

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

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MAY 02 2014

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

ROBERT PALMER,

APPELLANT

APPELLATE CASE NO. 2011-203766

RECORD ON APPEAL

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STATE'S EXHIBIT #64 (CD – PALMER STATEMENT)
STATE'S EXHIBIT #65 (CD – GORMAN STATEMENT)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2010-GS-26-2195, 2196

The State,)

Plaintiff,)

Transcript of Record

vs.)

Robert Palmer,)

June 10, 2010

Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Candice Lively, Esquire
Attorney for Plaintiff

Carla F. Grabert-Lowenstein, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 (On the record, June 10, 2010.)

2 MS. LIVELY: Your Honor, this is State of South
3 Carolina versus Robert Palmer. This matter comes before you
4 for two issues today. It's not a plea, we have nothing like
5 that. What we're doing is there's a motion by the Defense and
6 there's also the need for the State to serve two direct
7 indictments on this Defendant, and just for the purposes of
8 this Court understanding exactly the procedural background of
9 this case, this stems from the death of a child from back in
10 July of '08. At the time this Defendant was the boyfriend of
11 the Co-Defendant, Julia Gorman. The Horry County Police
12 Department investigated the matter, interrogated both this
13 Defendant as well as the Co-Defendant, and at the time based
14 upon certain admissions arrested the Co-Defendant, Julia
15 Gorman, the maternal grandmother, for homicide by child abuse
16 and this Defendant was charged with unlawful neglect of a
17 child. Since that time the State has, we actually went into a
18 proffer agreement or entered a proffer agreement with this
19 Defendant regarding his testifying on behalf of the State at
20 the time of the trial of Gorman. After that proffer agreement
21 was signed it - there was no promises in regards to plea
22 negotiations or anything of that nature. It was a general
23 cooperation, not an immunity type of agreement, and I will
24 provide you with a copy of that for you to review.

25 So, since that time I actually met with the pathologist

1 in the case, as well as the radiologist. After meeting with
2 them and reviewing the medical information in the case, it was
3 the opinions of those experts that this Defendant was also
4 involved in the injury to the child or potentially involved.
5 So, what we have now is the State revoked the offer or the
6 proffer. There was no offer, ever has been an offer. We
7 revoked the proffer in May. I called Ms. Grabert-Lowenstein
8 to tell her of my intent to revoke the proffer. I also gave
9 her the names of the expert medical witnesses I had talked to,
10 even though I didn't have to do that so that she could talk to
11 them and see why I determined that the medical evidence
12 clearly was in contradiction or if not contradiction the
13 failure of the Defendant, this Defendant to provide us
14 additional information led me to believe that he had to have
15 had some knowledge or be involved.

16 So, Your Honor, at that time I sent a letter revoking the
17 proffer and then the Defense has now filed this motion to
18 require the State or to ask that you enforce the proffer
19 agreement. So, that's one of the reasons why we're here and
20 also the State is - does intend to serve this Defendant with
21 the two direct indictments, one of them is a homicide by child
22 abuse and one for homicide by child abuse, aiding and
23 abetting, which we will need this Court to actually set bond
24 on those matters and the victim's family has been notified.

25 THE COURT: All right, let me see the proffer

1 agreement.

2 MS. LIVELY: Yes, sir, and actually what I'm going to
3 do is hand up the agreement that is attached to the motion
4 that was filed by the Defense.

5 THE COURT: Okay.

6 MS. GRABERT-LOWENSTEIN: Yes, Your Honor, there is a
7 written motion with the proffer with the passing of the lie
8 detector test, as well as the revocation of the proffer.

9 THE COURT: Okay.

10 All right, Ms. Grabert-Lowenstein, let me hear from you.

11 MS. GRABERT-LOWENSTEIN: As I'm sure the Court's aware,
12 the proffer is covered by contract law and it has to be shown
13 by a preponderance that there has been a breach of that. My
14 client relied on the proffer, presented himself not once but
15 twice to be interviewed, answered every question. He took and
16 passed the polygraph. From the beginning of this case the
17 timeframe was that the injuries happened on a Friday night at
18 a time when we could conclusively show my client was not
19 there. The new evidence, and I do appreciate the assistant
20 solicitor telling me about it and I did have an opportunity to
21 discuss with at least one of the witnesses that new evidence.
22 It makes where the pathologist now, you know, says as they did
23 originally that it could be three days and two new experts say
24 three hours. Because this evidence came about after both of
25 the interviews it's the Defense contention that's never really

1 been covered; and so, to say that he's withholding information
2 is inaccurate because we just don't know. Even with the
3 three-hour timeframe it doesn't conclusively say that my
4 client, especially with a confession of shaking by the other
5 Defendant, was the perpetrator or in any way aided and abetted
6 the grandmother of this child.

7 The State in withdrawing the proffer has attempted to do
8 it unilaterally, which they can't do and it's the Defense
9 condition, contention rather that until they show that there
10 has actually been a withholding of information my client has
11 relied on the offer for the proffer and has totally,
12 completely complied with everything required of him now, and
13 Your Honor, as I put in my written motion, after I was given
14 this new information I brought my client in to my office
15 because I wasn't going to let him be interviewed again
16 obviously without my having spoken to him and, you know,
17 talked about things in more depth. We did that. I told the
18 assistant solicitor that we were confident he could fill in
19 some information, especially about that three hours,
20 information frankly he's never been asked about and that's why
21 we're here today because he has complied, you know, he, he
22 first of all relied on the proffer. He's complied with it,
23 and you know, when an individual has cooperated as much as my
24 client, to then have the proffer pulled, Your Honor, it, it
25 makes us question due process, and I'm just asking this Court

1 to enforce the proffer because my client is - has in no way
2 violated the proffer, you know, they can't point to where he's
3 been untruthful, and in fact, if the Court wants to hear I
4 have the employee of the Solicitor's Office who interviewed
5 him who I believe will indicate that he answered every
6 question, was candid, and you know, this just can't be
7 withdrawn and he has not violated the proffer.

8 THE COURT: All right, all right, Ms. Lively, let me
9 hear from you.

10 MS. LIVELY: Yes, sir.

11 THE COURT: How has he violated the proffer agreement?

12 MS. LIVELY: Well, Your Honor, first of all I would say
13 that it is completely a discretionary matter regarding the
14 State's ability to either offer or revoke the proffer. The
15 reliance by the Defendant would have to be to some detriment
16 to him.

17 THE COURT: Well, I mean, he's talked to you all.

18 MS. LIVELY: Yes, he has.

19 THE COURT: And I guess based upon - and you all are
20 now wanting to charge him.

21 MS. LIVELY: That's correct.

22 THE COURT: I mean, as I understand she has, and I
23 haven't read the case, I'll need to go back but it says an
24 immunity agreement. So, you're saying this is not an immunity
25 agreement?

1 MS. LIVELY: That's exactly right, and I will tell you,
2 Your Honor, if I may, I pulled every single one of her cases
3 or I had an assistant in my office do so, and I've got copies
4 of every single one of them and I can address them, each of
5 them to, to distinguish them. None of them address an open-
6 ended proffer agreement which states that his statements may
7 be used against him if I decide to take this to Court, as well
8 as the proffer agreement says the only thing that the proffer
9 agreement guarantees him, if it guarantees him anything, is
10 that I will take it into consideration upon my election of
11 charges as well as sentencing. That's all it says.

12 THE COURT: All right, well, let me ask you that, Ms.
13 Grabert-Lowenstein. Where have they, where, where have they
14 promised anything that they are now, that they are not going
15 forward with?

16 MS. GRABERT-LOWENSTEIN: Your Honor, they - yes, it's
17 open-ended, but they still have to show before they can revoke
18 it that he is in some way by a preponderance of the evidence
19 breached it and they can't show that.

20 THE COURT: So, you're saying that even if they don't
21 withdraw this proffer they can still charge him with these
22 additional crimes and go forward with it.

23 MS. GRABERT-LOWENSTEIN: Your Honor, we've always, we've
24 always understood what could potentially happen. However,
25 everybody understands that with the cooperation, he was going

1 to be a witness. It puts him in the witness stand and having
2 to testify truthfully as opposed to the Defendant seat. She
3 wants to put him in the Defendant seat right along side the
4 other Defendant and that's what they can't, they can't at this
5 point make that decision. He has cooperated.

6 THE COURT: But I mean, let me ask you this, if I
7 agree with you and if I say your client has not breached the
8 proffered agreement, how does that prevent the State from
9 going ahead and doing what they're now seeking to do, to issue
10 these direct indictments?

11 MS. GRABERT-LOWENSTEIN: Well, I think due process, Your
12 Honor, keeps them from doing that, and frankly, the spirit of
13 the proffer. Who would ---

14 THE COURT: I mean, but I guess my question is is as I
15 read the proffered agreement signed by everybody all it does
16 say is that they will, let me see, I want to get the exact
17 terms, that the State shall consider the extent and degree of
18 cooperation in the election of charges and at the sentencing
19 of your client and shall advise the Court to the extent and
20 degree of his cooperation. It doesn't say that they can't
21 bring the charges. It doesn't say that they can't prosecute
22 them as a Co-Defendant. It just says, you know, they'll
23 consider what he says when they elect what to charge him and
24 when it comes time for sentencing.

25 MS. GRABERT-LOWENSTEIN: Your Honor, how could they make

1 him a Co-Defendant in the same trial and have him at the
2 Defendant's table with Julia Gorman, the other Defendant, if
3 he is supposed to cooperate? You know, they can't do that.
4 They've set up the terms of the proffer. The only one left to
5 be done is the testifying against Ms. Gorman.

6 THE COURT: Yeah, but that's what I understand
7 they're trying to do is to withdraw this proffer so that they
8 can't make him testify against her anymore, they can't make
9 him cooperate anymore, they can't hold him to the terms of
10 this agreement either by withdrawing it.

11 MS. GRABERT-LOWENSTEIN: And then they make it impossible
12 and violate his due process by revoking the offer at this
13 point. You know, if he had failed to pass the lie detector,
14 if he had not complied with being questioned, Your Honor,
15 believe it would be and under the case law a different
16 situation and I could not find any cases that dealt exactly
17 with this type of situation but they can't turn right around
18 and make it impossible for my client to comply with the
19 proffer, which by revoking it at this point they do that.

20 THE COURT: But you're - I guess my question is
21 there's nothing that says they can't go ahead and charge him.
22 Under the agreement they can still charge him with these
23 crimes.

24 MS. GRABERT-LOWENSTEIN: Your Honor, they can charge him
25 with the crimes. My argument is they can't put him in the

1 Defendant seat with Ms. Gorman and they can't proceed towards
2 a trial on him until we know whether he's testified truthfully
3 because they put a proffer on the table, those are the
4 requirements and he ---

5 THE COURT: Right, but ---

6 MS. GRABERT-LOWENSTEIN: --- has to have the opportunity
7 to comply. If they revoke the proffer at this point in time
8 then he can't comply with it, and all I'm saying is he is
9 entitled, must have by due process the opportunity to comply
10 with the proffer. Charging him while I think frankly goes
11 against the spirit of the proffer I'm not, I'm not going to
12 stand here and argue that they can't do it. I think it's a
13 totally different situation, but revoking it at this point I
14 don't think they can do.

15 THE COURT: All right. All right, Ms. Lively,
16 anything?

17 MS. LIVELY: Yes, sir, I'm just going to state Reed
18 versus Becka that she quotes in hers is dealing with plea
19 agreements and the prosecutor even in a written plea agreement
20 can revoke that at any time until the plea has actually been
21 entered by the Defendant and is on the record and then that's
22 when due process attaches, whether or not he detrimentally
23 relied on what the solicitor said he or she was going to do.

24 MS. GRABERT-LOWENSTEIN: And we have detrimental
25 reliance, I'm sorry.

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11

1 THE COURT: All right, go ahead.

2 MS. LIVELY: Okay, thank you.

3 Then United States versus Irvine is specifically to an
4 immunity agreement, which if we had granted this Defendant
5 immunity I know we would be dealing with a completely, a more
6 difficult burden and issue in regards to the State and his due
7 process, but that's not what we're dealing with here. That is
8 completely different. I mean, it's no different than if we
9 had found a videotape of him killing this child after he had
10 signed the proffer, I can still prosecute him on that charge.
11 I mean, just because the information that I'm getting now
12 narrows the timeframe which puts him as a potential or likely
13 participant, that would be extremely detrimental to the State
14 that I couldn't actually prosecute him for that. That's a
15 decision that's left up to the executive branch in regards to
16 prosecution of cases and it is not something that goes into
17 due process at this point. That's a misplaced argument.

18 United States versus Conner also deals with plea
19 agreements. Young versus United States also dealt with plea
20 agreements. United State versus Arnott I couldn't even see
21 where that was relevant. Santobello versus New York deals
22 with - it talks about a recommendation on a guilty plea and it
23 even goes into some discussion of a proffer. It says a
24 proffer agreement differs from a plea bargain where there is
25 some due process argument because proffer agreements are not

1 an essential part of the judicial process. They're not.
2 They're an investigatory tool that we use with our office to
3 determine whether or not someone is going to be a witness to
4 assist us in prosecution. That's it. He has not provided us,
5 he has not given us the smoking gun in this case. He's not
6 provided us with any additional information that even assists
7 us or takes us anywhere different than where we were in the
8 beginning. He's given us a few more details and in no where
9 has that even implicated himself. So, he hasn't even given a
10 statement that I would consider detrimental to himself, and
11 even if he had the proffer clearly says anything that he says
12 could and may be used against him at a later time. So, and
13 Your Honor, this is the thing, I - the fact that he took a
14 polygraph, you know, initially I required that. I was
15 concerned, but as you know, that's not evidence in the court
16 of law. That's just also an investigatory tool that we use,
17 but according to the medical information which I have no
18 ability to sit here and tell you that I'm an expert at at all
19 this child with the massive brain fractures and injuries he
20 had could not have functioned all weekend, and that's the
21 reason why the State has charged this Defendant as a Co-
22 Defendant, aider and abettor or principal in this case, and
23 he's been directly indicted by the Grand Jury who found
24 probable cause and it is our intent at this time to go
25 forward.

1 THE COURT: All right, anything in reply?

2 MS. GRABERT-LOWENSTEIN: Your Honor, I think the point's
3 missed. We're not saying that he can't be charged. We are
4 saying, however, that if we enter into a proffer and my client
5 has detrimentally relied because he presented himself for a
6 polygraph, he presented himself for interviews and answered
7 every question that they can't jerk that proffer at this time.
8 He has to be given the opportunity to in a trial against Julia
9 Gorman fulfill the rest of the proffer which he could not have
10 done obviously up until this point by testifying.

11 THE COURT: But let's say he does fulfill all - let's
12 say he fulfills all of that, why can't they still charge him
13 and try him?

14 MS. GRABERT-LOWENSTEIN: Your Honor, I think then they're
15 obligated to take a look at it, and yes, in their discretion
16 make the decision at that point about the proffer, and again,
17 I'll just mention we offered a third interview. To me the big
18 issue is the point in time that they're trying to yank it, you
19 know when we're interviewed and that's all nice and pleasant
20 until they finally find a medical expert that says something
21 different, Your Honor, he has a right to rely on being able to
22 finish the proffer. We all understood what was going to
23 happen at the end, that they would then make their decision,
24 but to yank it now and to not give him that opportunity to
25 testify I believe is a violation of due process because he has

1 detrimentally relied.

2 THE COURT: But I mean what is the detriment to him?
3 You say he's detrimentally relied on it. What has he done ---

4 MS. GRABERT-LOWENSTEIN: Being, being interviewed.

5 THE COURT: But how has his being interviewed
6 detrimented him?

7 MS. GRABERT-LOWENSTEIN: Because they may, they may try
8 to use those statements against him, having to submit himself
9 to a polygraph, having to cooperate.

10 THE COURT: But I mean, what statements has he given
11 or what information has he given them that they can now use
12 against him to prejudice him in these cases?

13 MS. GRABERT-LOWENSTEIN: Well, as his attorney I hope
14 none, but the point is that he has put himself out there.
15 He's, he's, you know, allowed them to interview him. I
16 understand the Court's question and certainly the reason they
17 offered him the proffer originally was because they didn't
18 think he was the perpetrator. I wouldn't expect any questions
19 at this point to actually incriminate him, and now they seem
20 to want that. Your Honor, the obligation, the obligation was
21 to present himself, to pass a polygraph and then to testify
22 truthfully. Just once again say, to allow them to pull the
23 proffer before he has an opportunity fulfill it is, I think, a
24 violation of his due process and a violation of the contract,
25 they are then in breach of the contract.

