examination by Ms. Lively

479

1 A Sorry.

2 Q Some of the jurors on this side might have
3 a little bit of trouble seeing, okay?

4 A And if you like I can go over there and
5 then come back over here and we'll dance; so basically
6 we've got these lines which shouldn't be here. These are
7 the fracture ones and then these lines, these sort of
8 squiggly lines, these lines are the sutures that we were
9 talking about. Those are the lines that are supposed to be
10 there because they're marking between the different bones
11 of the skull, okay, so these are the fractures, that's the
12 trauma. These thingies here, these are not fractures, this
13 is just these suture lines, what they called the suture
14 lines between the different bones of the skull.

15 So this again the right side of the head these
16 lines show the fractures and then these one, there are not
17 fractures, these are what they call the suture lines
18 between the different bones of the skull.

19 The other thing that you can begin to appreciate,
20 and I think we have another picture a little bit better, is
21 as you can see there's a little bit of space going on
22 between these bones of the head, so that's the suture
23 lines, you're starting to see a little bit of that opening
24 of that little bit of space that I was describing earlier;
25 so again at the suture lines, particularly this one here,

Dr. Schandl - Direct Examination by Ms. Lively

480

1 you can start to see a little bit of opening there, a
2 little bit of stretching of that suture line between the
3 bones, but again those are not fractures. This is, this is
4 the fracture on the right.

5 Q And which one would you like to show next?
6 Okay, now she's showing Number 59 which is in evidence?

7 A This is another, it's a similar picture.
8 This one, however, is, is from a different angle where you
9 can see how this, the fracture, so this is the one we were
10 looking at on the right side, and this is the one on the
11 left side; so we have fractures running this way on the
12 left side, again parietal bone, parietal bone, left and
13 right fractures and this shows better those suture lines
14 that are meant to be there. Those are okay, and then again
15 these are the fractures.

16 So these are the ones we saw on the last picture
17 on the right side, these are the fractures on the right,
18 fractures on the left and then again the suture line which
19 are not fractures.

20 Q Thank you, Dr. Schandl, and then State's
21 Exhibit Number 58 which is this the other side of the
22 skull?

23 A That's correct, this is the other side of
24 the skull. So again a very similar picture but now we're
25 looking at the left side of the skull and you can

Dr. Schandl - Direct Examination by Ms. Lively

481

1 appreciate how this fracture goes this way and this way and
2 that way. You can get that idea that this suture line is
3 starting to open up a little where, you know, where the
4 bones are coming together and starting to separate a little
5 bit, which I believe is due to swelling of the brain as
6 it's taking up more space in the head, and again over on
7 the left side of the head, left parietal fracture, and then
8 you can again see the suture line where it's just a normal
9 suture except perhaps a little bit stretched as if from
10 swelling.

11 Q Thank you so much, you can have a seat, Dr.
12 Schandl.

13 Based on those photos and the documentation
14 that you made of those fractures are you able to tell us
15 within a reasonable degree of medical certainty if there
16 were one or more impact sites?

17 A There are always more possibility so I
18 cannot tell you with a reasonable degree of medical
19 certainty whether this was one really big hit or
20 compression or whether it was a hit on the left and a hit
21 on the right, both of them are certainly possible.

22 Q Okay, how about within a reasonable degree
23 of medical certainty can you tell us the type of force or
24 the level of force that it would take to inflict such an
25 injury or such injuries to the skull?

1 A No, not in like in pound, feet or something
2 like that, no, not really, I mean every child's skull is,
3 is different. They are more compressible than an adult
4 skull so then you may need more, more, more pressure than
5 you would otherwise. There are just way too many variables
6 to give you a number plus we have such a complex fracture
7 pattern that again we're not sure if is it two hits, one on
8 the left and one on the right or is it some kind of a
9 complex one hit thing that, you know, you can't quite get
10 your head around but it's possible that there was one big
11 hit that caused all those fractures, so, so, no, I can't
12 give you that information.

13 Q Okay, and that's fair, and one of the
14 things I was going to ask you in regards to you saying that
15 the, how the child's skull is different, would that help to
16 explain why there would not be any outside lacerations or
17 contusions because of the way that the child's skull
18 absorbs force?

19 A Yes, that, that's certainly one, one of the
20 reasons so if you hit something that's soft it's not going
21 to show as much trauma on the outside as if you hit
22 something that's very hard, and I think that's what she's
23 trying to get at. The, the other thing to consider is that
24 I don't know how large of a surface was, was involved in,
25 in the trauma or how small of a surface. If it's a larger

Dr. Schandl - Direct Examination by Ms. Lively

483

1 surface that, that impacted the head then that energy or
2 that power is spread out over more distance and so you're
3 less likely to show something on the skin, and that
4 combined with the fact that the child's skull is more
5 compressible than mine or yours and so we have a softer, a
6 softer thing that's being hit, possibly a larger area of
7 something that is hitting those two things together can
8 play a role in whether or not we actually see something on
9 the skin.

10 Q Okay, were the type of fractures that you
11 saw in ^{Minor} skull, and you've named it comminuted
12 fractures, is it different than a linear fracture or
13 something maybe just like one small fracture; how is that
14 different whenever you're making your findings?

15 A Well when, when you're looking at, at
16 fractures it really is what it looks like, so if you have
17 one small fracture that's linear it's much less likely that
18 the force that caused that is going to cause as much damage
19 to the brain. We're worried about the brain, not the skull
20 so much. The skull, you know, is there to protect the
21 brain, so if we have one little tiny linear skull fracture
22 we're less worried about the effect on the brain as if we
23 have multiple fractures in different areas of the head.
24 We're much more worried about, okay, well we have all these
25 fractures now we're worried something is going to happen to

1 the brain; and so that's really what the difference is, is
2 how much chance is there that that trauma to the skull,
3 which is where we're seeing all the trauma, is impacting
4 the health of the brain and that's really the question.

5 Q Okay, and so after taking all that into
6 consideration and in trying to come up with your finding,
7 excuse me, were you able to, to look at the skull and the
8 internal brain to determine whether the injuries occurred
9 at the same time or if there were any old injuries to the
10 head?

11 A To a degree, yes.

12 Q Okay, and can you tell it within a
13 reasonable degree of medical certainty?

14 A Yeah, well, well within a range of time,
15 yes.

16 Q Okay, and what would that opinion be
17 regarding the injury, the skull fractures and the swelling
18 and blood on the brain?