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15

1 THE COURT: Okay, all right, well, I find that this is
2 not an immunity agreement. It is a proffer and that the
3 State's sole obligation under that was to consider his
4 cooperation when they elect charges and at a time of
5 sentencing. I don't see where he's been prejudiced or it's
6 violated his due process. I'm going to allow them to withdraw
7 it. So, I'll deny your motion to enforce the proffer, but
8 that also relieves him of any obligations under the proffer.
9 Since they've withdrawn it they can't come back now and say he
10 hasn't cooperated because they're the ones that are
11 withdrawing it.

12 MS. GRABERT-LOWENSTEIN: Certainly. Thank you, Your
13 Honor.

14 THE COURT: All right, all right.

15 MS. LIVELY: Yes, sir, Your Honor, if I may proceed
16 then on the serving of the indictments. This Defendant was
17 charged originally with child neglect. The State has now
18 presented two indictments to the Grand Jury, both of which
19 have been true-billed, indictment number 2010-GS-26-2196 and
20 2195. The 2196 indictment is for homicide by child abuse and
21 the allegation is that he did act as the principal in
22 inflicting fatal injuries, causing the death of a minor child
23 17 months old while committing child abuse or neglect and that
24 the child's death occurred under those circumstance. This
25 Defendant has also been true-billed, has a true-billed

1 indictment for homicide by child abuse, aiding and abetting
2 and it involves the same set of facts involving this 17 month
3 old child who died between - on July the - the infliction of
4 injuries, I'm sorry, was July the 14th of 2008.

5 Your Honor, this Defendant originally had a bond set for
6 the child neglect and I'm going to actually defer to the
7 Defense on this. I had that the Co-Defendant had originally
8 she was denied bond and then subsequently given \$100,000
9 surety bond. Is this Defendant - does he have - what was his
10 bond at the time of the child abuse, the child neglect?

11 MS. GRABERT-LOWENSTEIN: Your Honor, I believe that the
12 bond, in fact I know the bond that my client set was 100,000.

13 THE COURT: So, your client is under a ---

14 MS. GRABERT-LOWENSTEIN: That he posted was 100,000.

15 MS. LIVELY: And let me just double-check that, I'm
16 pretty - I was a little confused on that because of the fact
17 that his actual charge at the time was just the unlawful
18 neglect.

19 THE COURT: Child neglect.

20 MS. LIVELY: And he's local and he doesn't have a prior
21 record, but that does appear to be what the bond was at that
22 time, and ---

23 THE COURT: 100,000 surety?

24 MS. LIVELY: Yes, sir.

25 MS. GRABERT-LOWENSTEIN: Yes, it was posted.

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

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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

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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. Galtmore.

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. Galtmore: 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

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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

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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 fortencial??? 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.

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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,

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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

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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

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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

State of South Carolina
County of Horry

In The Court of General Sessions

State of South Carolina,

vs.

Julia S. Gorman,

Defendant.

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) 08-GS-26-3756/08-GS-26-0841
) 10-GS-26-0041/10-GS-26-2194
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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: BABB
Circuit Court Reporter

Pretrial Motions

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1 Galmore's motion to sever?

2 Ms. Lively: Yes, sir.

3 The Court: Mr. Galmore?

4 Mr. Galmore: Yes, sir, Your Honor, we have
5 filed a motion to sever in this case just trying to protect
6 Ms. Gorman's right to a fair and impartial trial. The
7 Court is familiar with the case law and severing is not an
8 issue that is novel. Case law says that a severance should
9 be granted where there is a serious risk a joint trial
10 would compromise a specific trial right of a codefendant or
11 prevent the jury from making a reliable judgment about a
12 codefendant's guilt.

13 Regarding Ms. Gorman's specific trial right that
14 is jeopardized by these cases being tried jointly I'm
15 referring to her motion for a directed verdict. Once the
16 trial begins at the conclusion of the State's case we will
17 be moving for a directed verdict and again at the
18 conclusion of all evidence we'll be moving for a directed
19 verdict and I feel that her right to have that directed
20 verdict fairly and impartially reviewed would be
21 jeopardized if they were tried jointly.

22 The Court: In what regard?

23 Mr. Galmore: The testimony that will come
24 forward, well one of the issues in this case is the time
25 line. The cause of death, what we know is that EMS was

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1 contacted Monday at 6:06 p.m. and we've had various time
2 lines for when the injuries were inflicted in this case. A
3 time line saying seventy-two hours meaning the Friday night
4 before the Monday, a three-day weekend is when the injuries
5 were inflicted and apparently VICTIM [REDACTED] survived for several
6 days with these injuries to his head. We've had a forty-
7 eight-hour time line that's been established. Right now as
8 a result of our meetings with doctors down at MUSC we
9 believe the fatal blows were inflicted within zero to three
10 hours of the 6:06 p.m. time when EMS was called. We believe
11 the evidence ---

12 The Court: Wouldn't that develop in either
13 case?

14 Mr. Galmore: Well we believe the evidence will
15 show that Mr. Palmer was with VICTIM [REDACTED] one hundred percent of
16 the time during that three hour window but that Ms. Gorman
17 was not and unfortunately, you know, the State, I mean,
18 excuse me, the jury can draw its own conclusions but if
19 this person is there with this child during the time that
20 these injuries are inflicted either did it or knows
21 something about it, so unfortunately for Mr. Palmer seems
22 like his fate would be sealed with this jury but as far as
23 Ms. Gorman she wasn't around VICTIM [REDACTED] one hundred percent of
24 the time during the three hours.

25 The Court: But aren't we talking about directed

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1 verdict motions?

2 Mr. Galmore: Yes, I'm talking about, I'm
3 talking a directed verdict motion. The reason why I'm
4 talking about directed verdict is because there's no direct
5 evidence that points at either defendant. There are no
6 eyewitnesses, there's no weapon, there's no video, so this
7 is a circumstantial case and because it's a circumstantial
8 case it's dependent upon, I feel like the State's case is
9 dependent upon suspicion, mere suspicion which is not a
10 adequate standard for directed verdict, but if Mr. Palmer
11 is tried with Ms. Gorman evidence of his guilt, I guess the
12 easiest way to say it is the evidence against him may in
13 the jury's eyes rub off on Ms. Gorman.

14 The Court: But we're talking about directed
15 verdict motions?

16 Mr. Galmore: Yes, okay.

17 The Court: And how would that impact the Court?

18 Mr. Galmore: Well she has a, a right to have a
19 directed verdict motion heard fairly, impartially, and we
20 feel like the evidence that, that will be presented is
21 evidence against Mr. Palmer. The evidence that they have
22 against Ms. Gorman is as you've heard DSS records from
23 somewhere in Long Beach, California, other types of
24 suspicion, other types of rumor type of evidence. It's not
25 direct evidence, it's not substantial circumstantial

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1 evidence, but we feel that if she's tried with the
2 codefendant that she won't get a, a fair ruling on the
3 directed verdict issue.

4 The Court: All right, and is that, do you have
5 other grounds in support, should offer support of your
6 motion to sever?

7 Mr. Galmore: Well there is also the fact that
8 these parties, well Mr. Palmer was offered a proffer. He
9 relied on that proffer and for whatever reason the State
10 has chosen to withdraw the proffer and then to seat him at
11 the defense table with us, we quite frankly don't know what
12 his intentions are. He may be at the table as a
13 cooperative witness for the State, we don't know. All we
14 know is that we don't know what he's done in reliance on
15 that proffer. We don't know how many interviews he's given
16 and to whom. All we know is that he was their witness, now
17 he's, now he's stuck at the table with us and we don't want
18 him. I think it's an opportunity for, for an improper
19 verdict just looking at the evidence that they have against
20 him versus the lack of evidence that they have against Ms.
21 Gorman.

22 The Court: But would these not be matters that
23 would come in regardless of whether they're tried together
24 or tried separate? Would not the same exact issues be
25 raised and the same evidence be produced?

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1 Mr. Galmore: Well we, we don't want to have a
2 situation where his wrongdoing leads to the jury concluding
3 that she's guilty.

4 The Court: The difference would be if he were
5 to testify in the fashion that you suggest would be whether
6 he's named as a defendant or named as just a witness, I
7 mean isn't that the only real difference?

8 Mr. Galmore: Well if he's sitting here at the
9 defense table as far as the jury is concerned they may
10 convict her just because of his involvement and that's a
11 problem that we're trying to avoid by having him here.

12 The Court: But what difference would it make
13 whether he's a named defendant or just an unindicted co-
14 conspirator or a witness?

15 Mr. Galmore: Well it all goes to the State's
16 theory of the case, you know. At one point the State's
17 theory was that Mr. Palmer struck the fatal blow. At
18 another point is we don't know what happened but from the
19 evidence that will be presented we know that he was there,
20 so under either one of those theories that's evidence
21 against him and we don't want that evidence to be imputed
22 to my client.

23 The Court: Ms. Lively?

24 Ms. Lively: Yes, sir, Your Honor, well first of
25 all in a homicide by child abuse case that's something the

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1 State is always going to have a problem with when you've
2 got two potential perpetrators is you've got, you're not
3 going to have video, I've never seen it, and you're not
4 going to have exact, can't rely on the perpetrators to give
5 you the truthful story so this is what's going on.

6 First of all I have absolutely no intention of
7 calling Palmer as a cooperative witness so I just want to
8 go ahead and put that out there. He is at the defense
9 table for a reason. We have information that I've shared
10 and we've met with doctors all together regarding what the
11 State's theory of the case is, that on Monday July the
12 14th, 2008, is whenever the child received the fatal
13 injuries. I'm not saying that he hadn't been abused before
14 then and I'm not saying that we've got statements from
15 Julia Gorman where she admits to shaking and slapping the
16 child. We have all that, but what we have is that, and
17 that's been clearly addressed with the --

18 The Court: I'm sorry.

19 Ms. Lively: It's okay, and it's been clearly
20 addressed with the defense. I have not held back anything
21 in regards to the theory of the case so let's get to the
22 issue of severance.

23 We have the same victim, the same time line. We
24 have two defendants who admit to being in the home with the
25 child on the day that he starts to seize and is sent to

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1 Conway Medical through EMS and then two days later the
2 child is dead, so what we have, Your Honor, is exactly and
3 very similar and scary in similarities to the case of State
4 v. Chad Smith which was actually an Horry County case tried
5 before Judge Thomas where you're not able to point the
6 finger at which one but you are able to say that you were
7 both there, you both admit being there with the child, the
8 child died from injuries that would have been immediately
9 apparent to someone based upon how the child acted after
10 those injuries, therefore, you either both did it, aided
11 and abetted in doing it, one did it, that's the reason why
12 I've charged as I have. Homicide by child abuse used on
13 both defendants as well as aiding and abetting child abuse
14 on both defendants which is exactly what was done in the
15 State v. Chad Smith case where the mother and the boyfriend
16 were charged and subsequently convicted.

17 Also in State v. Walker, Your Honor, it's the
18 same kind of thing, child was beaten to death and the only
19 two people that were there that could have done it was the
20 mother and her boyfriend. So what happens is because of
21 the way that child abuse cases are unfortunately a crime
22 that's committed that no one knows but the perpetrators and
23 the dead child then what we have is the State has to try
24 and narrow it the best way that we can and that's exactly
25 what we've done. I've got the time line, the defense is

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1 very aware of it. There are only two people that could
2 have done it cause VICTIM couldn't have done it to himself
3 and so without him being in a motor vehicle accident or
4 being thrown from the top of a building the only way other
5 way he was injured to the point of being killed was that
6 one of these two individuals did it or they both did it.
7 So under those circumstances to raise what Mr. Galmore is
8 saying well maybe the guilt from Palmer will rub off on
9 Gorman or vice versa, well clearly in the severance motions
10 made by defense and what our Supreme Court is saying, Your
11 Honor, that issue of whether they'll have antagonistic
12 defenses is not to be the reason that the Court determines
13 severance is appropriate because they expect that
14 defendants will point the finger at each other.

15 It has to be some type of crucial trial right of
16 the defendant that's going to be the reason why the
17 severance should be granted, i.e. a Bruton issue. We don't
18 have a Bruton issue in this case, Your Honor. We have no
19 statements by Gorman saying I saw Palmer beating him in the
20 head. We have nothing from Palmer saying I saw Gorman. As
21 a matter of fact they both said I don't know what happened.
22 I didn't do anything, would Julia hurt him, no; would
23 Robert hurt him, no, so they've never pointed a finger at
24 each other so we don't even have that confrontation issue
25 that could arise through Bruton. So because we have all

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1 the same evidence, we have the only one victim. we have two
2 people who put themselves as the only caretakers of this
3 child and then the child dies then to sever the case would
4 be extremely prejudicial to the State. We'd have to try
5 this case twice. You know they would point the finger at
6 the other and because of the fact that we have only one
7 victim and we only have two perpetrators and we don't know
8 which one did it it is important that we are able to try
9 them together.

10 The Court: All right, the Supreme Court of this
11 state has very clearly said in State v. Hughes that
12 defendants who are jointly tried are not entitled as a
13 matter of right, Mr. Galmore, to separate trials and you
14 have correctly stated the law under the Dennis case where
15 you stated that severance would be appropriate where
16 there's a serious risk that a joint trial would compromise
17 a specific right of a defendant or prevent a jury from
18 making a reliable judgment about a codefendant's guilt.

19 In this particular case, and I have looked at the
20 exceptions that the Court has made as to that general rule,
21 I do not see where there's any specific right that would be
22 compromised or that there's any danger that the jury could
23 not reliably reach a verdict in this matter. I think it's
24 a case that should appropriately be tried together and I
25 believe that the rights of these defendants can be

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1 protected in a joint trial, thank you.

2 All right, now, Ms., that out of the way, Ms.
3 Lively, let's move forward with the State's motions, you
4 have the majority over?

5 Ms. Lively: Yes, sir, Your Honor, we could also
6 if you wanted to the last motion from, from Ms. Grabert-
7 Lowenstein regarding the voir dire. She had twelve
8 questions and we could actually, I could tell you that we
9 agree to some of those and then if you want to hear it now
10 we can, if not we can do that after ---

11 The Court: Certainly, let's get that out of the
12 way. That will be all the defense motions, all right.

13 Ms. Lively: Okay, that will be great, Your
14 Honor.

15 The Court: Ms. Grabert-Lowenstein?

16 Ms. Grabert-Lowenstein: Thank you, Your Honor,
17 I'll first of all front myself out, I am used to a system
18 where as I prosecutor I was able to talk directly with the
19 jury, jurors or perspective jurors. I think that in this
20 particular case for a lot of the reasons that Mr. Galtore
21 has spoken about and actually that Ms. Lively spoke about,
22 this is and in this particular climate right now is an
23 energy charged case that the charges are volatile I think
24 we need an opportunity to know the background of the
25 jurors. I believe the best way to do that is for each one

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. Galtmore, Esq.
J. Andrew Ritner, Esq.
Attorneys For Julia S. Gorman

BRENDA R. BABB
Circuit Court Reporter

1 July the 11th, 2008.

2 The Court: I'm going to change it from on or
3 about July the 14th, okay, and I'll take out through July
4 the 14th, 2008, okay?

5 Ms. Lively: Yes, sir.

6 The Court: And that's Ms. Gorman as well July
7 the 14th?

8 Ms. Lively: Yes, sir, in regards to the
9 homicide by child abuse and the homicide by child abuse
10 aiding and abetting, so there should be four indictments
11 that will reflect the on or about date of July the 14th,
12 2008, and the unlawful conduct towards a child is those two
13 indictments are not included in the amendment.

14 The Court: All right, I have, wait a minute now
15 --

16 Ms. Lively: Yes, sir.

17 The Court: I have indictment number 2194,
18 homicide by child abuse as it pertains to Julia Shawnette
19 Gorman, that one should be July the 14th?

20 Ms. Lively: Hold on, let me just see cause I've
21 got them, 2194, correct, Your Honor, homicide by child
22 abuse against Julia Gorman.

23 The Court: Okay, and I have unlawful conduct
24 towards a child as to Julia Shawnette Gorman July the 11th,
25 2008.

1 Ms. Lively: Correct, Your Honor.

2 The Court: That would be indictment number 841.

3 Ms. Lively: Eight forty-one, correct.

4 The Court: Should that one be changed to July
5 the 14th?

6 Ms. Lively: That one should be like the one for
7 Mr. Palmer's which is July the 11th, 2008 through July the
8 14th, 2008.