19 A It appears that all of that damage occurred
20 within a week. There are several things that are going on
21 that I'm looking at including how much bleeding is on the
22 brain? How much, is it stuck to the, to the side, what
23 does it look like under the microscope, is there any
24 healing of the bone? I mean, there are number of different
25 things that go into that opinion but and put them, putting

Dr. Schandl - Direct Examination by Ms. Lively

485

1 them all together it really looks like this injury took
2 place somewhere between three days and a week from when I
3 saw, when I saw him.

4 Q Okay, and let's be clear, what day did you
5 see him?

6 A I saw him on, on the 19th of July and what
7 I mean by when I saw him is at the time of his death and to
8 me that's the time after organ donation, so we have lots of
9 different times of death floating around. There's the time
10 of brain death but he was kept alive after that time, so
11 then we also have the time of organ procurement and that
12 is, is basically the time that I'm referring to as the time
13 that I see him, so his actual time of death when he no
14 longer has circulation, he no longer has oxygen to his
15 parts and all body activities cease. We can expect that as
16 long as he's kept alive on machines that there will be some
17 degree, perhaps not as rapid as somebody in full health,
18 but some degree of change, some degree of attempt to heal
19 as long as the person is kept alive; so that's sort of the
20 window that I have to look at is the actual time of death
21 when, when his body functions ceased, which is the time of
22 organ donation, for, for my, my estimations of when this
23 injury occurred.

24 Q Okay, and in all fairness is this one of
25 the things that you and I have gone back and forth about

1 regarding timing as well?

2 A It is.

3 Q Okay, and you actually have on the autopsy
4 report what is the official recorded time of death, date
5 and time?

6 A Yes, the official date and time of death is
7 July 16, 2008, at 3:25 p.m.

8 Q And do you have it documented in your
9 autopsy the date when his organs were procured?

10 A I do not believe that I have that date and
11 time in my report, however, it was on July 18th, some time
12 during the day of July 18th.

13 Q And that would have been the day when the
14 blood flow and circulation and everything and the oxygen
15 flow would have ceased?

16 A That's correct.

17 Q Okay, now, Dr. Schandl, in regards to the
18 findings that you have to come up with in your forensic
19 examination of the body were you able to come up with, and
20 I know you have and that's why I'm asking, within a
21 reasonable degree of medical certainty were you able to
22 provide us with an opinion as to the cause of death to

23 Minor

24 A Yes, ma'am.

25 Q And, please, tell the jury what your final

Dr. Schandl - Direct Examination by Ms. Lively

487

1 conclusion was in regards to the cause of his death?

2 A I will read it and then I'll explain what
3 it means. Subdural and subarachnoid hemorrhage with global
4 cerebral edema, due to inflicted blunt head trauma; so
5 subdural and subarachnoid hemorrhage, that's the bleeding
6 on the brain, different areas surrounding the brain.
7 Cerebral edema that's the swelling of the brain which can
8 in itself cause damage to the brain, as it swells it has
9 nowhere to go, and so blood can't get to it because the
10 vessels are squashed basically; so all those things are
11 going on, and due to inflicted blunt head trauma we know he
12 has fractures. We know he has blunt head trauma. I have
13 no history that he was run over by a wagon or fell off of a
14 horse or, you know, anything else to suggest that there was
15 something else going on, so this is inflicted blunt head
16 trauma from my point of view.

17 Q Is it the type of trauma that a child his
18 age can inflict upon himself?

19 A It's highly unlikely. We're talking about,
20 children get into precarious situations, don't get me
21 wrong, but this is not something that, you know, you fall
22 down from standing or, or you fall out of the, you fall
23 onto the road from the, from the car door or something like
24 that, this isn't an ordinary childhood accident.

25 Q And, Dr. Schandl, once you come up, once

Dr. Schandl - Direct Examination by Ms. Lively

488

1 you've been able to determine the cause of death are you
2 required as a pathologist to determine or make a finding as
3 to the manner of death?

4 A Yes.

5 Q And were you able to do that in this case
6 as well?

7 A Yes, ma'am.

8 Q And would you, please, tell the jury what
9 your final conclusion was in regards to the manner of death
10 for Minor

11 A The manner of death in this case is
12 homicide.

13 Q And, Dr. Schandl, when you were talking
14 about the cause of death you mentioned the subarachnoid
15 hemorrhaging and subdural hemorrhaging in the brain which
16 is the blood; is that correct?

17 A That is correct.

18 Q And, and I believe that you provided me as
19 well as the defense with one particular photo you felt was
20 important to be able to describe the amount of blood; is
21 that correct?

22 A Yes, ma'am.

23 Q And is that actually a picture that we've
24 looked at earlier today

25 A Yes, ma'am.

Dr. Schandl - Direct Examination by Ms. Lively

489

1 Q State's Exhibit Number 60, if you would,
2 please, Dr. Schandl, would you ---

3 The Court: Your objections previously made are
4 noted.

5 Ms. Grabert-Lowenstein: Thank you, Your Honor.

6 Ms. Lively: Thank you.

7 Q (Continuing) And, Dr. Schandl, that's
8 State's Exhibit Number 60 and I'll go ahead and for the
9 record, it is in color, but please explain why to the jury
10 you needed to provide that and what it shows?

11 A This is, is a color photograph and it
12 shows, so before we were looking at the surface of the
13 skull, this shows after I've removed the skull plate the
14 surface of the brain and the bleeding around the, around
15 the brain. I believe she asked me to, to tell you why I
16 request, would request it in color, essentially blood is
17 red and everybody can see where the blood is if it's in
18 color but that's really the long and the short of it.

19 Q All right, and, Dr. Schandl, was there, was
20 there a lot of blood in the brain?

21 A There was a sufficient amount to make me
22 very confident that, that there was a blunt trauma.

23 Q And once again if I may, I'll take that
24 from you, did this help you in making your conclusion
25 regarding the inflicted trauma to Minor

Dr. Schandl - Cross Ex. by Ms. Grabert-Lowenstein

490

1 A Yes, absolutely, so we were talking earlier
2 about fractures to the skull, again we're not worried so
3 much about the skull, what we're worried about is the
4 brain, so what we're worried about is things that happen
5 inside the skull; so just looking at fractures to the skull
6 is certainly one thing and it tells us that there was blunt
7 trauma and then that's a very important piece of the
8 puzzle, but until we see what's inside the skull such as
9 the bleeding then we're not really getting to the, the
10 matter which is his brain was sick because of the trauma.

11 Q And finally did you have any type of
12 findings in your, in your autopsy and your complete
13 investigation of his case that he had any type of genetic
14 disorders, or diseases or anything that could have caused
15 the type of injuries that you noted in your autopsy?