9 The Court: Well this one unfortunately just
10 says on or about July the 11th.

11 Ms. Lively: Yes, sir.

12 The Court: But the amendment was to change it
13 to July the 11th through July the 14th?

14 Ms. Lively: July the 14th, correct. They
15 should all reflect July the 14th in some form or fashion,
16 and the only one that has a time span are the unlawful
17 conduct towards a child from July the 11th to the 14th.

18 The Court: All right, I want to make sure I got
19 it. The next one I'm looking at is an indictment for
20 homicide by child abuse, again as to Ms. Gorman, and this
21 one says July the 14th, the 11th, 2008, and it's changed to
22 July the 14th, 2008.

23 Ms. Lively: Correct, Your Honor.

24 The Court: Is that correct?

25 Ms. Lively: Yes, sir.

1 The Court: So they're two, all right, one is
2 aiding and abetting; is that right?

3 Ms. Lively: Correct.

4 The Court: All right, let me get the ones as to
5 Ms. Gorman.

6 Ms. Lively: The aiding and abetting is the
7 2194, the first one that you --

8 The Court: Okay, all right, all right, now I
9 have one as to Mr. Palmer ---

10 Ms. Lively: Yes, sir.

11 The Court: That indictment is 2196?

12 Ms. Lively: Yes, sir.

13 The Court: Correct, that should be the 14th?

14 Ms. Lively: Yes, sir.

15 The Court: All right, that one is the 14th?

16 Ms. Lively: Yes, sir.

17 The Court: I have one for Mr. Palmer, aiding
18 and abetting 11th through the 14th; is that correct?

19 Ms. Lively: No, sir, that should be July the
20 14th as well.

21 The Court: And through July 14th to be taken
22 out?

23 Ms. Lively: No, it should just say on or about
24 July the 14th on indictment 2195.

25 The Court: Okay, all right, and then I have one

17

1 for unlawful conduct and it says, it is actually 4120, and
2 it is for Mr. Palmer, unlawful conduct towards a child and
3 it originally says July the 11th but it's July the 14th; is
4 that correct?

5 Ms. Lively: No, sir, it's July the 11th.
6 That's the one where we're claiming that there were
7 injuries, or there were problems, with the child over the
8 weekend.

9 The Court: Okay, that one says only July the
10 11th. Okay, all right.

11 Mr. Galmore: Your Honor, I need, respectfully I
12 need to enter my objection. I know the Court had ruled on
13 this issue previously, but it is my position that changing
14 the dates of the alleged offense is the date is a crucial
15 issue and it's a critical part of this case when these
16 injuries were inflicted and for the State to be allowed to
17 change those without going back before the grand jury I
18 think these indictments need to be quashed. I think they
19 need to re-indict.

20 The Court: All right, thank you very much. All
21 right, Ms. ---

22 Ms. Grabert-Lowenstein: Your Honor, if I could
23 just the record, I know my objections were on the record
24 previously but I'll join Mr. Galmore's objections.

25 The Court: All right, very well, okay, and voir

1 dire this sheet, of course my standard voir dire should be
2 sufficient; is that correct?

3 Ms. Lively: Correct, Your Honor.

4 Mr. Galtmore: Yes, sir.

5 The Court: Very well, any reason why we should
6 not bring in the jury and begin the jury selection process?

7 Ms. Lively: No, Your Honor, the State is ready
8 to proceed.

9 Mr. Galtmore: We're ready to proceed, Your
10 Honor.

11 Ms. Grabert-Lowenstein: We're ready to proceed,
12 Your Honor.

13 The Court: Very well, all right. Bobby, if you
14 could bring in the jury and let's see how many we can get
15 seated.

16 Ms. Grabert-Lowenstein: Your Honor, if we could
17 Mr. Galtmore and I have decided to split the peremptory that
18 we have exchanging ten.

19 The Court: Wait a minute, my understanding is
20 multiple defendants you have ten; is that correct?

21 Mr. Galtmore: Yes, sir.

22 Ms. Grabert-Lowenstein: Ten each.

23 Ms. Lively: That's correct, Your Honor.

24 The Court: All right, ten each, okay.

25 Ms. Grabert-Lowenstein: And we're just going to

1 both of them or either of them, may, if they choose, they
2 have no obligation to do so, but they may put up witnesses
3 for the defense. After all that is done we will begin
4 closing remarks or closing arguments and you will hear
5 again from Ms. Lively and the defendants. The order will
6 depend on what's been presented during this trial but that
7 will be the final thing before I charge you on the law.

8 I ask you again, please, pay close attention to
9 these attorneys as they make their opening remarks. It's
10 going to be their summary of what they intend to prove.
11 It's going to lay out the case for you and it's very
12 helpful in understanding why witnesses are called and what
13 witnesses are going to say. Ms. Lively?

14 Ms. Lively: Thank you, Your Honor.

15 Opening Statement

16 By Ms. Lively:

17 Your Honor is correct, I'm going to give you
18 enough information to know why you're here for this week so
19 you can understand a little bit about what you're going to
20 hear from that witness stand.

21 Ladies and gentlemen, we're here because Richard
22 VICTIM [REDACTED], seventeen months old, visiting his
23 grandmother, Julia Gorman, the defendant, for the first
24 time, his trip to the beach with his mom Cesalee, died in
25 her care and in Palmer's care, seventeen months old.

1 One of the things that you need to understand in
2 child abuse cases is that child abuse is a crime that
3 happens in silence. It's not often that we have a video
4 camera that's taping the event. We don't have pictures a
5 lot of times showing the inflicted injury. Instead what we
6 have to rely on whenever we have the body of a child before
7 us we have to rely on that child, that body, as our silent
8 witness, and it is a shame that we have to work our way
9 backwards to know the truth of what happened to this child,
10 so let me just give you a brief scenario about why he was
11 here.

12 Cesalee comes here to South Carolina to visit her
13 mother with VICTIM his name is VICTIM VICTIM. His
14 father Richard Grimes is here as well, he's in the
15 military. So Cesalee comes here with VICTIM after a two-
16 day bus ride from Pensacola, Florida, because Julia said
17 come on, I'd love to meet my grandson, spend some time with
18 him, so in June of 2008 Cesalee did just that. Her's and
19 Richard's only child, VICTIM brings him here and while
20 they're here they go to the beach. They spend time, he
21 plays in a wading pool, he's a typical toddler.

22 Now Cesalee has to leave and right before she's
23 getting ready to leave to go back and meet up with Richard,
24 he's packing, he's getting ready to have to do basic
25 training or something, he'll tell that to you, you're going

1 to hear from him, VICTIM gets sick. He has a fever, some
2 type of cold, and anyone who's ever been around toddlers
3 know that's about every other week, snotty nose, fussy, and
4 on top of that the poor kid gets bit by ant bites, so he's
5 got ant bites all over him, so he goes into, they take him
6 to the doctor, Cesalee, Julia Gorman, and VICTIM at the
7 doctor, and you're going to hear from that doctor. He's a
8 family practitioner in Aynor, Dr. Jody Hutson. He's going
9 to come in here and tell you, yeah, I saw VICTIM He came
10 in for ant bites and a cold, treated him, gave him some
11 medicine, then they left.

12 Now here was the decision that ended up being
13 unbeknownst to Cesalee, the decision that cost VICTIM his
14 life and it is in no way shape or form her fault. The
15 plane trip was six hours, this child is sick, fussy, so
16 Cesalee makes a decision after speaking with her husband to
17 sign over a temporary guardianship to Julia and Robert
18 Palmer, watch him for me, you want to spend some more time
19 with your grandson, this is a perfect chance and Gorman
20 welcomed it, let him stay here with me, we'll take care of
21 him.

22 Cesalee, young, wanted to get back to her
23 husband, excited about the perspective move, thinking about
24 having a toddler on a six-hour plane ride, makes that
25 decision and you'll hear about that.

1 She leaves on July 2nd, 2008, other than the cold
2 and the ant bites, same toddler, nothing different. July
3 the 14th, 2008, 911 is called, he's actively seizing. He's
4 taken to the Conway Medical Center.

5 You're going to hear medical evidence and
6 testimony that he had multiple, not one, multiple skull
7 fractures, bleeding on his brain, bruises on his body.
8 July the 16th, 2008, they have to pull the plug, he has no
9 more brain reflexes, he's dead.

10 So for sixteen months of that child's life he's
11 running around a toddler, only child to these parents, two
12 weeks with Palmer and Gorman, he's dead.

13 Now, ladies and gentlemen, you're going to hear
14 from that silent witness this whole week. That silent
15 witness is VICTIM [REDACTED], seventeen months old. You're
16 going to see pictures; you're going to hear medical
17 evidence. Medical evidence that is going to show you and
18 prove to you beyond a reasonable doubt that this was
19 nothing less than a deliberate, violent, forceful act, done
20 by the defendants.

21 There were three people in that trailer, single
22 wide, not even fourteen feet wide trailer, with two
23 bedrooms, one bathroom, three people in that trailer, one
24 of them is dead, nobody else. Their testimony, everybody's
25 testimony you will hear is consistent in regards to who the

1 only two caretakers of that child were on July the 14th,
2 2008, when he presented at the hospital actively seizing,
3 only two people.

4 He ate that day, he was functioning that day.
5 You will hear medical testimony that someone with his type
6 of injuries you would expect to think that he had either
7 been thrown out of a motor vehicle at a high rate of speed
8 or fallen from stories high, but you wait and listen to the
9 medical evidence.

10 The experts, the people who come in here who
11 deal with these type of things are going to help you
12 understand what you have to do with all that information
13 cause you have to put it together and you have to make it
14 make sense to you, and I'll tell you it will make sense.
15 You will have no doubt as to who is responsible for this
16 child's death; and what the law is in South Carolina, and
17 our legislature clearly understands that child abuse
18 happens in private, okay, that's what our legislature
19 knows; and the statute in regards to what they're charged
20 with we don't have to show motive in South Carolina, okay,
21 don't have to necessarily make it make sense. What it has
22 to do is it has to fit the elements of the crime.

23 "A person is guilty of homicide by child abuse if
24 the person causes the death of a child under the age of
25 eleven while committing child abuse or neglect and the

1 death occurs under circumstances manifesting an extreme
2 indifference to human life or knowingly aids and abets the
3 other person to commit that child abuse or neglect and it
4 results in the death of a child," guardians of the child.
5 He died in their care, no reasonable explanation for it but
6 you listen for that yourself.

7 Extreme indifference to human life meaning that
8 if I am doing something so horrific to a child that by
9 looking at it you know that that could cause injury or
10 death to the child I have extreme indifference because I'm
11 doing it anyway. That's extreme indifference to human
12 life.

13 Abuse and neglect is an act or omission by any
14 person which causes harm to the child's physical health and
15 welfare, okay, seems pretty straightforward, and then harm
16 to a child, inflicts or allows to be inflicted upon the
17 child physical injury even if it's corporal punishment.

18 And then the other issues that can be brought up
19 in other circumstances, we're focusing on the physical
20 here, because that's what we're going to show you, clearly
21 the physical abuse and neglect of this child, so, ladies
22 and gentlemen, it's not going to be a fast case.

23 It's such an important case to ^{VICTIM} [REDACTED] He is a
24 silent witness and he is going to speak loudly to you this
25 week. He is going to provide you with all the information

1 and the ability you need to make the right decision for
2 him. We're going to hand it to you, give you all the
3 admissible relevant evidence so you can make that decision
4 for VICTIM [REDACTED] and find them guilty, thank you.

5 Ms. Grabert-Lowenstein: Your Honor, the defense
6 on behalf of Mr. Palmer wishes to make a opening at this
7 point, Mr. Galmore and I have decided the order of things.

8 Opening Statement

9 By Ms. Grabert-Lowenstein:

10 Ladies and gentlemen of the jury, my name is
11 Carla Grabert-Lowenstein and it is my absolute honor to
12 represent Mr. Palmer. We are going to ask you to take a
13 long hard look at all the evidence that's going to be
14 presented in this case and it won't be a fast case and as
15 important as it is to VICTIM [REDACTED] it's important to Mr. Palmer.
16 We are convinced that when you look at all the cold hard
17 evidence you'll reach the conclusion that there weren't
18 three people in that trailer, there were two, VICTIM [REDACTED] and
19 the actual perpetrator and that my client had no knowledge
20 of what went on, had no knowledge of any injuries to VICTIM [REDACTED]
21 and you will be able to find him not guilty of all the
22 charges.

23 We ask you to examine the actual evidence, not
24 speculation or innuendo, but simply the evidence that's
25 admitted before you. The events of July 14th of 2008 were

1 incredibly tragic. They were tragic to ^{VICTIM} [REDACTED] they were
2 tragic to the people who care about him, and that included
3 my client.

4 Mr. Palmer's odyssey end to that tragedy began in
5 2004. He was in the Navy; he met Ms. Gorman. They became
6 a couple and after he was honorably discharged he moved
7 with her back to Horry County, back to Horry County where
8 he had been raised and where his extremely close knit
9 family still lives.

10 During the odyssey of this relationship between
11 Robert and Ms. Gorman he found that she had had two
12 children by a previous marriage, Kyle and Kala, and then
13 later he learned about her daughter Cesalee. He learned
14 that this wasn't a close good relationship; they didn't get
15 along. It was troubled.

16 Now in June of 2008 it had been a substantial
17 period of time since Cesalee and her mother had seen each
18 other, and this was the first time that Robert had the
19 pleasure of seeing ^{VICTIM} [REDACTED] but more importantly it was the
20 first time that his grandmother saw him, the first time in
21 seventeen months.

22 Cesalee came to visit Robert and Ms. Gorman where
23 they lived in Aynor and she did make the decision to leave
24 him. The evidence may be different as to when she was
25 going to come back or the circumstances but she made that

1 decision. Now during this period of time my client was the
2 primary caretaker for VICTIM [REDACTED] This was a role that Robert
3 felt entirely comfortable with. He's a father; he had a
4 son who was five years old at that time. The evidence is
5 going to show he's a caring loving father and never were
6 there any issues about people being concerned about him
7 being around children or the care of Dillon, his own son,
8 or more relevant VICTIM [REDACTED]

9 During this time period Ms. Gorman was working a
10 distance away from their home at Bass Pro Shop. She would
11 take the duties of taking care of VICTIM [REDACTED] over when she came
12 home. Now evidence is going to show that she was
13 frustrated about work and yet she was frustrated at their
14 relationship. It wasn't exactly going well.

15 The evidence as to July 14th, those late
16 afternoon early evening hours, will be that Ms. Gorman got
17 home at about 4:15 or so. The first words out of her mouth
18 were where is he; Robert says VICTIM [REDACTED] is sleeping, he's
19 taking his nap. They had been concerned about being a
20 little sick still and they had an appointment the next day.

21 You're going to find that just as the prosecutor
22 said this child was taken while in their care for medical
23 appointments. Now she comes home like I said, the first
24 words out of her mouth were where is he, VICTIM [REDACTED] is asleep,
25 he's taking his nap. The evidence will show they both go

1 in, they check on him, he's fine, he's sleeping. They then
2 have a discussion and it was suggested by Ms. Gorman that
3 they let him sleep, let us eat dinner alone. Mr. Palmer
4 agrees.

5 While dinner is ostensibly being prepared Robert
6 goes out with Logan, the evidence is going to show, and
7 Logan is a bull dog puppy. The evidence is going to show
8 he was outside and Ms. Gorman during her interview
9 confirmed he had gone out to walk the dog. He comes back
10 in, and he was quite some distance away the evidence is
11 going to show, this is a big, big piece of property, comes
12 back, they eat dinner. The evidence is going to show they
13 ate dinner pretty quickly and it's then Ms. Gorman who goes
14 in to get VICTIM [REDACTED] and VICTIM [REDACTED] is seizing. Robert says give
15 him to me, get me a cold cloth cause he's burning up, and
16 call 911, which Ms. Gorman does.

17 The medical evidence is going to show that this
18 case is not a what happened but it's a who happened. The
19 injuries were severe and the evidence is going to show that
20 the time frame for when those injuries happened was exactly
21 when Mr. Palmer was outside. This is a who done it and you
22 will have some extensive evidence to show you that.

23 We'll have the opportunity to hear the two
24 interviews, one of Mr. Palmer and one of Ms. Gorman. The
25 interview of Robert he said, the officers acknowledge you

1 cared for this child, you've shown emotion, can you tell us
2 what happened. Robert consistently said I don't know, I
3 know I didn't hurt him, and at that time he didn't, he even
4 says he doesn't think that Julia hurt him.

5 You turn to the interview of Ms. Gorman and you
6 get an entirely different picture. First of all the person
7 she starts talking about, the very first thing in the
8 interview is her daughter Cesalee. The officers let her
9 talk for a while. They then bring it home, the evidence is
10 going to show that, you know, Cesalee wasn't involved in
11 this, Ms. Gorman.

12 She talks about how VICTIM [REDACTED] was whining, crying
13 and this goes on for a while. She is given a doll and
14 after saying she's not sure if she can remember she shook
15 him, she said I shook him but it wasn't hard, it was like
16 this, and she describes an incident when she was trying to
17 cook, grabbing, he was crawling up her leg. She makes it
18 very clear in her statement that VICTIM [REDACTED] was climbing all
19 over her, she couldn't get the cooking and the cleaning
20 done, it was frustrating. She talks about he must have
21 wanted his mom so, you know, the minute I got home from
22 work he was climbing on me, he was whining, I'd step out,
23 I'd step back in it would start again. She was frustrated;
24 she was frustrated and that frustration caused VICTIM [REDACTED] his
25 life.

1 The evidence is also going to make it clear when
2 you look at the interview of Mr. Palmer that when he
3 doesn't tell the officers what they want that's why he's
4 here. The evidence is going to show it wasn't that he
5 didn't want to tell them, he makes it clear, he wouldn't
6 cover for her, she wasn't worth going to jail for, but you
7 can't say something you don't know if you have no
8 knowledge.

9 Ladies and gentlemen, again on behalf of Mr.
10 Palmer we just ask you to listen to all the evidence, not
11 make any conclusions till you've heard all of it and we're
12 confident that you'll reach the conclusion that Robert
13 Palmer was not the perpetrator of the injuries to VICTIM [REDACTED]
14 [REDACTED], had no knowledge of it. Julia didn't say anything
15 to him either that she was so frustrated it might happen or
16 even after, and that's all covered in the interview, that
17 he had absolutely no knowledge. Ladies and gentlemen, if
18 he had no knowledge how can he be held responsible, and
19 we're confident that you will reach that same conclusion
20 and find him not guilty on all charges.

21 The Court: Mr. Galmore?

22 Mr. Galmore: May it please the Court?

23 Opening Statement

24 By Mr. Galmore:

25 We don't know what happened to VICTIM [REDACTED], we

1 don't know. Did Robert Palmer strike this child to cause
2 his injuries, we don't know. Did Julia Gorman strike this
3 child and cause these injuries? She will take that witness
4 stand and tell you that she did not, but the truth is we
5 don't know. We simply don't know and we have a problem.
6 We've had this problem since July 14th, 2008, 2008, 2009,
7 2010, here we are 2011, and we have the same problem. They
8 don't know what happened; we don't know what happened. We
9 don't know when he was struck.

10 You'll hear three or four different time frames
11 for when these injuries were inflicted. We don't know who
12 inflicted these injuries. As Ms. Grabert-Lowenstein said
13 her client felt like Julia Gorman wasn't that type of
14 person. You'll hear Julia likewise say I dated this man
15 for four years, he never seemed to be the type of person
16 that would cause these injuries to a child, we don't know.

17 The evidence in this case is unfortunately
18 lacking. Let me just leave that out there for just a
19 second and let me talk to you about what your job is here
20 today. I want to talk to you about roles and
21 responsibilities because everybody in this courtroom, all
22 these court officials have responsibilities here today and
23 so do you.

24 Madam Court Reporter, her job is to take down a
25 record of everything that's being said in this courtroom.

1 If you think you heard something from a witness and you're
2 in the back deliberating and you're not real sure what the
3 witness said you can ask the Judge to have the court
4 reporter play that testimony back so you'll know for sure;
5 she's recording everything.

6 Madam Clerk, we know that one of her jobs is to
7 give the oath and you've taken three so far today but her
8 job is to keep a record; keep all of the exhibits, keep all
9 of the documents, keep them locked up in the file
10 downstairs in perpetuity. If State's evidence comes to
11 earth in a thousand years and asks about this case you will
12 have a Clerk of Court for Horry County who can go into the
13 vault downstairs and pull this case out and give it to
14 them. If you want to know about a case from 1928 you can
15 go downstairs right now and ask the Clerk of Court for it;
16 they'll go into the vault and pull it out. That's her job
17 to maintain these files. All the legal proceedings that go
18 on in this case, all the legal wrangling, she's going to
19 have it in her file.

20 His Honor's job, as he explained to you, he's the
21 judge of the law. He gives you the law and you have to
22 apply it. His Honor is sort of like a referee at a
23 football game. If the Solicitor and I have a disagreement
24 about the evidence, the Solicitor and Ms. Grabert-
25 Lowenstein have a disagreement, me and Ms. Grabert-

1 Lowenstein have a disagreement about the evidence the Judge
2 decides what happens and he gives you the law and he asks
3 you to apply the facts of the case to the law, give you a
4 very simple example.

5 Say it's a auto accident case and the Judge tells
6 you the law of the State of South Carolina is that it is
7 unlawful to enter an intersection on a red light, that's
8 the law; and you as jurors will have to apply the facts of
9 the case to the law. So as witnesses are called to the
10 witness stand, some witness says the light was green,
11 another witness says the light was red, you as the judge of
12 the facts have to decide who do you believe, what color was
13 that light, and if you as a jury decide the light was red
14 then you have the law. The law says it's unlawful to enter
15 the intersection on a red light. If you as the jury decide
16 the light as green you have the law, it doesn't fit and the
17 facts don't fit, the person is not guilty of the offense.

18 Now your job is to interpret, excuse me, not to
19 interpret, but to judge these facts. When this case is
20 over and you go back to your jury room before you start
21 your deliberations you close your eyes, close your ears,
22 don't talk to your other jurors, just close your eyes and
23 think to yourself, you ask yourself the question what
24 happened to VICTIM [REDACTED], the answer to that question is
25 we don't know, then we charge you on your oath that you

1 have to find Julia Gorman not guilty.

2 Back to jobs, my job is to try and get my client
3 off. Everybody has pretty much figured that part out. The
4 Solicitor's job is to bring you evidence and you're
5 supposed to use that evidence to decide if a person is
6 guilty or not guilty of a crime. Now I don't know how
7 closely you were listening to the Solicitor, one thing they
8 didn't say who struck VICTIM [REDACTED] That's because like I said
9 probably ten times now we don't know.

10 Now your job is not to find evidence for them.
11 The Judge has told you don't go home and look on the
12 internet and see what you can figure out about the case.
13 If these people don't bring you evidence then you don't
14 have a case and that is the situation that we have here.
15 Ever since 2008 no one has been able to answer this
16 question. They'll tell you that Julia Gorman did it;
17 they'll tell you that Robert Palmer did it. They'll tell
18 you that Julia did it and Robert didn't know about it.
19 They'll tell you that Robert did it and Julia didn't know
20 about it, then they'll tell you Robert did it and Julia
21 knew about it and helped cover it up. We don't even know
22 if a crime was committed.

23 They're going to bring you doctors. The doctors
24 are all going to say we think a crime was committed but
25 when you listen to all of the evidence and you're back in

1 that jury room and you ask yourself that question, was a
2 crime actually committed. The answer to that one also, we
3 don't know. I'm sorry, I wish we did know, I'm sorry
4 VICTIM [REDACTED] is not here with us, but respectfully that's not my
5 job. My job is to point out to you that the State of South
6 Carolina has not and will not meet their burden of proof,
7 and let me explain what a burden of proof is because that
8 is the obligation that they have today.

9 Quite frankly, you're not here to decide who did
10 it, you're not here to decide if either one of them is
11 guilty or not guilty. What you're here to decide is
12 whether or not the State has met its burden of proof. Now
13 we have in the law three different burdens of proof. I
14 know that's kind of complicated. We have a burden of proof
15 for civil cases, auto accidents and things like that, and
16 the easiest way to describe it is to show it to you.

17 Let's imagine this as a football field, a hundred
18 yards in the end. The burden of proof in a civil case is
19 called by a greater weight or a preponderance of the
20 evidence.

21 The easiest way to show you that football team
22 comes up to the fifty yard line and just gets one toe
23 across that fifty yard line that will be sufficient for an
24 auto accident to show that these people are responsible.

25 We have a burden of proof called clear and

1 convincing evidence and that one is kind of up here
2 somewhere and we use clear and convincing evidence in
3 administrative cases. It's not in courtrooms very often.

4 Now for a general sessions case, that is what
5 this is a criminal case, where you're being asked to find
6 someone guilty of a crime. In a general sessions case the
7 burden of proof is high. It is, that's why it's called a
8 burden, it is responsibility that they must carry. The
9 burden of proof in a criminal case is beyond a reasonable
10 doubt so when the question comes up, did she do it, are you
11 convinced of her guilt beyond a reasonable doubt. We will
12 show you that you cannot be convinced of her guilt.

13 We're on this football field and like I said
14 civil burden, clear and convincing evidence, beyond a
15 reasonable doubt is up here, march that ball all the way
16 down the field. Now the State of South Carolina is not
17 required to score a touchdown. That would be beyond every
18 doubt. I could say there's a doubt that the sun is going
19 to come up tomorrow morning and you would say that's
20 probably an unreasonable doubt; that's probably a stupid
21 doubt. It's come up every day for four billion years; it's
22 probably going to come up in the morning. That is an
23 unreasonable doubt. I could say there ain't no fish in the
24 Waccamaw River, again that's an unreasonable doubt, but
25 when the question arises what happened, when did it happen,

1 who did it, and you don't have clear answers to those
2 questions then this is a case where the State has not,
3 cannot, and will not meet their burden of proof. We ask
4 you to keep an open mind, we ask you to listen to the
5 evidence, we ask you to pay attention. This is an
6 important case, lives are on the line, and I submit to you
7 that at the end of this case, at the end of the evidence,
8 let me back up, you take out all the assumptions, you take
9 out all of the rumors, take out all of the gossip, the
10 innuendo, take all of that out and you look at the facts,
11 the facts of this case, Ms. Gorman did not strike her
12 grandson and cause these injuries which caused his death.
13 The State of South Carolina didn't say that to you in the
14 opening; they didn't say she did it and when the case is
15 over at the end they're not going to say she did it because
16 they can't and because they cannot tell you beyond a
17 reasonable doubt what happened to this child, when it
18 happened, and who did it, again I ask you as jurors to
19 follow your oath, don't do their job for them, find Julia
20 Gorman not guilty of these offenses, thank you for your
21 attention.

22 The Court: Ladies and gentlemen, it is almost
23 4:00 and as I told you we were going to break this
24 afternoon and you can get a fresh start with the witnesses
25 in the morning. I'm sure these lawyers have something for

Mr. Grimes - Direct Examination by Ms. Lively

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1 Mr. Galtore: 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?

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- 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?

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

Mr. Grimes - Direct Examination by Ms. Lively

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1 him?

2 A VICTIM [REDACTED] VICTIM [REDACTED].

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 VICTIM [REDACTED] was born?

17 A Yes, ma'am.

18 Q All right, now, Richard, who was the
19 caretaker for VICTIM [REDACTED]

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 VICTIM [REDACTED] was?

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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 VICTIM or you and Cesalee had VICTIM 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 VICTIM 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 VICTIM taken to his well baby

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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 VICTIM 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, VICTIM 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?

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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 VICTIM birth or after
10 VICTIM birth?

11 A This was before.

12 Q Okay, so at the time of VICTIM 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 VICTIM 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

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED]

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

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1 The Witness: (Continuing)

2 A Marine Combat Training. At the end of that
3 training Judy Morris, my wife and VICTIM 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 VICTIM 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 VICTIM came to
18 South Carolina?

19 A Yes, ma'am.

20 Q All right, now, Richard, was that the last
21 time you saw VICTIM before he was injured?

22 A Yes.

23 Ms. Lively: May I approach, Your Honor?

24 The Court: Certainly.

25 Ms. Lively: (Continuing)

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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

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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?

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1 The Court: Mr. Galtmore and Ms. Grabert-
2 Lowenstein?

3 Mr. Galtmore: 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 VICTIM [REDACTED]

23 A Yes, ma'am.

24 Q And in picture Number 7, who's represented
25 in this picture?

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1 A Our whole family, my wife, VICTIM [REDACTED] 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 VICTIM [REDACTED] to come to South Carolina?

24 The Court: Ms. Lively, are you seeking to
25 publish those?

Mr. Grimes - Direct Examination by Ms. Lively

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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

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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 VICTIM 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.

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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 VICTIM [REDACTED]

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 VICTIM [REDACTED] 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

1 VICTIM 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

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1 if you recall, that VICTIM 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 VICTIM 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

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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 Aydain?

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

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1 Q Was there ever a time when you were unable
2 to contact Julia and Robert regarding VICTIM

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 VICTIM
24 was on his way to the hospital; they had called the
25 paramedics because he was seizing in the playpen when they

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 VICTIM
24 in the room at the time.

25 Q And what was his condition at that time?

Mr. Grimes - Direct Examination by Ms. Lively

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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 VICTIM 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 VICTIM 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 VICTIM 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

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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 VICTIM 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 VICTIM

Mr. Grimes - Direct Examination by Ms. Lively

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1 A We had VICTIM [REDACTED] 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

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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. Galtmore: 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. Galtmore: 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

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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

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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 VICTIM 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 VICTIM 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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM 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 VICTIM

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 VICTIM
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 VICTIM 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?

Mr. Grimes - Cross Examination by Mr. Galmore

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Cross Examination

By Mr. Galmore:

Q Now, Mr. Grimes, you never lived in Aynor, did you?

A No, sir, I don't even know where that is.

Q Okay, have you ever been to Ms. Gorman's home?

A No, sir.

Q Well you weren't there, were you?

A No, sir.

Q Do you know who struck your son?

A No, sir.

Q Do you know if he was struck at all?

A Something happened.

Q Right, but you had received information that maybe the dog did it; is that correct?

A Yes, sir.

Q And I believe you testified that you asked for a policeman to go to Conway Hospital; is that correct?

A Yes, sir.

Q And your reason for doing that was what, sir?

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

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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. Galmore

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. Galmore: May I approach the witness, Your
11 Honor?

12 The Court: Certainly.

13 Mr. Galmore: (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 VICTIM [REDACTED] VICTIM [REDACTED].

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 ^{VICTIM} [REDACTED] 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. Galmore

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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 - VI

20 A VICTIM was already born when we got
21 married. ti
m

22 Q VICTIM 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. Galmore

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 VICTIM 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 VICTIM [REDACTED] 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 VICTIM [REDACTED] with her?

Mr. Grimes - Cross Examination by Mr. Galtore

172

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 VICTIM 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 VICTIM 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 VICTIM 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. Galmore

174

- 1 A As far as sitting still, no.
- 2 Q Was there ever a time that VICTIM [REDACTED]
- 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 VICTIM [REDACTED] 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. Galtore

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 Aydain?
- 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 Aydain 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 Aydain here and
- 25 let Cesalee take a plane back to Arizona?

Mr. Grimes - Cross Examination by Mr. Galmore

176

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 VICTIM [REDACTED] 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

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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 VICTIM [REDACTED] VICTIM [REDACTED], 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

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1 Q And that document authorizes Julia Gorman
2 and Robert Palmer to tend to VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM [REDACTED]
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 VICTIM 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 VICTIM [REDACTED] 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 VICTIM 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

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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 ^{VICTIM} [REDACTED]?

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

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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 ^{VICTIM} [REDACTED] born?

20 A [REDACTED].

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

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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 VICTIM 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 VICTIM 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

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1 Q All right, now, Cesalee, how were things
2 whenever you were having to care for VICTIM 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 VICTIM 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 VICTIM 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?

- 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 VICTIM 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 VICTIM 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 VICTIM was born.
- 14 Q Okay, and whenever he left to do his duties
- 15 in the military who would take care of VICTIM
- 16 A I did.
- 17 Q Okay, now, Cesalee, when you were caring
- 18 for VICTIM 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

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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 VICTIM start

Ms. Carnaghie - Direct Examination by Ms. Lively

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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 VICTIM turned or right
20 around the time VICTIM 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

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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, VICTIM 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 VICTIM 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

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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 VICTIM
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 VICTIM 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 VICTIM

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?