16 A No, ma'am.

17 Ms. Lively: Okay, thank you, answer any
18 questions the defense may have for you, Dr. Schandl.

19 A Yes, ma'am.

20 Cross Examination

21 By Ms. Grabert-Lowenstein:

22 Q Good afternoon, Dr. Schandl?

23 A Yes.

24 Q You didn't find any old injuries, let me
25 rephrase it, you didn't find any broken bones?

Dr. Schandl - Cross Ex. by Ms. Grabert-Lowenstein

491

1 A No, ma'am.

2 Q And there were no cuts?

3 A No, ma'am.

4 Q Okay, your job was to determine what caused
5 Minor to die?

6 A Yes, ma'am.

7 Q Okay, and would I be correct in saying you
8 didn't see Minor when he was alive?

9 A That is correct.

10 Q And you weren't his treating physician,
11 obviously?

12 A That is correct.

13 Q Okay, there isn't any way for you from your
14 examination to say how much pressure was applied?

15 A That is correct.

16 Q And you're saying basically that there's a
17 difference between the type of pressure if there were two
18 hits, one hit, and the type of surface?

19 A That's correct.

20 Q Okay, you aren't saying, are you, that it
21 would take somebody who weighed say two hundred pounds to
22 apply the pressure?

23 A I am not suggesting that in order that it
24 would take someone that was three hundred pounds or one
25 hundred pounds, no, ma'am.

1 Q I mean you're not, you can't tell us
2 anything about the size of the person or who it was who
3 inflicted the injuries?

4 A No, ma'am.

5 Q Okay, and the time frame that you gave us
6 that's when the date that you did the autopsy, correct?

7 A Well strictly speaking it's the day before
8 the autopsy so the date that the organs were procured which
9 was the 18th, I believe.

10 Q Okay, so your, your estimation as a
11 pathologist of the three days to a week was based on what
12 you saw on the 18th, not what was seen by anyone on the
13 14th?

14 A That is correct.

15 Ms. Grabert-Lowenstein: If I may have just a
16 moment, Your Honor, but I believe that's all.

17 No further questions, Your Honor.

18 The Court: Mr. Galmore?

19 Cross Examination

20 By Mr. Galmore:

21 Q Dr. Schandl, let me ask you about this time
22 frame again. I think your testimony was that the damage
23 was inflicted within three days to a week; is that correct?

24 A That's correct.

25 Q Okay, and when you say a week are you

Dr. Schandl - Cross Examination by Mr. Galmore

493

1 referring to seven days?

2 A Yes, sir.

3 Q Okay, now you're not saying that these are
4 fractures and injuries that were repeatedly done over a
5 seven day period, are you?

6 A No, sir.

7 Q Okay, are you able to give an opinion as to
8 whether these, these injuries occurred at a single event or
9 multiple events?

10 A I cannot tell you that for certain, no,
11 sir, I cannot tell you that for certain.

12 Q Okay, would it be possible for these
13 injuries to occur at different times?

14 A Within that, within that time frame, yes,
15 sir.

16 Q Within the three to seven day time frame?

17 A Yes, sir.

18 Q Okay, now you said that that time frame was
19 based on the time that the organs were procured; is that
20 correct?

21 A Yes, sir.

22 Q And that would have been the 18th?

23 A Yes, sir.

24 Q And you performed the autopsy on the 19th?

25 A Yes, sir.

1 Q Okay, so your time frame for this jury is
2 somewhere between the 11th and the 15th is when these
3 injuries had to have been inflicted?

4 A Yes, sir.

5 Q And we know ---

6 A It wasn't the 15th.

7 Q Right, we know he was in the hospital as of
8 the 14th?

9 A Yes, sir.

10 Q So somewhere between the 11th and the, and
11 the 14th when 911 was called?

12 A Yes, sir.

13 Q So that is seventy two hours?

14 A Yes, sir.

15 Q Okay, and I think you testified that you
16 can't give us any information regarding the amount of force
17 that was used to inflict these injuries?

18 A NO specific information, sir.

19 Q Can you tell us whether he was hit with
20 something or if he struck something, he impacted something
21 himself?

22 A I do not have any specific evidence to
23 determine that.

24 Q Okay, now as part of your duties in
25 performing autopsy you try to obtain case history on the

Dr. Schandl - Redirect Examination by Ms. Lively

495

1 patient; is that correct?

2 A Yes, sir.

3 Q And I think you testified on direct
4 examination that you had no history of the, the patient
5 being run over by a wagon?

6 A That is correct.

7 Q Okay, what case history information did you
8 receive in this case?

9 A That he had skull fractures and had been
10 flown from a local hospital to MUSC.

11 Q Did you receive information that the child
12 had been to a swimming pool?

13 A I did. I cannot tell you if I received
14 that information before my examination.

15 Q Okay, okay, did you receive information
16 that he was noted to be lethargic?

17 A Yes, at the same, the same juncture, yes.

18 Q And you said you can't tell us whether this
19 was a single event or a multiple event?

20 A That is correct, just within that bucket of
21 time.

22 Q So you don't know who inflicted these,
23 these wounds, these injuries?

24 A That's correct.

25 Q And you don't know how these injuries were

1 inflicted?

2 A That is correct.

3 Q Very briefly let me ask you about the
4 bruising that you noted on the body, did you note that some
5 or, some of all of his bruising may have been caused by
6 resuscitation efforts?

7 A There's certainly a possibility
8 resuscitation can cause bruising.

9 Mr. Galmore: Thank you very much, Dr. Schandl,
10 no further questions.

11 A Yes, sir.

12 The Court: Ms. Lively?

13 Ms. Lively: One question.

14 Redirect Examination

15 By Ms. Lively:

16 Q Did you have any information provided to
17 you whether the child ever underwent CPR?

18 A I honestly cannot remember.

19 Q Would that be important in regards to your
20 documentation of bruising to know if CPR had actually been
21 administered?

22 A Yes, ma'am.

23 Ms. Lively: Okay, thank you, that's all I have.

24 Ms. Grabert-Lowenstein: Nothing further, Your
25 Honor.

Dr. Schandl - Redirect Examination by Ms. Lively

497

1 The Court: Mr. Galmore?

2 Mr. Galmore: No, sir, nothing further.

3 The Court: All right, you may step down, Dr.

4 Schandl. Will there be any further need for Dr. Schandl?

5 Ms. Lively: No, Your Honor, may she be excused
6 from her subpoena?

7 Mr. Galmore: No objection.

8 Ms. Grabert-Lowenstein: No objection, Your
9 Honor.

10 The Court: Dr. Schandl, you're released from
11 your subpoena. thank you for coming.

12 Ms. Lively: Dr. Ann Abel.

13 The Court: All right, let's, that's going to
14 be another rather lengthy --

15 Ms. Lively: Yes, sir, Your Honor.

16 The Court: All right, let's let the witness
17 [sic] take a break. Would you take them back, Becky, and
18 may I see you, Mr. Ropp?

19 Ms. Lively: Thank you.

20 (Whereupon, the jury retired to the jury room at
21 2:36 p.m.)

22 The Court: All right, we'll be at ease for
23 about ten minutes.

24 Ms. Lively: Thank you, Your Honor.

25 (Whereupon, State's Exhibits 38 - 55 marked for

Dr. Schandl - Redirect Examination by Ms. Lively

498

1 identification and a recess was taken.)

2 The Court: One moment before we bring them in.

3 Yes, ma'am?

4 Ms. Lively: Your Honor ---

5 The Court: Please be seated, please be seated.

6 Ms. Lively: Just to avoid the back and forth of
7 the jury I just wanted to let Your Honor know the next
8 witness is going to be Dr. Ann Abel. She is the one who
9 actually worked at MUSC that took the photos of the
10 bruising of the child while in the hospital bed at MUSC and
11 she documented that. I've had these photos marked for I.D.
12 purposes ahead of time. These would be State's Exhibit 38
13 through 55 and the defense, of course, has had a copy of
14 these and I have Dr. Abel ready to proffer any testimony
15 necessary regarding this matter.

16 The Court: Ms. Grabert-Lowenstein, Mr. Galmore,
17 I assume you have seen these photographs?

18 Mr. Galmore: May I approach, Your Honor?

19 Ms. Grabert-Lowenstein: Your Honor, yes, we
20 have seen all of these.

21 The Court: Objections?

22 Mr. Galmore: Yes, Your Honor, I, I have an
23 objection to the introduction of these photographs. It's
24 my position that these photographs are highly prejudicial
25 in violation of Rule 403. While some photographs show what

Dr. Schandl - Redirect Examination by Ms. Lively

499

1 purport to be bruises we just had testimony that many of
2 these alleged bruises could have been caused by
3 resuscitation efforts.

4 We've already had testimony from the 911 workers
5 and from, that there was no bruising. We've had some
6 testimony from Conway Medical Center as well.

7 Your Honor, the problem is with these photographs
8 and again I ask you to put it in context, we've already had
9 photographs of Minor on a carousel, Minor at the pool,
10 Minor on the beach, now it's being contrasted against
11 Minor in a hospital bed with I.V.'s and intubation tubes
12 in them, and finally we've already had admitted into
13 evidence photographs of Minor skull, scalp reflected,
14 and his skull split open, so I really think that these
15 photographs are being purposely introduced to the jury to
16 try to gain a, a verdict based on sympathy and not based on
17 evidence.

18 The Court: Would you agree that these
19 photographs show bruising?

20 Mr. Galtmore: Yes, I do agree that the
21 photographs show something.

22 The Court: And have you not challenged that?

23 Mr. Galtmore: I submit that there has been
24 testimony about bruising, if there is bruising then the
25 testimony ---

Dr. Schandl - Redirect Examination by Ms. Lively

500

1 The Court: Haven't you challenged it?

2 Mr. Galtore: I'm sorry?

3 The Court: Haven't you challenged the fact?

4 Mr. Galtore: I have, yes, sir.

5 The Court: All right, sir, you know any other
6 evidence that would more clearly show that the bruising did
7 exist?

8 Mr. Galtore: I think the point is that the
9 bruising, that the pictures of these, of these alleged
10 bruises is cumulative since the testimony has already been
11 put out there.

12 The Court: But it's conflicting testimony.

13 Mr. Galtore: Should I not challenge them when
14 they're introduced?

15 The Court: I understand but isn't there
16 conflicting testimony, some said they didn't see the
17 bruises others said they did?

18 Mr. Galtore: Yes, sir.

19 The Court: All right, sir, Ms. Grabert-
20 Lowenstein?

21 Ms. Grabert-Lowenstein: Your Honor, my, my
22 concern is a little bit different in that I believe some of
23 those are probably duplicative and, therefore, we don't
24 need two pictures that show the same bruises, one may be
25 blown up. I would simply like to limit them just to the

Dr. Schandl - Redirect Examination by Ms. Lively

501

1 one that are absolutely necessary to aiding Dr. Abel.

2 You know that's a large number of them and I
3 don't think that probably all of them are necessary and if
4 we could just, I mean from my standpoint on behalf of Mr.
5 Palmer if we could just run through those, get a, and make
6 sure that they're not duplicative, and when they were
7 taken, I know Dr. Abel took them but like I said I believe
8 some of them are duplicative and I would just like to make
9 sure that those are not entered.

10 The Court: Which ones do you feel are
11 duplicative?

12 Ms. Grabert-Lowenstein: I, I believe, Your
13 Honor, that there's some that show the, like a purported
14 bruise close up.

15 The Court: And then a measurement.

16 Ms. Grabert-Lowenstein: Right, and there's ---

17 The Court: Well they show two different things,
18 do they not? One shows the location of the bruise; the
19 other shows the measurement of the bruise; isn't that what
20 it does?

21 Ms. Grabert-Lowenstein: I think the far away
22 picture and I believe they all have measurements can also
23 show that and that's, that's really my point. We don't
24 need duplicative pictures. A close up of a bruise is no
25 more frankly assisting than one that's further away that

Dr. Schandl - Redirect Examination by Ms. Lively

502

1 shows it's location. In fact I would argue that that's
2 more accurate because it shows closer the location and it's
3 hard to tell in the close ups which one is which, you know,
4 which part of the body is being photographed.

5 The Court: And aren't some of the bruises very
6 light or light colored bruising?

7 Ms. Grabert-Lowenstein: Some are, and there
8 probably are a couple of different colors in there but I'm
9 more concerned with the sheer number and the same pictures
10 of the same bruise.

11 The Court: If these are all of one bruise I
12 would agree with you but they seem to be many many
13 different locations and some are of the bruise itself taken
14 from a distance to give an idea of the location of the
15 bruise and then others of maybe the same bruise or appear
16 to be the same bruise with a measuring device to say how
17 big the bruises were. Let me hear from you, Ms. Lively,
18 are you going to do this witness?

19 Ms. Lively: Absolutely, Your Honor, and thank
20 you, the State would just first of all say that I took real
21 effort in pulling out the pictures that were duplicative.
22 The ones that show it maybe from a distance and then close
23 up are specifically because close up you don't know which
24 limb you're looking at. I tried to put them in order so
25 they would be understood by the jury and not cumulative.