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 VICTIM 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 VICTIM
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 VICTIM [REDACTED]

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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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

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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 VICTIM 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 VICTIM 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

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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 VICTIM [REDACTED]

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 VICTIM [REDACTED] 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. Galmore: 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 VICTIM 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 VICTIM

23 A Yes.

24 Q On the beach?

25 A Yes.

Ms. Carnaghie - Direct Examination by Ms. Lively

202

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 VICTIM 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 VICTIM [REDACTED] 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

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1 photos was the last one you took of VICTIM 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 VICTIM 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 VICTIM [REDACTED]

15 A Yes.

16 Q Okay, now, Cesalee, when you took VICTIM [REDACTED] 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.

Ms. Carnaghie - Direct Examination by Ms. Lively 206

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 VICTIM 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 VICTIM 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 VICTIM what did you do in order to make sure that he could

Ms. Carnaghie - Direct Examination by Ms. Lively

208

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 VICTIM 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 VICTIM [REDACTED]

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 VICTIM [REDACTED]

4 Q That's VICTIM [REDACTED] okay, so VICTIM [REDACTED] legal name
5 is what?

6 A Richard.

7 Q VICTIM [REDACTED] VICTIM [REDACTED]?

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 VICTIM
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 VICTIM [REDACTED]

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, VICTIM [REDACTED] 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 VICTIM 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 VICTIM 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.

Ms. Carnaghie - Direct Examination by Ms. Lively 216

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 VICTIM [REDACTED] 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 VICTIM 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 VICTIM [REDACTED]

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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM 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 VICTIM 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 VICTIM 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 VICTIM what did you do?

Ms. Carnaghie - Direct Examination by Ms. Lively

222

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 VICTIM [REDACTED]

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 VICTIM [REDACTED] 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 VICTIM [REDACTED] I don't remember the rest of that conversation.

22 We went upstairs, I saw VICTIM [REDACTED] 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 VICTIM
23 went to the hospital any time that you and your mom fought
24 or had a disagreement?

25 Mr. Galmore: 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. Galtmore: 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. Galtmore: 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 VICTIM 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 VICTIM 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 VICTIM 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 VICTIM 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 VICTIM

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 VICTIM 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 VICTIM [REDACTED]

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 VICTIM [REDACTED] 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 VICTIM [REDACTED]
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 VICTIM [REDACTED]

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 VICTIM
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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM [REDACTED]

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 VICTIM [REDACTED]

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 VICTIM [REDACTED] 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

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM 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 VICTIM [REDACTED]
- 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 VICTIM [REDACTED] 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 VICTIM [REDACTED]
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

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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. Galmore

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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

MMS. Carnaghie - Cross Examination by Mr. Galtore

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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. Galmore 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 VICTIM [REDACTED] 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

MMS. Carnaghie - Cross Examination by Mr. Galmore

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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. Galmore: May I approach the witness, Your
7 Honor?

8 The Court: Yes.

9 Mr. Galmore: (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?

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?

MMs. Carnaghie - Cross Examination by Mr. Galmore

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1 The Court: Yes.

2 Mr. Galmore: 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. Galmore: 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. Galmore: I'll move on, sir.

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 VICTIM [REDACTED]

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, VICTIM [REDACTED] 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 VICTIM [REDACTED]
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.

Mms. Carnaghie - Cross Examination by Mr. Galtore 256

1 Q Is it true that your mother had to contact
2 Mr. Grimes commanding officer in order to get the insurance
3 on VICTIM [REDACTED]

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.

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?

MMs. Carnaghie - Cross Examination by Mr. Galmore

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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

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

MMS. Carnaghie - Cross Examination by Mr. Galmore

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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.

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

Mrs. Carnaghie - Cross Examination by Mr. Galtore 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 VICTIM 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

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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 VICTIM
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 VICTIM
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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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. Galmore: 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 VICTIM 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. Galmore asked you
20 about your mom feeding VICTIM 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 VICTIM
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. Galtore 267

1 Mr. Galtore: 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

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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

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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 VICTIM [REDACTED]

14 VICTIM [REDACTED]?

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

Dr. Hutson - Direct Examination by Ms. Lively

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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

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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

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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 VICTIM [REDACTED]
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

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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.

Dr. Hutson - Direct Examination by Ms. Lively

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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 Richard, 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

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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.

Dr. Hutson - Direct Examination by Ms. Lively

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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 VICTIM VICTIM ; 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

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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

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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

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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.

Dr. Hutson - Direct Examination by Ms. Lively

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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 VICTIM [REDACTED]

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

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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.

Dr. Hutson - Direct Examination by Ms. Lively

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1 Q And was that where he received his?

2 A Yes, he would have, he would have received
3 one in each side, yes.

4 Q Okay, and what are the normal reactions and
5 possible reactions that could occur after a child receives
6 this type of vaccination?

7 A Well the most common is just discomfort at
8 the site of the immunization for potentially a couple of
9 hours afterwards and you can get a fibril response; you're
10 injecting a protein into the body which is going to make an
11 immune reaction so may feel ache and feverish like when
12 you're getting sick for a couple of hours afterwards,
13 usually no more than four to six hours.

14 Q Okay, would it cause a child that age to
15 become possibly whiney or fussy or uncomfortable?

16 A Sure.

17 Q Okay, so that wouldn't be unusual?

18 A No, not at all.

19 Q Would it cause skull fractures?

20 A No.

21 Q How about bruising?

22 A If there were, they're both subcutaneous
23 immunizations, that means they're given under the skin, not
24 into the muscle so the likelihood of bruising is very low,
25 certainly the needle could go through a vein, probably one

Dr. Hutson - Direct Examination by Ms. Lively

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1 or two percent of the time you might get a little dime size
2 bruise at the site, be very superficial bruise, would be
3 resolved within a couple of days probably.

4 Q Within a couple of days, okay. Now were
5 there before, I know you said that there was this two month
6 out visit scheduled, did you ever receive any calls that
7 you know of or any concerns after that July 8th visit from
8 the grandmother regarding this child?

9 A No.

10 Q So July 8th, 2008, was the last contact you
11 had whatsoever?

12 A Yes.

13 Q Now, Dr. Hutson, since that time or even
14 not too far out from July the 8th did you become aware of
15 what occurred to this child?

16 A Yes.

17 Q Okay, and what was your reaction?

18 Ms. Grabert-Lowenstein: Objection, relevance.

19 Ms. Lively: Your Honor, it's relevant because
20 it goes to the fact that he had just treated the child and
21 then six days later he shows up in the hospital with
22 seizures and then dead two days later.

23 The Court: You're asking him what was his
24 reaction when he had heard the child had a problem?

25 Ms. Lively: Yes, sir.

Dr. Hutson - Cross Exam. by Ms. Grabert-Lowenstein 284

1 The Court: I'll let him answer that.

2 Ms. Lively: (Continuing)

3 Q Based on your observations of the child
4 less than a week before what was your reaction when you
5 learned what had happened to him?

6 A I was shocked and heart sick for the little
7 boy.

8 Ms. Lively: That's all I have, thank you so
9 much, Dr. Hutson, please answer any questions of the
10 defense.

11 The Court: Ms. Grabert-Lowenstein?

12 Ms. Grabert-Lowenstein: Thank you, Your Honor.

13 Cross Examination

14 By Ms. Grabert-Lowenstein:

15 Q Good Afternoon, Dr. Hutson.

16 A Good afternoon.

17 Q When you saw ^{VICTIM} [REDACTED] on July 1st of 2008 you
18 would have examined his entire body?

19 A Yes, think so.

20 Q You noted no cuts on him?

21 A Uh-uh.

22 Q And you noted no bruises?

23 A No.

24 Q And as already been really talked about by
25 the prosecutor you would have noted that in the chart?

Dr. Hutson - Cross Exam. by Ms. Grabert-Lowenstein

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1 A Yes.

2 Q And you would have reported that?

3 A Yes.

4 Q Okay, now on July 8th when he came back do
5 you recall whether my client was with the grandmother?

6 A July 8th he was with the grandmother, yes.

7 Q Okay, now on July 8th as she brought him in
8 you would have looked at all of his body?

9 A Yes.

10 Q Okay, note any cuts?

11 A No.

12 Q Bruises?

13 A No.

14 Q And were the ant bites healing?

15 A Yes.

16 Q Would the allergy symptoms that you noted
17 on July 1st make him cranking, whiny?

18 A Could potentially.

19 Q Okay, and you've already indicated the
20 medication would have made him maybe a little drowsy?

21 A Uh-huh.

22 Q Okay, and when children get immunizations
23 do they sometimes, sometimes have a reaction to them that
24 makes them cranky?

25 A Yes.

Dr. Hutson - Cross Examination by Mr. Galtmore

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1 Ms. Grabert-Lowenstein: No further questions.

2 The Court: Mr. Galtmore?

3 Cross Examination

4 By Mr. Galtmore:

5 Q Dr. Hutson, when Richard came to your
6 office on July 1st his complaint was for ant bites; is that
7 correct?

8 A Correct.

9 Q Okay, now would it have been necessary to
10 bring him in to the doctor's office for ant bites?

11 A Not necessarily but he's a young boy and
12 they weren't from area so they may not have experienced ant
13 bites before. They also had the complaint that he was
14 pulling at the ears, I believe so ---

15 Q Yes, sir, yes, sir?

16 A So he had more than one complaint.

17 Q I guess what I'm saying is if a, if a child
18 has ant bites could a parent just give that child some
19 benadryl maybe?

20 A Sure, if they're familiar with treating
21 them.

22 Q Yes, sir, okay, but if you're not familiar
23 with treating them then the appropriate thing would be to
24 bring the child to a physician?

25 A If you're concerned, yes.

Dr. Hutson - Cross Examination by Mr. Galmore

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1 Q And you said they also complained about
2 pulling at the ears and a stuffy nose?

3 A I believe the notes says, yes, number two,
4 pulling at the ears, stuffy nose.

5 Q Yes, sir, was a specific complaint made
6 about the squishiness of VICTIM head?

7 A I don't recall anything like that, no.

8 Q You don't recall that the mother or
9 grandmother said that the child's head seemed to be soft?

10 A No.

11 Q Now when they came in on the first I think
12 you indicated that you weren't able to give them the
13 immunizations at that time?

14 A We're cautious, certainly we could have but
15 he had ant bites on his feet and legs and had the stuffy
16 nose so if there's any chance that would be an infection
17 we'd want to wait on that so that's why we waited.

18 Q Just out of an abundance of caution you
19 waited a week until the 8th; is that correct?

20 A Correct.

21 (Whereupon, Defendant Gorman's Exhibit Number 3
22 marked for identification.)

23 Mr. Galmore: May I approach, Your Honor?

24 The Court: Certainly.

25 Mr. Galmore: (Continuing)

Dr. Hutson - Cross Examination by Mr. Galtore

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1 Q Dr. Hutson, let me hand you what's been
2 marked as Defense Exhibit Number 3?

3 A Yes, sir.

4 Q And ask you if you recognize that document?

5 A Yes, that's the shot record from his chart
6 that was brought to us.

7 Q Okay, so the parents had to bring that in
8 to you?

9 A Correct.

10 Q Okay, so when VICTIM came to your office on
11 July 1st his mother and his grandmother brought that shot
12 record along with them?

13 A Correct.

14 Q And I think you indicated that he was
15 behind on his shots?

16 A Yes, those two that we ended up giving we
17 usually give them at twelve months of age so he would be
18 four months behind by our, but there are some physicians
19 who won't give that till fifteen months of age.

20 Q But it's your office practice to give those
21 chicken pox and what was the other one?

22 A Measles, mump rubella, the M.M.R. shot

23 Q It's your practice to give those two shots
24 at twelve months?

25 A Twelve months of age, yes.

Dr. Hutson - Cross Examination by Mr. Galtore

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1 Q Okay, so it's not a bad thing that these
2 shots were four months behind?

3 A No, no, again we see that all the time, we
4 see immunization delay.

5 Q Now this would have been your first time
6 examining ^{VICTIM} [REDACTED] is that correct?

7 A That's correct.

8 Q Did you do a physical examination looking
9 at his body?

10 A Yes, I did a pointed exam of the head and
11 neck and chest and the skin, certainly.

12 Q All right, so you, you laid eyes on his
13 head, his neck, and his chest?

14 A Yes.

15 Q Okay, and his legs, those where the ant
16 bites were?

17 A Uh-huh, yes.

18 Q Did you see any signs of physical abuse?

19 A No.

20 Q And I think you testified that you didn't
21 see any unusual interactions between the mother and the
22 grandmother?

23 A None that I recall.

24 Q None that you recall, if something stood
25 out you would have recalled it?

Dr. Hutson - Cross Examination by Mr. Galtore

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1 A I believe so, yes.

2 Q If they were fighting or arguing in the
3 lobby or in the waiting room that's something you probably
4 would recall?

5 A Yes.

6 Q Okay, now the next time you saw Aydain was
7 July 8th; is that correct?

8 A Yes.

9 Q Okay, now when they came into the office on
10 July 8th what was the principal complaint at that time?

11 A Well the appointment was scheduled again to
12 give him those two shots and catch him up but the nurse's
13 note says he had nausea and vomiting the day prior, 7-7-08,
14 and had a E.R. visit because of that.

15 Q Okay, so this appointment was already
16 scheduled?

17 A I believe so, yes.

18 Q On the first they scheduled a follow up
19 appointment for the 8th so that he could have the shots?

20 A I don't know if it was done on the first
21 but he had had an appointment already.

22 Q Okay, now I understand that your office is
23 part of the Conway Medical Center; is that correct?

24 A That is correct.

25 Q And even though you're out there in Aynor

Dr. Hutson - Cross Examination by Mr. Galtmore

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1 you're connected to the hospital here on 501?

2 A That is correct.

3 Q And you can actually pull up on your
4 computer in Aynor the hospital records from Conway?

5 A Yes, I saw that E.R. record, it's not a
6 part of our chart but I saw it in the computer screen, yes.

7 Q Okay, so you're able to go into the
8 computer on the 8th check the hospital records down here
9 from Conway for the 7th to see what that emergency room
10 visit was about?

11 A As long as it's my patient, yes.

12 Q Yes, sir, yes, sir, now when you looked at
13 the Conway emergency room records from the 7th did those
14 records indicate or suggest any signs of physical abuse?

15 A Not that I recall, no.

16 Q What was VICTIM taken to the hospital for
17 on the 7th?

18 A That he vomited.

19 Q And what was the treatment plan for that?

20 A They, I believe, gave him a popsicle and
21 sent him home.

22 Q One of those pedialyte popsicles?

23 A Yes.

24 Q Is it absolutely necessary to take a child
25 to the emergency room if that child vomits?

Dr. Hutson - Cross Examination by Mr. Galtmore

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1 A Not really, no.

2 Q Now if you're not familiar with this child
3 would it be appropriate if you didn't know that child very,
4 that child's physical history to take the child to the
5 emergency room under those circumstances?

6 A I see new parents or grandparents who are
7 thrust in a child care situation are nervous all the time
8 and if anything is wrong with the child they'll come
9 running to our office or go to the emergency room, that's
10 why the wait lines in the emergency rooms are so long.

11 Q Yes, sir, yes, sir, so VICTIM was taken to
12 the emergency room on the 7th and then he was brought to
13 your office on the 8th?

14 A Yes.

15 Q When he came to you on the 8th you gave him
16 the follow up, excuse me, you gave him the shots; was there
17 anything that you did to treat the vomiting?

18 A No.

19 Q Did you feel like the hospital had treated
20 it appropriately on the 7th?

21 A Yes.

22 Q Now when you examined VICTIM on the 8th did
23 you get an opportunity to look at his body?

24 A Yes.

25 Q Okay, and I think you testified that his

Dr. Hutson - Cross Examination by Mr. Galmore

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1 shirt would have been up and you would have had to look in
2 his diaper also?

3 A Correct.

4 Q Did you see any signs of physical abuse
5 when you looked at VICTIM body?

6 A No.

7 Q Let me ask you one more question, if
8 someone wants to schedule an appointment with Aynor Family
9 Practice do they call you for that?

10 A They call the office number, yes.

11 Q They call the office?

12 A Uh-huh.

13 Q So say I wanted to schedule an appointment
14 I would end up more than likely talking to a receptionist
15 or secretary?

16 A Correct.

17 Q Probably not talking to the physician?

18 A Unless it was after hours.

19 Mr. Galmore: Yes, sir, thank you, Dr. Hutson,
20 no further questions.

21 The Court: Ms. Lively?

22 Ms. Lively: No more redirect, Your Honor.

23 The Court: All right, Doctor, you may step
24 down, thank you.

25 Do we have further need for the doctor?

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 2867 Highway 129?