Dr. Abel - Direct Examination by Ms. Lively

503

1 Dr. Abel clearly in her expertise, which she will be
2 testifying as a child abuse pediatric, she has to look at
3 those in order to indicate and give her opinion.

4 Also under State V. Martucci and State v. Holder,
5 Your Honor, clearly because the State has to show that what
6 happened to this child rose to the level of extreme
7 indifference to human life, Every single injury to that
8 child is crucial and Mr. Galtmore has brought up, you know,
9 he said that there's some who said that they didn't see any
10 bruising and there was Tina Millan who documented it in her
11 nurse's notes that there was bruising but we didn't have
12 pictures of that; so it's extremely important for the State
13 to be able to show that those bruises are, they were there,
14 an expert who does this for a living documenting it and we
15 have it now that we can show to the jury so --

16 The Court: I'm going to allow them.

17 Ms. Lively: Thank you.

18 The Court: Okay, all right, call your witness
19 and bring in the jury, please.

20 Ms. Lively: Dr. Ann Abel.

21 Madam Clerk: Do you want to swear her now or
22 wait for the jury?

23 The Court: Wait for the jury, she should be
24 sworn in the presence of the jury.

25 (Whereupon, the jury returns to the courtroom at

Dr. Abel - Direct Examination by Ms. Lively

504

1 3:00 p.m.)

2 The Court: All right?

3 Ms. Lively: Thank you, Your Honor, the State
4 once again calls Dr. Ann Abel to the stand.

5 Dr. Ann Abel

6 being first duly sworn, testified as follows:

7 Madam Clerk: Please state your full name and
8 spell your last name for the Court?

9 The Witness: My name is Dr. Ann Abel, my last
10 name is spelled a-b-e-l.

11 Direct Examination

12 By Ms. Lively:

13 Q Dr. Abel, where do you work?

14 A Medical University of South Carolina.

15 Q And how long have worked there?

16 A About five and a half years.

17 Q And what are your duties at the MUSC?

18 A I'm the director of the Violence

19 Intervention and Prevention Division in the pediatric
20 department.

21 Q Okay, and could you, please, give the jury
22 the benefit of your education and background?

23 A Okay, I have a bachelors degree in
24 chemistry and biology, a masters degree in physiology. I
25 did pediatric residency the first two years in Indianapolis

Dr. Abel - Direct Examination by Ms. Lively

505

1 and the last year in Columbia, South Carolina. I was in
2 practice in general pediatrics. I then did a fellowship in
3 child and adolescence psychiatry and for many years did a
4 practice of behavioral issues in children and development.
5 Then I, I was working in the field of child maltreatment
6 through the mental health aspect and then I started doing
7 the pediatric aspect and then I did a fellowship in
8 forensic pediatrics and then I worked full time at
9 Children's Hospital in Washington, D.C., Children's
10 National Medical Center as a director of their child abuse
11 program, and I returned to South Carolina and worked part
12 time, for a period of time due to my husband's health, and
13 then I took a job at Charleston in 2006 as the child abuse
14 pediatrician.

15 Q Okay, and are you board certified?

16 A Yes.

17 Q In what area?

18 A I'm board certified in general pediatrics
19 and I also am board certified in child abuse pediatrics
20 which is a new field.

21 Q Okay, and what does child abuse pediatrics
22 include?

23 A It's a field, it's a sub-speciality of
24 pediatrics. You have to be a board certified pediatrician
25 to be able to sit for the test. You have to be qualified

Dr. Abel - Direct Examination by Ms. Lively

506

1 to sit for the test and the field is the evaluation and
2 management of cases when someone is concerned of possible
3 abuse or neglect of a child or a teenager and so it's a
4 medical sub-speciality and it's largely outpatient work but
5 some of it is in patient consults.

6 Q Okay, and since this is something that you
7 become board certified in is it something that the, that is
8 recognized throughout the United States of America as a
9 qualified board certified specialty?

10 A Yes, this, this field is officially
11 approved by all the accrediting bodies and the first test
12 for people that were qualified to take the test was in 2009
13 and, yes, it's a recognized field.

14 Q All right --

15 Ms. Lively: Your Honor, at this time the State
16 would offer Dr. Ann Abel as an expert in pediatrics and
17 especially the sub-specialty of child abuse pediatrics.

18 Ms. Grabert-Lowenstein: No objection on behalf
19 of Mr. Palmer.

20 Mr. Galmore: Your Honor, I would object. She
21 has just testified that this is an entirely new field of
22 child pediatric, child abuse pediatrics since 2009. I
23 would ask the Court to inquire of whether or not she has
24 any, has ever testified in court as a child ---

25 The Court: I'll allow you to do that right now.

Dr. Abel - Direct Examination by Ms. Lively

507

1 Mr. Galmore: Yes, sir.

2 Voir Dire Examination

3 By Mr. Galmore:

4 Q Dr. Abel, have you ever testified in court
5 as a child abuse pediatric expert before?

6 A Yes.

7 Q Since 2009, right, because the field did
8 not exist beforehand; is that correct?

9 A The field existed, the sub-speciality test
10 hadn't been given yet, but I testified, I've been
11 testifying for many years as a child abuse pediatrician or
12 forensic pediatrician. My fellowship certificate says
13 forensic pediatrician.

14 Q So you are trained as a pediatrician,
15 that's correct?

16 A I am a board certified pediatrician and I'm
17 also board certified in child abuse pediatrics.

18 Mr. Galmore: No further questions on the topic,
19 Your Honor.

20 The Court: All right, she's admitted as an
21 expert.

22 Ms. Lively: Thank you, Your Honor.

23 Q (Continuing) Now -

24 The Court: In those fields.

25 Ms. Lively: Thank you, Your Honor,

Dr. Abel - Direct Examination by Ms. Lively

508

1 Q (Continuing) Dr. Abel, whenever, how do you
2 get involved in a particular case with a patient such as
3 Minor

4 A All right, your question I think refers to
5 like an in patient consult.

6 Q Correct?

7 A My team gets a call from a care giver at
8 the hospital such as a physician or a social worker. It
9 always has to have a physician's name attached and we're
10 being asked to consult to come and evaluate and to give our
11 information.

12 Q And who all is on your team?

13 A Well my division it has three doctors, two
14 nurse practitioners, one physician's assistant, and two
15 administrative assistants.

16 Q And so what part do each of these
17 individuals play in the process?

18 A At the current time only two of us are
19 doing, two physicians are doing inpatient consults. There
20 is one nurse practitioner that sometimes does it but she's
21 always accompanied by one of the physicians.

22 Q And whenever you're doing an assessment do
23 you consider things like child development, age, or all
24 those things included in your consultation?

25 A What happens in a consultation is that we

Dr. Abel - Direct Examination by Ms. Lively

509

1 find out why we're being asked to consult. We go to the
2 bedside; we examine the child. We talk to the care givers
3 that are there. We look at the medical records that are
4 available at the time. We look at all the x-ray images,
5 the blood test reports, We talk to the family about, we do
6 a total history and physical which we find out what, what
7 were the signs and symptoms or how did they come to
8 medical, how did they bring this child to medical
9 attention, past medical history as much as they can tell
10 us. Oftentimes we can later get more information from the
11 other doctors that were involved in the past.

12 We get a review of systems, like we go head to
13 toe, we talk about neurological, skin, breathing,
14 digestion, all of the bodily systems, we review that, has
15 the child ever had problem in this area, talk about the
16 child's development, what the child can do. We ask when
17 was the last the child last totally normal. We find about
18 any past testing that was done. We ask about family
19 history, if there are any family history of various kinds
20 of diseases that are occasionally associated with what
21 we're seeing in front of us.

22 Q That's quite an extensive list, Dr. Abel?

23 A Social history, yes, it is very extensive,
24 yes.

25 Q Okay, and is that a part of the speciality

Dr. Abel - Direct Examination by Ms. Lively

510

1 underneath pediatrics that you're referring to the child
2 abuse pediatrics?

3 A Yes, what I just described is a typical
4 evaluation that would be done in a case like this.

5 Q Okay, would it be fair to say you take in
6 the subjective information as well as the objective
7 documentation you're able to see?

8 A Right, we listen to what the family is
9 telling us and we record it, writing it down, and we get
10 all the objective or things we can see with our eyes and
11 the physical exam. We make pictures, if we can see any
12 lesions on the child's body we'll take a picture of it so
13 for further review.

14 Q And in regards to, to Minor on July
15 the 15th, 2008, did you make notes and take pictures in
16 regards to this particular problem?

17 A Yes.

18 Q Okay, well what date exactly were you
19 brought in as a consult on this particular patient?

20 A The 15th of July.

21 Q Okay, it was the 15th, all right?

22 A Yes.

23 Q And would you, please, tell the jury what
24 information you had prior to walking into that consult so
25 you'd know what to expect and what to be looking for?

Dr. Abel - Direct Examination by Ms. Lively

511

1 A I recall being told that the child had been
2 in an outlying emergency department, had been brought there
3 on an emergency basis, had skull fractures, had bleeding
4 within the skull, inside, and that the bab -- and the
5 child, it was a baby, it was a toddler, the toddler was
6 unconscious, and there was concern about possible non
7 accidental trauma.

8 Q Okay, and when there's a concern for
9 possible non accidental trauma is that what triggers you
10 coming in to get a consult?

11 A Yes, there's other kinds of cases where it
12 isn't trauma, it's something else, but in this case trauma,
13 yes.

14 Q Okay, and, Dr. Abel, whenever you actually
15 went in for the consult did you observe the child yourself?

16 A Yes.

17 Q Okay, and please tell the jury what you
18 recall the first time that you observed the child ^{Minor}

19 ?

20 A He was a little white toddler; he was
21 unconscious. He was on the respirator; he was very thin
22 for his height. I examined him head to toe, listened to
23 his heart, watched the monitors, you know, felt his belly,
24 turned him side to side with the help of the nurse so I
25 didn't dislodge his breathing tube, made photographs of the

Dr. Abel - Direct Examination by Ms. Lively

512

1 bruises that I saw. He was, he was flaccid, he had no
2 muscle tone. He was totally unconscious; his eyes were
3 fixed and dilated.

4 Q Were you aware at that time as to what his
5 prognosis was?

6 A It was grave, yes.

7 Q And what were the chances at that point in
8 time for any meaningful recovery?

9 A Well normally that call's made by the
10 pediatric intensivist so I, I usually let them address that
11 issue but I was very concerned.

12 Q You were concerned?

13 A Yes.

14 Q Okay, now tell us who, if anyone, you spoke
15 to to try and get a history on this child, non medical?

16 A Non med, okay, I spoke to the maternal
17 grandmother and her boyfriend.

18 Q Okay, did you speak with them separate or
19 together?

20 A I spoke to them separately and I had with
21 me the hospital social worker, Natasha Simone-Major, so
22 there were two of us talking to each one of them
23 separately, is my recollection.

24 Q All right, and did you document or take
25 notes of those particular meetings?

Dr. Abel - Direct Examination by Ms. Lively

513

1 A Yes, that's in my report.

2 Q Okay, and Dr. Abel, if you need to look at
3 your report to refresh your recollection would you, please,
4 tell us what was relayed to you regarding the history of
5 this child from the maternal grandmother?

6 A Just a minute; the child had been eating
7 normally and went to the swimming pool on the evening of
8 July 13th. They came back home and then on the morning of
9 the 14th the grandmother went to work really early in the
10 morning around five.

11 Q Okay, and who was he, who was he left in
12 the care of according to his maternal grandmother?

13 A With her boyfriend.

14 Q Okay, and then what else was reported to
15 you?

16 A Now the part that the boyfriend talked
17 about was that the child ate breakfast about 9:30 in the
18 morning and then went back to sleep, then he ate lunch
19 around noon, and then he took a nap, and when the mother
20 came back from work around 3:30 in the afternoon the child
21 was asleep, and then together, I mean they both separately
22 gave the same history that around 6, around 6:00 when the
23 grandmother went to get the baby up for supper he was
24 apparently having a seizure, so 911 was called.

25 Q Okay, now, Dr. Abel, was, did either the

Dr. Abel - Direct Examination by Ms. Lively

514

1 maternal grandmother or the boyfriend ever give you any
2 type of indication that the child had had some type of
3 injury while in their care?

4 A They both denied that there had been any
5 injury the day that the child came to the emergency room.
6 They both described several incidents that were
7 approximately two weeks before, one where he was in a
8 stroller, let me get the words here, 'he was in a stroller
9 that fell backwards down a few stairs and he got a little
10 bump on his head but seemed okay," and the other was that,
11 let's see, that "a puppy dog had pushed him over and he
12 had," "he had seemed normal after that," and those were
13 both about two weeks prior to the 13th.