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. Galtmore

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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. Galtmore.

18 Mr. Galtmore: 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 2501
18 Bay Water Drive Aynor 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 VICTIM 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. Galtmore 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. Galtmore:

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. Galtore 310

1 A Front door, yes, sir.

2 Q Front door section?

3 The Court: Be sure the jury can see now.

4 Mr. Galtore: 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. Galmore 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. Galmore 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. Galmore: 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 2867
19 Highway 129 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.

Ms. Rosenthal - Direct Examination by Ms. Cote

318

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 VICTIM [REDACTED] 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 VICTIM [REDACTED]

6 A Yes.

7 Q Did VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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 VICTIM 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 VICTIM [REDACTED]

12 Q And did you have an oxygen mask placed on
13 him?

14 A Yes.

15 Q That was done, obviously VICTIM [REDACTED] 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 VICTIM 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 VICTIM [REDACTED] it was from the lieutenant who just spoke
9 previously, correct?

10 A Yes.

11 Q How was VICTIM [REDACTED] 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 VICTIM [REDACTED]
25 body.

Ms. Rosenthal - Cross Examination by Mr. Galmore

324

1 Ms. Grabert-Lowenstein: No further questions.

2 Cross Examination

3 By Mr. Galmore:

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 VICTIM 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

Ms. Milan - Direct Examination by Ms. Lively

327

1 E.R.?

2 A I am a registered nurse.

3 Q And in regards to, have you had any other
4 kind of training in any other areas or background in
5 medical profession?

6 A Yes, I have.

7 Q And what are those?

8 A I worked at MUSC in the neurological ICU
9 and also the surgical trauma neuro ICU.

10 Q And how long did you work in that capacity?

11 A Well I started off as a tech first and then
12 I worked four years there while I was in nursing school and
13 then worked there for a year to a year and maybe three
14 months as a nurse.

15 Q Have you had, have you had quite a bit of
16 experience in seeing traumatic injuries in the emergency
17 room?

18 A Yes, I have.

19 Q And in regards to that are you usually one
20 of the first ones that get to see a patient whenever
21 they're brought into the emergency room for treatment?

22 A Yes, I am.

23 Q All right, and how long have you worked at
24 Conway Medical again?

25 A Five years and about six months.

Ms. Milan - Direct Examination by Ms. Lively

328

1 Q Okay, and whenever you, when you started
2 there did you start there as an R.N.?

3 A Yes, I did.

4 Q Okay, and were you always in the E.R.
5 department?

6 A Yes.

7 Q All right, now, Ms. Millan, did you have an
8 opportunity to be working in your capacity as an R.N. on
9 the afternoon or evening of July 8th, or not July 14th of
10 2008?

11 A Yes.

12 Q Tell the jury who all was there with you
13 that day working in the E.R.?

14 A Myself, Debbie Warran was our charge nurse,
15 Dr. Cacace was our doctor that was on, and there was also
16 Lisa, she was the R.N. prior to me coming on.

17 Q What time did you come on that night?

18 A At 7:00.

19 Q All right, and what time, does your shift
20 go from 7 p.m. to 7 a.m.?

21 A Yes, it does. We usually stay about thirty
22 minutes after our shift especially if there's something
23 going on, so I usually come in at 6:53 is my clock in time
24 and then we come in to the back and get report.

25 Q And were you on time for work that evening;

Ms. Milan - Direct Examination by Ms. Lively

329

1 do you recall?

2 A Yes, I was.

3 Q And did you have an opportunity to come in
4 contact with a toddler on July the 14th, 2008, in the E.R.?

5 A Yes.

6 Q Okay, please tell the jury what you recall
7 seeing whenever you first came into contact with this
8 toddler?

9 A Can I refer to my notes?

10 Q Absolutely.

11 A Okay, could I grab them now?

12 Q Sure, go ahead, that's fine.

13 A I was, it was actually Room 9 cause I
14 remember the room number, this child came in and I was told
15 he had been seizing since 6:00 from the day shift nurse
16 that was on which was Lisa, and then when I immediately
17 observed him I found that he was, and I'll read from my
18 notes which I documented, that he was unresponsive, he was
19 posturing, which is an abnormal flexion, and also seizing
20 at the time, and he had no response whatsoever and his
21 pupils were dilated.

22 Q And in your experience in dealing with
23 traumatic injuries in the E.R. what was, what did you
24 consider his prognosis to be at that time?

25 A Very critical.

Ms. Milan - Direct Examination by Ms. Lively

330

1 Q Okay, and whenever you actually had the
2 opportunity to make those observations were there any other
3 people in that Room Number 9 with you when you were caring
4 for the child?

5 A Yes, at that time there was Lisa, still
6 cause she was giving me report, and I was also observing
7 Dr. Cacace. We also had the two family members that came
8 in with the child which was the boyfriend and the
9 grandmother.

10 Q Okay, now when you were in the room with
11 the child what were ya'll doing immediately to try and
12 treat his symptoms?

13 A We were giving him medication to stop the
14 seizing and we were also putting in the I.V.'s and drawing
15 blood like we normally do on all of our patients.

16 Q Okay, and who provided you with a history
17 as to any injuries or, you know, illnesses in regards to
18 this particular child?

19 A The grandmother.

20 Q All right, and do you see the grandmother
21 in the courtroom now?

22 A I can't remember her face as much but it's
23 been a long time, 2008.

24 Q Okay, and what information did the
25 grandmother provide to you?

Ms. Milan - Direct Examination by Ms. Lively

331

1 A She had told us that he had been seizing,
2 she had also told us that he was on a medication. She
3 didn't really tell us why he was on that medication, which
4 we knew what the medication was. She also told us that he
5 hadn't fallen or anything and we were told by the
6 grandmother, you know, that at first she was the mother and
7 then stated she was the grandmother of the child.

8 Q Okay, what medication was reported to you
9 as being the one that the child was on?

10 A Xyzal.

11 Q Xyzal, and were you familiar with that
12 medication?

13 A Yes.

14 Q All right, and did she give you approximate
15 time line as to when the last time the child would have
16 received that medication?

17 A Yes, can I refer to my notes?

18 Q Please do.

19 A She said it was on 7-11-2008 at 21:00.

20 Q Okay, and the day that of his visit was 7-
21 14-2008, correct?

22 A Correct.

23 Q Did she tell you what amount of that
24 particular medication that she was administering to the
25 child?

Ms. Milan - Direct Examination by Ms. Lively

332

1 A Yes, she did.

2 Q How much?

3 A I'm going to review my notes, 2.5
4 teaspoons.

5 Q Two point five teaspoons?

6 A Uh-huh.

7 Q Yes, now whenever you got this information
8 from the grandmother did she, was there anything else that
9 she said or did that, that you noticed?

10 A She was very anxious, pacing back and forth
11 in front of the bed, seemed very upset, and the boyfriend
12 was there with her as well.

13 Q And what did you notice about the
14 boyfriend, if anything?

15 A Very concerned about the child. While the
16 child was seizing he actually wanted to approach the bed
17 and I told him he could go ahead and talk to the child and
18 he was holding his hand.

19 Q Okay, and what about the grandmother, did
20 she do the same?

21 A She didn't at first and then she did later
22 on.

23 Q And at any point in time did VICTIM become
24 responsive?

25 A No, no, not at all.

Ms. Milan - Direct Examination by Ms. Lively

333

1 Q All right, in reference to your notes,
2 which you've provided to myself as well as the defense,
3 what is a Glasgow Coma Score?

4 A It is what we use for a neurological exam
5 to see how well the patient is responding to us.

6 Q Okay, all right, and tell the jury what the
7 three different things are that you look for in
8 establishing a score for a particular patient?

9 A Okay, can I review to my notes?

10 Q Absolutely.

11 A We would have used three things, eye
12 response; we'd also do verbal response and motor response.

13 Q Okay, and before you came on to your, to
14 work that night had there been some type of, you said Lisa
15 was there before you?

16 A Uh-huh.

17 Q Okay, so had she already done that type of
18 testing on VICTIM before you got there?

19 A She did, yes.

20 Q And is that documented in your nurses
21 notes?

22 A I'm going to look real quick.

23 Q Okay?

24 A Yes, it is.

25 Q Okay, please tell the jury what VICTIM

Ms. Milan - Direct Examination by Ms. Lively

334

1 Glasgow Coma Score was at the time that it was first
2 noted?

3 A It was noted at 19:02 and it was a five.

4 Q Okay, what is the range for a Glasgow Coma
5 Score?

6 A It can go from three which would be coma
7 and then fifteen which is the highest which they're awake
8 and alert.

9 Q Okay, and whenever you're dealing with a
10 trauma patient in the E.R. what level Glasgow Coma Score
11 concerns you greatly regarding that particular patient?

12 A Anything below nine.

13 Q Below nine?

14 A Yes.

15 Q And when VICTIM got there at 7:02 his was a
16 --

17 A Five.

18 Q Five, now while he was in your care was
19 there any improvement to his, his physical condition?

20 A No.

21 Q All right, was there anything additional
22 that you did regarding this child with regard to his
23 breathing, let's talk about that first?

24 A Okay, yeah, we put a breather on him to
25 make sure he's getting enough oxygen at a hundred percent.

Ms. Milan - Direct Examination by Ms. Lively

335

1 Q Okay, and what is that to do?

2 A Just basically making sure that he's
3 getting a lot of oxygen and that we're not depriving him of
4 any oxygen.

5 Q Okay, what observations, if any, did you
6 make regarding his breathing?

7 A He was very labored and grunting.

8 Q And did that give you any concern?

9 A Yes, it did.

10 Q Why is that?

11 A Because they can't keep going like that.
12 They're going to eventually get tired where they'll not
13 breath at all.

14 Q Okay, and so in regards to his heart rate
15 were you ever able to get his heart rate while he was in
16 your care?

17 A Can I look real quick at my notes?

18 Q Please do.

19 A I did get it down some but the lowest I
20 could get it was 142.

21 Q And for a child his age is that, is that a
22 concern?

23 A Yes, it is.

24 Q What would you have liked to have seen it,
25 the range be for him?

Ms. Milan - Direct Examination by Ms. Lively

336

1 A At least 110 to 115.

2 Q Now how long, were you caring for him the
3 entre time he was there?

4 A I was, yes.

5 Q And at some point in time was there a
6 decision made regarding where, whether his care was going
7 to continue at Conway Medical Center?

8 A Yes, as soon as we got the cat scan.

9 Q Okay, all right, and when you got the cat
10 scan were you able to review that cat scan and be with the
11 E.R. doctor to determine the next stage in his, in VICTIM
12 care?

13 A I was in the actual cat scan with the child
14 and was in the back watching the scan while I was watching
15 VICTIM at the time and then when I saw it I called
16 immediately to Dr. Cacace to pull it up and look at the cat
17 scan and then when we came back he came into the room.

18 Q Okay, what did you see?

19 A I saw cranial skull fractures.

20 Q Skull fractures?

21 A Uh-huh.

22 Q Okay, and what else did you see in regards
23 to those scans?

24 A I noticed a little bit of bleeding in the
25 back of the head as well.

Ms. Milan - Direct Examination by Ms. Lively

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1 Q Now whenever you saw the skull fractures
2 and the bleeding, well let me ask you this, with that kind
3 of trauma what kind of a history would you expect to get as
4 to what had happened to this child?

5 A Any, it could range from anything of a
6 child falling from a second story building, a car accident
7 being thrown from a car or any kind of abuse to the child,
8 I mean it can range from a lot of things.

9 Q Okay, now whenever you saw VICTIM in the
10 hospital did you see any outside injuries or anything that
11 gave you concern?

12 A Yes, I did.

13 Q Okay, and what were those?

14 A I'm going to look at my notes again and
15 tell you.

16 Q Okay.

17 A I saw bruising on his right hand, his right
18 thigh, and his left thigh. I also saw a bruise on his
19 lower side of his chest on the left side.

20 Q And, and why do you document things like
21 that?

22 A Because normally you wouldn't see that on a
23 child at all, I mean you would see it maybe a little
24 scratch here or there but you wouldn't see the type of
25 bruises that I saw.

Ms. Milan - Direct Examination by Ms. Lively

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1 Q And at the time whenever you were observing
2 him in the hospital what did he have on his body clothing-
3 wise?

4 A I can't remember, honestly.

5 Q All right, but you did document the
6 bruising?

7 A Yes, I did.

8 Q Was there ever a time whenever you
9 discussed with the grandmother or the boyfriend anything
10 about how he got the bruises?

11 A I did ask and I was told by the grandmother
12 that he did not have any falls.

13 Q Okay, that was the only response you got?

14 A Yeah, other, well I did get one other
15 response from the boyfriend, he said that he was dragging
16 his foot but, you know, earlier that day but I don't
17 remember anything else at that time.

18 Q Okay, and was there any follow up in
19 regards to dragging his foot, what do you mean or anything
20 like that?

21 A They just said that he had eaten earlier
22 and was dragging his foot.

23 Q Okay, all right, so he had eaten earlier?

24 A Uh-huh.

25 Q Okay, was there any information, was any

Ms. Milan - Direct Examination by Ms. Lively

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1 information provided to you as to anyone else who had cared
2 for that child?

3 A I was just told that the, the dog, I'm
4 sorry, the mother of the child had dropped him off, but I
5 don't know when.

6 Q That the mother of VICTIM [REDACTED] had dropped him
7 off?

8 A Yeah, with the grandmother.

9 Q Okay, did the grandmother say anything else
10 to you about the mother or concerns that she had with the
11 mother and this child?

12 A Yes, she did, she, she had also told me
13 that she was a drug addict and she just dropped the child
14 off and she didn't know where she was.

15 Q Now after the skull fractures were seen on
16 the cat scans and who made the decision that VICTIM [REDACTED] was to
17 be transferred?

18 A Dr. Cacace.

19 Q Okay, and is that a normal procedure
20 whenever you have a child with these type of injuries?

21 A Yes.

22 Q Why is that?

23 A We are a level three hospital and you need
24 a level one hospital to care for a patient in that critical
25 state.

Ms. Milan - Direct Examination by Ms. Lively

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1 Q And so do you, and you can refer to your
2 notes, do you recall when the child was going to be
3 transported to MUSC?

4 A The child left at 22:33, I mean could you
5 repeat the question?

6 Q Okay, that's basically my question when was
7 he actually transferred to MUSC, you said 22 --

8 A Thirty-three which is 10:33.

9 Q 10:33 p.m.?

10 A Uh-huh.

11 Q And, and who was it that actually comes and
12 gets the child?

13 A We actually had Megicare come, they flew
14 into our hospital to fly the child out.

15 Q And whenever they come and get the child at
16 that point in time is that when you relinquish your care of
17 the child?

18 A Yes.

19 Q Can you recall, and you might have said
20 this, was this an air flight or was it an ambulance?

21 A It was an air flight.

22 Q Okay ---

23 A We, I'm sorry.

24 A No, that's fine, and whenever, by the time
25 they got there what was ^{VICTIM} condition right before he

Ms. Milan - Direct Examination by Ms. Lively

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1 left?

2 A He was still critical.

3 Q He was still critical?

4 A Uh-huh.

5 Q And had his Glasgow Coma Score changed in
6 any way, shape or form?

7 A Oh, yeah.

8 Q It did?

9 A Yes.

10 Q Okay, when did you reassess him for his,
11 those three things you look at in regards to Glasgow Coma
12 Score?

13 A I'm going to look at my notes again.

14 Q That's fine.

15 A 20:30.

16 Q And that would be 10:30?

17 A That would be 9, I'm sorry 8:30.

18 Q 8:30?

19 A Uh-huh.

20 Q Okay, thank you, 8:30, and what was his
21 Glasgow Coma Score for each thing you look at?

22 A It was a three.

23 Q It was a three?

24 A Uh-huh.

25 Q And you stated earlier that three is

Ms. Milan - Direct Examination by Ms. Lively

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1 basically what?

2 A It's coma.

3 Q Okay, at any point in time did other
4 interventions, medical interventions have to be placed into

5 VICTIM [REDACTED]

6 A Yes.

7 Q Okay, and what were those?

8 A We also intubated him to protect his
9 airway, we also did an oral gastric tube.

10 Q And why is an oral gastric tube done?

11 A To prevent any vomiting.

12 Q And once again is that a normal situation
13 when you have a patient in this condition?

14 A Yes.

15 Q And you stated that you were with the child
16 that whole evening?

17 A Yes.

18 Q Were the defendants also in that room the
19 whole evening?

20 A They were there until the police came and
21 separated them.

22 Q Okay, and who was it, if you know, that
23 contacted the police regarding this particular matter?

24 A I don't know honestly.

25 Q Okay.

Ms. Milan - Cross Ex. by Ms. Graber-Lowenstein

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1 y A I just know they were there.

2 Q Okay, so it wasn't you?

3 A Uh-uh.

4 Q Did you ever speak with the police or DSS
5 that evening?

6 A No, no, I believe someone else did but it
7 wasn't me. Cause I didn't leave his side.

8 Q Okay, you did not leave VICTIM side that
9 whole night?

10 A Right.

11 Ms. Lively: Thank you so much, please answer
12 any questions the defense may have for you.

13 Ms. Grabert-Lowenstein: It pleases the Court
14 may I just very briefly.

15 Cross Examination

16 By Ms. Grabert-Lowenstein:

17 Q What kind of medication did Ms. Gorman
18 indicate that she had given VICTIM

19 A Xyzal.

20 Q What is Nyzal?

21 A Xyzal is an antihistamine.

22 Q I'm sorry, Xyzal?

23 A Yeah.

24 Q That's an antihistamine, if the child was
25 not stuffy nose, having other allergy symptoms would they

Ms. Milan - Cross Ex. by Ms. Graber-Lowenstein

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1 need the Xyzal?

2 A You can actually have it for neuro cardio
3 which is an allergic action.

4 Q If you didn't have an allergic reaction
5 would you need the Xyzal?

6 A No.

7 Q Did she mention anything about giving it on
8 Saturday which would have been the 12th of July?

9 A I wasn't told the 12th, no.

10 Q You were told the 11th?

11 A Yeah.

12 Q And you indicated, do you recognize my
13 client as the --

14 A I don't remember faces, I'm sorry, it's
15 been a long time.

16 Q Do you recall that the boyfriend that came
17 in was concerned and he was allowed to approach and hold
18 VICTIM [REDACTED] hand?

19 A Yes.

20 Q Did he stay there?

21 A He stayed there until he was escorted out
22 by the police.

23 Q Okay, and Ms. Gorman she did not approach
24 VICTIM [REDACTED] until after the boyfriend had?

25 A Correct.

Ms. Millan - Cross Examination by Mr. Galmore

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1 Q You don't have any knowledge of what caused
2 the injuries?

3 A No, I don't know exactly what caused his
4 injury.

5 Ms. Grabert-Lowenstein: No further questions.

6 Cross Examination

7 By Mr. Galmore:

8 Q You said you were in the room, Ms. Gorman,
9 Mr. Palmer were in the room, was there anyone else in the
10 room?

11 A Lisa was in the room, Dr. Cacace came in
12 the room.

13 Q Okay, was Lisa asking questions of these
14 two to try to get a medical, medical information?

15 A Yes, she was and I was present.

16 Q Was Dr. Cacace asking questions of these
17 two?

18 A Yes, he was.

19 Q Information?

20 A Yes.

21 Q Okay, so is it possible that while you were
22 asking questions of one of them either Lisa or Dr. Cacace
23 could have been asking the other one questions also?

24 A No, Lisa was talking to both of them and
25 then Dr. Cacace would talk to both of them as well.

Ms. Millan - Cross Examination by Mr. Galtmore

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1 Q Okay, you indicated that you intubated
2 VICTIM and gave him an oral gastric tube?

3 A Yes.

4 Q Does that sometimes cause bleeding?

5 A Bleeding from where?

6 Q During the insertion process is there
7 sometimes blood in the mouth or something like that?

8 A No.

9 Q Never?

10 A No.

11 Q Okay, when you took VICTIM to have the C.T.
12 scan did Ms. Gorman go with you?

13 A I don't recall.

14 Q Did, what kind of information or history
15 did you receive from EMS?

16 A I was told he was seizing since 6 p.m.

17 Q That was all that they, all the information
18 they gave you?

19 A And they gave him Valium.

20 Q Okay, and then you all began the process of
21 asking Ms. Gorman and Mr. Palmer questions also?

22 A Correct.

23 Q Did Ms. Gorman answer the questions that
24 you asked her?

25 A Yes, she did.

Ms. Millan - Cross Examination by Mr. Galtmore

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1 Q I know this is going to sound like a
2 unnecessary question but did anyone either of these two
3 people confess or admit to you in the hospital that they
4 had struck VICTIM [REDACTED]

5 A No.

6 Q Did either of these people give you an
7 explanation for how he obtained these injuries?

8 A No.

9 Q Now you indicated that you saw bruising on
10 several body parts, and I think you said right hand, right
11 thigh, left thigh, and left lower chest?

12 A Correct.

13 Q Correct, and when you asked Ms. Gorman
14 about the source of these injuries what was her response?

15 A No falls.

16 Q Okay, and when you asked Mr. Palmer about
17 the source of these injuries what was his response?

18 A The question was directed to both and Ms.
19 Gorman was the only one responded.

20 Q Okay, at some point Mr. Palmer said he was
21 dragging his foot?

22 A Yes, earlier that day.

23 Q What, if anything, would that be
24 symptomatic of?

25 A I mean it could be a neurological thing,

Ms. Millan - Cross Examination by Mr. Galmore

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1 you know, from whatever happened earlier that day, I'm not
2 sure.

3 Q Were you able to medically verify whether
4 VICTIM [REDACTED] was in fact dragging his foot?

5 A No.

6 Q So you all conduct the C.T. scan and you
7 discover skull fractures?

8 A Yes.

9 Q Did you share that information with Mr.
10 Palmer and Ms. Gorman?

11 A Dr. Cacace did.

12 Q Okay, that would have been before the
13 helicopter came to take VICTIM [REDACTED] to Charleston?

14 A Yes.

15 Q Would that have been before the police were
16 arrived at the hospital?

17 A The police actually had come before we got
18 the results of the cat scan, they were already there.

19 Q Okay, did the police ask you to not share
20 any information with these two?

21 A No, they did not.

22 Q So that's why Dr. Cacace told them what his
23 findings were?

24 A Correct.

25 Q And you said you were not the person that

Ms. Millan - Cross Examination by Mr. Galtore

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1 contacted the police?

2 A No, I was no where near a phone.

3 Q Okay, did VICTIM appear malnourished?

4 A He seemed very thin.

5 Q Would you say he was just small or would,
6 or would it be malnourishment?

7 A He just looked very thin to me.

8 Q Would he be under weight for a child of his
9 size?

10 A Yes.

11 Q Now how long was VICTIM at Conway Medical
12 Center?

13 A He was there until 22:33.

14 Q That's 10:30 p.m.?

15 A Yes.

16 Q And what time did he arrive?

17 A 18:58 which is 6:58.

18 Mr. Galtore: Thank you, Nurse Millan, I don't
19 have any further questions.

20 A Thank you.

21 The Court: Anything further?

22 Ms. Lively: One moment, Your Honor, the Court's
23 indulgence?

24 No, Your Honor, that would be all the questions
25 from the State.

Ms. Millan - Cross Examination by Mr. Galtmore

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1 The Court: You may step down.

2 Ms. Lively: May she be excused from her
3 subpoena?

4 The Court: Any objection?

5 Mr. Galtmore: No, sir.

6 Ms. Grabert-Lowenstein: No, Your Honor.

7 The Court: You are released from your subpoena.
8 Witness?

9 Ms. Lively: Your Honor, can we approach?

10 (Whereupon, a bench conference was held off the
11 record in the presence of the jury, but out of the hearing
12 of the jury and the court reporter.)

13 The Court: Ladies and gentlemen, I'm informed
14 that the next witness will be a rather lengthy witness.
15 You've been sitting there almost two hours now, If I gave
16 you a break then it would be almost 5:00 and I truly hate
17 to keep you here past 5. I know you've got lives and
18 family that rely on you so I'm going to let you go home.
19 I'll ask you if you could get back in the morning shortly
20 after 9 downstairs ,that way Mr. Ropp can assemble you and
21 bring you up for, doughnuts, Mr. Ropp?

22 Mr. Ropp: Yes, sir.

23 Mr. Galtmore: May we approach, Your Honor?

24 The Court: All right.

25 (Whereupon, a bench conference was held off the

Dr. Cacace - Direct Examination by Ms. Cote

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1 Ms. Lively: The State is ready, Your Honor.

2 The Court: All right.

3 Mr. Galmore: 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

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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

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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 VICTIM VICTIM ?

23 A Yes, VICTIM .

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

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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

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED] VICTIM [REDACTED]?

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

Dr. Cacace - Direct Examination by Ms. Cote

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1 say.

2 Q What do you recall about when you initially
3 responded to VICTIM [REDACTED]

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

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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 Aydain to deal with Ms. Gorman?

25 A Basically a minute or so.

Dr. Cacace - Direct Examination by Ms. Cote

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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

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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 VICTIM 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

Dr. Cacace - Direct Examination by Ms. Cote

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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 VICTIM 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

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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 VICTIM 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

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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 VICTIM [REDACTED]

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

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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 VICTIM 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

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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

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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 Richard Grimes.

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

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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 VICTIM [REDACTED] 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

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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

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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

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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 VICTIM 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

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED] 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

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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

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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 VICTIM 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

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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 VICTIM 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

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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 ^{VICTIM} 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

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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

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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

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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.

Dr. Cacace - Cross Examination by Mr. Galtore

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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

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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 VICTIM 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.

Dr. Cacace - Redirect Examination by Ms. Cote

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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

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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

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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

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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

Ms. Burke - Direct Examination by Ms. Lively

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1 By Ms. Lively:

2 Q Ms. Burke, where are you currently
3 employed?

4 A The Medical University of South Carolina.

5 Q And what are your duties there?

6 A I'm a pediatric flight nurse for the
7 Children's Hospital.

8 Q Okay, and in being a pediatric flight nurse
9 do you have special training for that particular duty?

10 A We do.

11 Q Okay, and are you up to date with that
12 training?

13 A I am.

14 Q All right, so are you currently the R.N. or
15 flight nurse on what is it called, is it Megicare?

16 A Megicare.

17 Q Megicare, is that correct?

18 A Yes.

19 Q All right, now, Ms. Burke, did you have an
20 opportunity to be called in on a case involving a toddler
21 in July, specifically July 14th of 2008?

22 A I did.

23 Q Okay, please tell this jury what has to
24 happen in order for Megicare to get involved with a
25 particular patient?

Ms. Burke - Direct Examination by Ms. Lively

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1 A A patient will present to a doctor's office
2 or an emergency room or already be a patient in the
3 hospital and that physician will then call our physicians
4 for a consult and they will decide if the patient needs to
5 be transported for a higher level of care at which time
6 will be the time to go.

7 Q All right, and is that what happened in
8 this particular case?

9 A It is.

10 Q How long does it take you to fly from MUSC
11 to, to Conway Medical Center?

12 A About forty minutes.

13 Q All right, was there any problems in the
14 timing of you getting there for this particular flight
15 within forty minutes?

16 A No, it doesn't, doesn't appear to be.

17 Q Okay, please tell the jury exactly when it
18 was that you got the call that you were going in to, to
19 Conway Medical Center for a patient?

20 A It was at 8:59 p.m. on 7-14-08.

21 Q Okay, 8:59 p.m, and whenever you got that
22 call do you have any information whatsoever regarding the
23 condition of that particular patient?

24 A We will get a weight and sometimes some
25 information.

Ms. Burke - Direct Examination by Ms. Lively

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1 Q Okay, and did you receive any information
2 so you could prepare yourself for that particular flight?

3 A It looks like this case we were told it was
4 a seventeen month old who was dropped off at the
5 grandparents a couple of days ago and EMS was called
6 tonight because he was "not acting right, began seizing
7 today," then they called EMS, the patient was brought to
8 the hospital and continued to seize.

9 Q Okay, so when you have that information
10 regarding that it's a seventeen-month-old with seizures
11 what do you have to have on flight to make sure you can
12 care for the child?

13 A We have to have monitoring capabilities as
14 well as appropriate medications.

15 Q Okay, and did you have that, that, those
16 items with you on that flight?

17 A They're standard on every flight.

18 Q Okay, now, Ms. Burke, what time did you
19 actually arrive at Conway Medical Center?

20 A We arrived at the patient's bedside at 10
21 p.m.

22 Q Okay, and when you arrived at the patient's
23 bedside you said we, so was that you and another person?

24 A A partner, yes, myself and a respiratory
25 therapist.

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1 Q Okay, and so whenever you got there please
2 tell the jury what it was that you observed regarding the
3 seventeen month old at that time?

4 A Okay, the patient was intubated and on a
5 ventilator, breathe sounds were not equal so he had better
6 breath sounds on the right side than on the left listening,
7 his heart rate was high, his sinus tachycardia, his pulses
8 were a little weak, skin was pink and pale and cool, and
9 but he had been sedated already and was waking up. He did
10 only withdraw when he was waking up, his upper arms and he
11 moved his right better then his left but I didn't see
12 anything else move, pupils were large and not reactive to
13 light, his abdomen was soft. He had two I.V.'s, his
14 saturation at that time, his oxygen saturation was 96
15 percent which is good, but did quickly drop after that.

16 Q Now, Ms. Burke, the information that you
17 had was this a critical case or not?

18 A Yes.

19 Q Okay, did the child at any time, you said
20 that he didn't, he wasn't reacting to light; is that
21 correct?

22 A Yes.

23 Q The pupils, okay, and was that a concern
24 for you?

25 A Absolutely, it makes you think of a head

Ms. Burke - Direct Examination by Ms. Lively

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1 injury.

2 Q Okay, and in regards to his oxygen
3 saturation you said it was at 96 percent when you were
4 there but then it dropped, please explain what you mean by
5 that?

6 A He was 96 percent saturated getting 50
7 percent oxygen on the ventilator because his breathe sounds
8 were unequal we pulled his tube back so he was then
9 oxygenating both lungs, ventilating both lungs and it came
10 back up but it did drop to 81 percent so we increased his
11 oxygen and manipulated his tube to improve that.

12 Q Was he breathing above the ventilator?

13 A When he was awake, he was given, for
14 intubation he was given a medication a paralytic,
15 chemically paralyzes that patient so that they don't fight
16 the ventilator so that you can get the intratracheal tube
17 placed without trauma.

18 Q Now please explain you said when he was
19 awake was he in any way, shape or form responding to you or
20 speaking or anything coherent?

21 A He wouldn't be able to speak around his
22 tube.

23 Q Okay.

24 A So the only, but the only movement I saw
25 him do was a withdrawal which is not a purposeful movement

Ms. Burke - Direct Examination by Ms. Lively

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1 so it's just simply a response to stimulation and waking
2 up.

3 Q A reflex, okay. Now, Ms. Burke, how long
4 did it take then for the flight to go to MUSC, was it forty
5 minutes?

6 A We left the bedside, we lifted off there at
7 10:38 and got to the hospital at 11:13.

8 Q And when you arrived at the hospital who
9 actually greets you there to take over the care of the
10 child?

11 A I gave, I gave the patient over to a nurse
12 and also Dr. Tecklenburg was at the bedside at that time.

13 Q Okay, and during the flight was there any
14 problems or concerns with the child at that time?

15 A No, ma'am, it looks like the flight went
16 well.

17 Q All right, and once you actually arrived at
18 MUSC did you have any additional care for this particular
19 patient?

20 A No, ma'am.

21 Q All right, so that concluded your duties
22 with this patient?

23 A It did.

24 Ms. Lively: Okay, all right, thank you so much,
25 answer any questions the defense may have for you.

Ms. Burke - Cr. Ex. by Ms. Grabert-Lowenstein/Mr. Galmor@91

1 The Court: Ms. Grabert-Lowenstein?

2 Cross Examination

3 By Ms. Grabert-Lowenstein:

4 Q You're just simply here today to testify
5 about ---

6 A The transport.

7 Q --- receiving VICTIM [REDACTED] and transporting him
8 and then leaving him within the care of MUSC?

9 A I am.

10 Ms. Grabert-Lowenstein: No further questions.

11 Cross Examination

12 By Mr. Galmore:

13 Q Nurse Burke, did you perform any test or
14 any procedures on VICTIM [REDACTED] VICTIM ?

15 A Other than monitoring, no.

16 Q Okay, did you observe any external injuries
17 to his head?

18 A I did not. He wasn't a full c-spine which
19 means he's had a neck collar on and his tape would be, his
20 head would be secured to a rigid board.