14 Q So they gave you that time frame prior to
15 that was two weeks that these events occurred?

16 A Yes.

17 Q And either one of those incidents did they
18 tell you he required medical attention?

19 A Neither case.

20 Q Okay, all right, was any other information
21 given to you regarding any type of family history or
22 genetic disorders or anything at all that would have been
23 important in your consultation?

24 A We're interested in cases of sudden
25 unexpected death of infants and toddlers, if there's any

Dr. Abel - Direct Examination by Ms. Lively

515

1 underlying or genetic disorder or metabolic disorder and
2 there was no family history of any children that had that
3 and that this child had not been known to have anything
4 like that. Now this history is coming from the
5 grandmother, her comment about the child was that he
6 arrived at her house very malnourished. She claimed he
7 weighed about fifteen pounds when he arrived and he was,
8 well at that point he would have been about sixteen months
9 of age and that would have been quite underweight and that
10 he was ravenously hungry.

11 Q And in regards to his appetite, and I'm
12 referring to, you provided the consultation report, about
13 three weeks prior to July the 14th how did she describe his
14 appetite?

15 A Ravenous.

16 Q And, and again on the date of July the
17 14th, 2008, the information that you have from the
18 boyfriend as well as the maternal grandmother was that he
19 had eaten that day?

20 A Yes, he had eaten breakfast and lunch.

21 Q All right, now, Dr. Abel, once you've
22 gathered this information and were you aware, you said that
23 you knew that he was grave, were you aware of what was
24 going on inside of his head, the injuries to his head?

25 A I was able to look at the head C.T. and

Dr. Abel - Direct Examination by Ms. Lively

516

1 able to see that he had very, very significant comminuted
2 fractures of both parietal bones and had evidence of
3 subdural bleeding and I thought some subarachnoid bleeding,
4 too.

5 Q All right, and in regards to seeing those
6 type of fractures on a child what were you expecting in
7 your experience as a child abuse pediatric to hear that was
8 the mechanism for how this child ended up with these
9 injuries?

10 A The kind of fractures he had they were not
11 simple linear skull fractures that occasionally can occur
12 when a child falls in a normal household fall. His were
13 huge big complex comminuted fractures, the kind, it's been
14 described it's like a cracked pot where there's been
15 severely forceful impact of the head against a hard surface
16 and it was on both sides.

17 Q And whenever you see a patient with these
18 type of injuries, especially a toddler in your, in your
19 experience, would you expect that child to be functioning
20 or eating with those type of fractures?

21 A The degree of fracturing is an indication
22 of the degree of force so the degree of force that was
23 applied to the head on both sides was massive and I would
24 expect the child to be unconscious immediately.

25 Q And, Dr. Abel, in regards to other things

Dr. Abel - Direct Examination by Ms. Lively

517

1 that you looked at, documentation that you did in this
2 particular case, were you the one that actually
3 photographed the body of the child?

4 A Yes, I photographed him.

5 Q Okay, and whenever you photographed the
6 child what exactly are you looking for on the exterior?

7 A I use more or less standard technique where
8 we identify the child, make a picture of the total self,
9 the total body, and then we focus on the areas that appear
10 to be injured and take a more distant shot and then we get
11 a little closer and put a measuring device and so that you
12 can accurately see exactly how big it is, what color it is.

13 Q As a child abuse pediatric in your consult
14 were there any outside evidence of injuries to this child
15 that gave you concern?

16 A Yes, he had multiple bruises, many of which
17 in places that are not typical for normal childhood
18 falling.

19 Q Okay, and what would you expect to be
20 typical bruising for a child who falls?

21 A Okay, so a toddler this age, if they fall
22 down at home, which they all do, it's very typical to get
23 bruises on the forehead so they go, they pitch forward and
24 they knock their head, or they get it on their extensor
25 surfaces like this part of their arms or the fronts of

Dr. Abel - Direct Examination by Ms. Lively

518

1 their lower legs, their shins, those are typical places.
2 Occasionally if they're really awkward they'll hit the side
3 of their hip, just like all of us can do if we run into
4 something, but frankly it's more common to get it here and
5 on the front of the shins and on the front of the forehead.

6 Q Okay, thank you, Dr. Abel --

7 Ms. Lively: May I approach, Your Honor, and
8 retrieve those?

9 The Court: Certainly.

10 Ms. Lively: Thank you.

11 Q (Continuing) For the record this is State's
12 Exhibit Number 38 through 55, I'm just going to ask you do
13 you recognize these, Dr. Abel?

14 A Yes.

15 Q Okay, and those are the photos, once again,
16 that you actually took at the, in, in the pq at MUSC?

17 A Yes.

18 Ms. Lively: Your Honor, at this time the State
19 would move 34 through 55 into evidence on behalf of the
20 State?

21 The Court: Your objections are noted.

22 Mr. Galtore: Thank you, sir.

23 Ms. Grabert-Lowenstein: Thank you.

24 The Court: And the photographs are admitted.

25 Ms. Lively: Okay, thank you.

Dr. Abel - Direct Examination by Ms. Lively

519

1 (Whereupon, State's Exhibits Numbers 38, 39, 40,
2 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and
3 55 entered into evidence.)

4 Ms. Lively: (Continuing)

5 Q Now, Dr. Abel, if you would, please, in
6 each of the photos if you would, please, describe to the
7 jury, and I'll let you look at it first, we'll do 30, I'm
8 sorry, I said it wrong, they're State's I.D. they're 38
9 through 55, I think I said 34, I apologize, so this is 38
10 and 39; is this the same area that was this photograph?

11 A Yes.

12 Q The same bruise?

13 A Yes.

14 Q Okay, all right, and once again this is
15 Minor what concerned you about this particular bruise
16 that we're seeing here?

17 A There's a bruise on his chest wall on the
18 left side and that's on the trunk of the body and it's
19 unusual to have a bruise on the trunk of the body in a
20 toddler without a real good explanation.

21 Q Did the maternal grandmother or boyfriend
22 give you a good explanation?

23 A No.

24 Q Did they give you any explanation?

25 A No.

1 Q All right, State's 40?

2 A Yes.

3 Q Okay, what is State's 40 showing?

4 A This is the same bruise, the child has been
5 turned a little bit more, you can see it.

6 Q So you can see the angle better as to where
7 it's located?

8 A Yes.

9 Q Okay, all right, and 41, if you would,
10 please, look at that and tell me what that is documenting?

11 A This is the right hip area upper thigh and
12 this is my hand, this is a tape measure, this is a yellow
13 greenish bruise on the lateral side of the right hip thigh
14 area.

15 Q Okay, and you mentioned that possibly
16 getting a bruise on the hip may not be ---

17 A Yeah, you can get, you can run into
18 something and get a bruise there, yes.

19 Q Okay, all right, and I know that you're
20 going to be asked this so I'll go ahead and ask, is there
21 any significance in regards to the color of these bruises
22 when you're seeing them on the 15th?

23 A No, we used to think we could time bruises
24 by the color changes cause we knew that hemoglobin changed
25 in a certain sequence but there's been lots of recent

Dr. Abel - Direct Examination by Ms. Lively

521

1 articles that that's really not true so we've given up
2 trying to date or time how old a bruise is by the color.

3 Q Okay, all right, so you just in your field
4 you document it?

5 A Yes.

6 Q Okay, now in regards to State's Number 42,
7 and I believe 43 goes along with that?

8 A Yes.

9 Q Okay, and if you'll, please, tell the jury
10 why you took 42 and 43?

11 A There's a bruise on the right upper thigh
12 at the back of the thigh really close to where the guteal
13 crease is and that's a fairly protected area. That's not
14 a typical place for a normal household bruise fall.

15 Q Okay, and ---

16 A Yeah.

17 Q And so it's not a typical place?

18 A No, it's not a typical place.

19 Q All right, and was this toddler, did you
20 know whether he was still in diapers or not?

21 A I don't know the answer to that.

22 Q And that's fine, that's fine. I just, now
23 if you could, please, tell me what it is that we're seeing
24 here in 44 and 45?

25 A All right, there's a faint bruise on the

1 right lateral thigh way up high.

2 Q And then 45 is just a close up of it?

3 A Yes, and, and there's a red mark that
4 appears to be a crease mark from laying on the padding of
5 the bed and that's not what I'm looking at.

6 Q Okay, all right, now in regards to this
7 bruise what, if any, concerns did you have regarding the
8 placement of this particular bruise?

9 A Okay, so let me see that again, okay.

10 Q I'm sorry?

11 A Well again that's the lateral, that
12 particular bruise all by itself you would wonder how it got
13 there but it could be accidental.

14 Q Okay, all right, that's fair, now, please,
15 tell the jury what we're seeing in, in 46?

16 A All right. This appears to be the, the
17 right hip, the leg is folded forward and there appears to
18 be a bruise up high closer to the waist.

19 Q Okay, closer to the waist, all right, and
20 you've measured this particular bruise?

21 A Yes.

22 Q Okay, it's about how big?

23 A About one by one inch.

24 Q Okay, and based on the placement of this
25 did that give you any concern?

Dr. Abel - Direct Examination by Ms. Lively

523

1 A Yes.

2 Q Okay, is that atypical spot for a toddler?

3 A Yes, it's atypical, that's not on an
4 extensor surface and it is on a trunk.

5 Q Okay, all right, and tell us what is in 47,
6 48?

7 A Okay, there is a larger bruise on the left
8 lateral thigh up high; it's one and a half by one and a
9 half centimeters.

10 Q Okay, could that bruise be from
11 vaccinations?

12 A Not usually.

13 Q Okay?

14 A I'm not aware he got any vaccinations
15 within a week of this either.

16 Q Okay, if you knew that he had gotten any
17 vaccinations on July the 8th, would you believe that to be
18 a possible cause?

19 A Possible.

20 Q Okay, what's the more probable?

21 A It's not likely he would get it in that
22 location, the nurse would have been not following normal
23 spot to give the immunization. That's not where you
24 normally give it.

25 Q Okay, and does it normally look like this?

Dr. Abel - Direct Examination by Ms. Lively

524

1 A Not normally, no.

2 Q Okay, tell me what we see on 49?

3 A All right, you got a lower leg and you've
4 got a bruise on the shin.

5 Q Okay, and you already testified that a
6 child would have bruises on the shin?

7 A Easily.

8 Q Easily on the shin, right?

9 A From accidents, yes.

10 Q All right, and you document every bruise;
11 is that correct?

12 A Yes.

13 Q Okay, all right, then what are we seeing in
14 State's Exhibit 50?

15 A It appears to be a slight scab on the
16 lower, I believe that is, yeah, that is the right lower leg
17 and then above it something is healing like possibly a
18 little insect bite.

19 Q Okay, and did you ever receive any
20 information from, from the history from the family that he
21 had had an episode with ants?

22 A Yes, I did.

23 Q Okay, all right, so, so were you told that
24 he was given any type of medication for ants and/or other
25 reason; do you recall?

Dr. Abel - Direct Examination by Ms. Lively

525

1 A Yes, I recall he went to a doctor and was
2 given some kind of treatment for ant bites.

3 Q Okay, you don't recall what that medication
4 was?

5 A I remember from the record, from the
6 medical record it was an antihistamine, yeah.

7 Q Okay, all right, I'll ask about that in a
8 minute, let me get through these if you don't mind. What
9 does State's Exhibit 51 show us?

10 A A slight bruise of the lower leg, I'm going
11 to say left lower leg because I can see the sites for the
12 tubes that are central and it looks like a bruise on the
13 shin, again kind of medial, kind of inside the leg.

14 Q Okay, I was going to say because this up
15 here ---

16 A Yeah.

17 Q --- appears to be ---

18 A That's the shin.

19 Q --- the shin and this appears to be where?

20 A It's inside the leg, so that's a little
21 atypical for a site for a normal fall.

22 Q Okay, just have a few more, and in State's
23 52 and 53; do you know what that is?

24 A I think on the flip there's a mark from
25 probably an attempt to do an I.V. in a recent past and then

Dr. Abel - Direct Examination by Ms. Lively

526

1 there's a area that looks it's a, insect bite or something
2 that's been scratched and it has a small mound of
3 superficial infection in it.

4 Q Okay, and once again as a part of what your
5 consult is do you document every single thing?

6 A Yes.

7 Q And, Dr. Abel, in all fairness in your
8 experience in what you're doing are you necessarily wanting
9 to find abuse or what is your job?

10 A No, my job is to come to an accurate
11 medical conclusion is there medical evidence that points to
12 maltreatment or does it point to something else, so that's
13 why I ask extensive history and sometimes do extra tests
14 that are highly unusual to be sure the child doesn't have
15 an unusual condition.

16 Q Okay, all right, and then just briefly the
17 last two photos 54 and 55; what are these showing?

18 A The top photo shows some scratching, I
19 believe it was on one of the shins, just a simple linear
20 scratch, and then the bottom photo, it's hard to see it, I
21 was trying to show slight scratching on the chest near the
22 lower rib cage on the right, very faint.

23 Q Okay, all right, you did, however, use a
24 tape measure to attempt to document that as well?

25 A Yes.