21 Q Yes, sir, you said you did not?

22 A But I did not, I did not chart that I did.

23 Mr. Galmore: Thank you very much, no further
24 questions.

25 Ms. Lively: That's all for this witness, Your

Ms. Burke - Cr. Ex. by Ms. Grabert-Lowenstein/Mr. Galmor@92

1 Honor, if she may be excused?

2 Ms. Grabert-Lowenstein: No objection.

3 Mr. Galmore: No objection.

4 The Court: You may be excused and you're
5 released from your subpoena.

6 Ms. Lively: Your Honor, may we approach for one
7 moment?

8 The Court: Certainly.

9 Ms. Lively: Thank you.

10 (Whereupon, a bench conference was held off the
11 record in the presence of the jury, but out of the hearing
12 of the jury and the court reporter.)

13 The Court: Take the jury to their jury room,
14 Mr. Ropp, make sure they're comfortable. We have a matter
15 that we have to take up.

16 (Whereupon, the jury retired to the jury room at
17 10:34 a.m.)

18 The Court: Before we get into her let's take a
19 quick break, okay.

20 Ms. Lively: Yes, sir, thank you.

21 (Whereupon, a recess was taken and the following
22 takes place on the record after the recess.)

23 Ms. Lively: Your Honor, the State would call
24 Dr. Donna Roberts to the stand.

25 The Court: All right, what are the issues for

Dr. Roberts - Direct Examination by Ms. Lively

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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

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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

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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 VICTIM VICTIM

13 [REDACTED]?

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

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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

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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 VICTIM [REDACTED] 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

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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

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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 VICTIM [REDACTED], 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 VICTIM [REDACTED]
[REDACTED]. In this picture you see here this big bone in the

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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 VICTIM [REDACTED] 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

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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

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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 Richard Grimes 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

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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

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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 VICTIM [REDACTED] 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

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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,

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED]?

24 A Yes. If you could continue to scroll down,
25 please. On this next slide I'm indicating severe brain

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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 VICTIM [REDACTED] 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

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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 VICTIM 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 VICTIMs. 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 VICTIM
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

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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

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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

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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

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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

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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

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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?

Dr. Roberts - Direct Examination by Ms. Lively

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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 **VICTIM**
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 ^{VICTIM} [REDACTED] 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

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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 VICTIM [REDACTED]

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

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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?

Dr. Roberts - Cross Examination by Mr. Galmore

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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 VICTIM 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 VICTIM 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

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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.

Dr. Roberts - Cross Examination by Mr. Galtore

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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 VICTIM 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

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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

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1 just have our table put back, take just a moment.

2 The Court: Is this the one where we have the
3 issue?

4 Ms. Lively: Yes, sir.

5 The Court: Okay, well let's let the jury take a
6 quick break and I'll handle that while they're out.

7 Ms. Lively: Yes, sir.

8 (Whereupon, the jury retired to the jury room at
9 11:55 a.m.)

10 Dr. Cynthia Anna Schandl

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

12 Madam Clerk: Please state your full name and
13 spell your last for the Court?

14 The Witness: Cynthia Anna Schandl, s-c-h-a-n-d-
15 l.

16 Direct Examination

17 By Ms. Lively:

18 Q Thank you, Dr. Schandl, what was your
19 involvement in the case of a minor child by the name of
20 VICTIM VICTIM ?

21 A I was the forensic pathologist. I
22 performed the autopsy after his death.

23 Q Okay, and what date was that done?

24 A The autopsy itself was performed on July
25 19th of 2008.

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

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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

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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

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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

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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

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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

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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

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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 VICTIM [REDACTED] VICTIM [REDACTED]?

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,

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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 VICTIM [REDACTED] 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 VICTIM [REDACTED] VICTIM [REDACTED] 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

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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

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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?

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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

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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 VICTIM [REDACTED] 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

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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

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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

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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

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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 --

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1 Mr. Galtmore: 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?

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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,

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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

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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?

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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

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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 VICTIM [REDACTED] 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

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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

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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

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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 VICTIM VICTIM ?

24 A Yes, ma'am.

25 Q And, please, tell the jury what your final

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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

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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 VICTIM [REDACTED] VICTIM [REDACTED]?

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.

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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 VICTIM [REDACTED]?

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

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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 VICTIM [REDACTED] to die?

6 A Yes, ma'am.

7 Q Okay, and would I be correct in saying you

8 didn't see VICTIM [REDACTED] 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.

Dr. Schandl - Cross Examination by Mr. Galmore

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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

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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.

Dr. Schandl - Cross Examination by Mr. Galtore

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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

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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

Dr. Schandl - Redirect Examination by Ms. Lively

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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.

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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. Abel - Direct Examination by Ms. Lively

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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. Galmore 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

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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

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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

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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.

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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,

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1 Q (Continuing) Dr. Abel, whenever, how do you
2 get involved in a particular case with a patient such as
3 VICTIM [REDACTED]?

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

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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

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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 VICTIM [REDACTED] 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

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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 VICTIM

[REDACTED]?

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

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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

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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

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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

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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

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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

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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

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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. Galtmore: Thank you, sir.

23 Ms. Grabert-Lowenstein: Thank you.

24 The Court: And the photographs are admitted.

25 Ms. Lively: Okay, thank you.

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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 VICTIM [REDACTED] 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.

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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

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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

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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

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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?

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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

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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

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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.

Dr. Abel - Direct Examination by Ms. Lively

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1 Q All right, now, Dr. Abel, after you had --
2 Ms. Lively: Your Honor, may I publish this to
3 the jury, this particular one that's difficult to see?

4 The Court: Certainly.

5 Ms. Lively: Thank you.

6 Q (Continuing) Now, Dr. Abel, and you can
7 refer to, to any of your notes if you need to, let me just
8 step back for a second and I had asked you about the child
9 being given medication, would you, please, look in your
10 records to determine what type of medication he was given?

11 A It wasn't on my consult because at the time
12 I talked to the family they weren't telling me that. I
13 found it on the report done a few hours earlier, see if I
14 can find it here. I can't read the writing, here it is,
15 Xyzal.

16 Q Okay, and, and what is Xyzal used for?

17 A It's a antihistamine used for allergy
18 symptoms of nose or skin.

19 Q Okay, and in regards to a child his age do
20 you know what, were you told or were you able to find out
21 through your research what this child was being given, what
22 dosage?

23 A I don't know the dosage.

24 Q Okay, that's fair, now do you know what
25 kind of side effects that Xyzal would have on a child this

Dr. Abel - Direct Examination by Ms. Lively

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1 age?

2 A I looked it up and the side effects are
3 similar to other anti, antihistamines, you can be drowsy
4 when you take it, that's the main one.

5 Q All right, now let me get to, let me get
6 back to his skull fractures. Dr. Abel, when after you got
7 all the history from the maternal grandmother and the
8 boyfriend and you looked at the bruising and you
9 considered the findings, the radiological findings, at that
10 time were you able to come up with a conclusion within a
11 reasonable degree of medical certainty as to whether or not
12 this child suffered from an accidental or non accidental
13 injury?

14 A Well I also check, you know, blood count,
15 chemistries, urinalysis, the normal things and he had
16 abnormal clotting test that is a kind of abnormal clotting
17 that we see with massive head trauma and the family history
18 and the boy's history gave no history that he had any kind
19 of clotting problem when he was a younger child, normal
20 circumcision, no problem, so, so there was no evidence of
21 an underlying clotting disorder. There was a clotting
22 disorder as part of the injury that he now had, so when you
23 have massive head injury like this, you know, your clotting
24 mechanism goes awry.

25 Q And just so you said something about the

Dr. Abel - Direct Examination by Ms. Lively

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1 circumcision, did you actually review his well baby check
2 records information?

3 A Yes, I have had a chance now to review all
4 of his well child records up till nine months of age.

5 Q Okay, and, and you mentioned the
6 circumcision was there anything, so there was nothing in
7 what happened to this child that gave concerns as to blood
8 disorder or genetic disorder?

9 A No, he was a normal child; he was
10 developing normally; his language was developing. He was,
11 his motor skills were developing normally up until nine
12 months of age and then, and then there are no more records
13 until he comes to this area and is seen several times.

14 Q Are you aware of the fact that he was seen
15 at Conway Medical Center a week before he presented at the
16 E.R. on the 14th?

17 A Yes.

18 Q Okay, and did you have an opportunity to
19 review those records as well?

20 A Yes.

21 Q Okay, and based upon the information that
22 you had and the severity of the injuries that you saw on
23 the 15th, do you believe it would have been possible for
24 this child to have had those type of injuries on the 7th?

25 A No.

Dr. Abel - Direct Examination by Ms. Lively

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1 Q Okay, all right, based upon your experience
2 as a child abuse pediatric and knowing how children
3 basically function and act would this child be immediately
4 symptomatic once the injury was inflicted to his head?

5 A The head, the skull fractures ---

6 Q Yes.

7 A --- were massive and in my judgment he
8 would have been unconscious immediately.

9 Q Okay, and I believe you said that earlier,
10 I just want to make sure, and I'm asking you, would the
11 child have eaten breakfast that morning if he had these
12 massive skull fractures?

13 A No.

14 Q Would the child have been able to sit up
15 and eat lunch if he had these massive skull fractures?

16 A No.

17 Q So when you're provided that history
18 regarding the child and you have, I believe you said the
19 other two events were the puppy dog knocking him over and
20 the stroller; is that right?

21 A That history was given but it was much
22 earlier.

23 Q I understand, that's what I mean from two
24 weeks out?

25 A Right.

Dr. Abel - Direct Examination by Ms. Lively

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1 Q Without any other information other than
2 that and that the child was functioning that day in your
3 opinion within a reasonable degree of medical certainty can
4 you tell us when you think the injuries would have had to
5 have been inflicted?

6 A The day he presented to the emergency
7 department was the 14th, right, 14th.

8 Q All right, and why is that?

9 A Because he was in extremist and he was
10 having seizures and, and he, so also the blood, the blood
11 that the radiologist they can tell just from the imaging
12 how old the blood is in the head so we knew that the blood
13 was no more than three days old and probably less, no more
14 than three days, and then just the fact that such a massive
15 fractures that he wouldn't have been able to function. Now
16 part of the dilemma is the history and all I can say is
17 that the history I was given does not match what I was
18 seeing at all.

19 Q And so what conclusion did you come to
20 regarding whether this was and as I stated earlier and with
21 all that information whether this was accidental or non
22 accidental?

23 A Well I put in my final report inflicted
24 trauma, inflicted head trauma.

25 Q And once again, Dr. Abel, were you able to

Dr. Abel - Direct Examination by Ms. Lively

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1 talk to, or I didn't actually ask you this, were you able
2 to talk to the biological mother and biological father
3 about this child?

4 A No, they had not arrived and I never met
5 them.

6 Q You never did, okay, so the information
7 that you received was just from, I mean the social history
8 was from the grandmother?

9 A Correct.

10 Ms. Lively: One moment.

11 Q (Continuing) And, Dr. Abel, were you up to
12 date on all the literature regarding traumatic abuse,
13 traumatic skull fractures and abuse of children?

14 A Well I'm doing the best I can. There are
15 hundreds of articles published every few months because
16 this is a very hot topic and I, I can't read them all.

17 Q Okay, all right, and in regards to your
18 experience as a child abuse pediatric in causes of death in
19 children is it, what is one of the highest causes of death
20 in children this age under two?

21 A Abusive head trauma.

22 Ms. Grabert-Lowenstein: Objection, Your Honor,
23 relevance.

24 The Court: I would sustain that objection.

25 Ms. Lively: Okay, thank you.

Dr. Abel - Direct Examination by Ms. Lively

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1 Ms. Grabert-Lowenstein: Thank you, Your Honor.

2 Ms. Lively: (Continuing)

3 Q And, Dr. Abel, after you actually did your
4 consultation on that day did you then follow up and include
5 in your records information you received from the autopsy?

6 A I have read them but, no, my report was
7 made before I had an autopsy report or other records.

8 Q Okay, all right, so everything you had was
9 based on what you saw from the 15th?

10 A And what, what the grandmother and the
11 boyfriend told me and from the medical records that were in
12 the I.C.U. chart. Some of them were from the outlying
13 emergency room and some of them, of course, had been
14 generated right there at the MUSC in pediatric intensive
15 care.

16 Q And, Dr. Abel, when you're seeing these
17 type of skull fractures in a child what normally do you
18 hear as a mechanism for that, for that particular injury?

19 A Well the type of comminuted skull fractures
20 that are seen would be like if a child had fallen from a
21 three story building and somehow managed to hit two
22 surfaces or if the child had been ejected from a moving car
23 and had landed on concrete thirty feet away.

24 Q So in your opinion would the force that
25 you're talking about be something that would be readily

Dr. Abel - Direct Examination by Ms. Lively

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1 visible or apparent to the person or someone watching this
2 injury take place?

3 A Okay, I think I understand the question,
4 the question being that would a person observing this
5 appreciate the magnitude of the force?

6 Q Yeah, the level of the force, the severity
7 of the force?

8 A Yeah, a person with normal observation
9 would perceive that this was tremendous force.

10 Q To the child?

11 A To the child, yeah.

12 Q And finally were you given any historical
13 information that would have put VICTIM [REDACTED] in the care
14 of anyone other than the maternal grandmother and the
15 boyfriend on July the 14th, 2008?

16 A No.

17 Q In regards to his development, just quickly
18 cause I know we've gone through a lot, but in regards to
19 VICTIM [REDACTED] development was there anything in his
20 development that gave you concerns?

21 A The history from the grandmother was
22 indicative that he had severe developmental problems and
23 behavioral problems but that didn't match what I got from
24 the well child check, very detailed pediatric notes, and he
25 had had faithful visits to the pediatrician when they

Dr. Abel - Direct Examination by Ms. Lively

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1 documented his development and his growth and all of that,
2 so the grandmother is describing a child that only can say
3 one word and is clingy and whiny and wants to be held all
4 the time. That doesn't match what's described in his first
5 nine months of life where he already had four or five words
6 at nine months of age and was developing, his motor skills
7 were developing normally.

8 Q And were you given any records whatsoever
9 that he had ever been in a motor vehicle accident or
10 dropped from a two story building?

11 A I was not told that.

12 Ms. Lively: Thank you, answer any questions the
13 defense might have for you.

14 The Court: We're going to take a quick break,
15 five minutes, ten minutes.

16 (Whereupon, the jury retired to the jury room at
17 3:45 p.m.)

18 (Whereupon, a recess was taken and the following
19 takes place on the record after the recess.)

20 The Court: Yes, sir?

21 Mr. Galmore: One issue has come up while we
22 were in our recess. It has come to my attention that the
23 same juror may have been asleep during the course of Dr.
24 Abel's testimony. I have spoken with Ms. Grabert-
25 Lowenstein and with Ms. Lively and I feel that the best

Dr. Abel - Cross Ex. by Ms. Grabert-Lowenstein

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1 Ms. Lively: Your Honor, we'll need to pick a
2 new foreman as well.

3 The Court: I will.

4 Ms. Lively: Yes, sir.

5 (Whereupon, the jury returns to the courtroom at
6 4:02 p.m.)

7 The Court: Ladies and gentlemen, I was
8 compelled to remove the juror from your jury, that was your
9 foreperson. Occupying the foreperson's seat now is Mr. --

10 Jury Panel Member: Robert Kidd.

11 The Court: Mr. Kidd, Mr. Kidd, you will assume
12 the duties as foreperson. Mr. Schafehen?

13 Jury Panel Member: Yes, sir.

14 The Court: Would you move over by Mr. Kidd?

15 Jury Panel Member: Yes, sir.

16 The Court: And from this point forward you will
17 be a, a member of the jury panel and, Mr. Kolbe, you will
18 remain as an alternate, thank you.

19 Witness?

20 Ms. Grabert-Lowenstein: Thank you, Your Honor.

21 **Cross Examination**

22 By Ms. Grabert-Lowenstein:

23 Q Good afternoon, Dr. Abel?

24 A Afternoon.

25 Q Could the bruises that you observed that

Dr. Abel - Cross Ex. by Ms. Grabert-Lowenstein

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1 you testified to have occurred at the same time as the
2 skull fractures?

3 A They could have.

4 Q Okay, and could the skull fractures have
5 happened given all the information that you looked at,
6 which if I might, you looked at all the medical evidence,
7 the radiology, correct?

8 A Yes.

9 Q Okay, taking all of that into account could
10 they have happened within an hour of him being seen by EMS?

11 A They could have.

12 Q Okay, thank you. Now you saw no evidence
13 as to heel cuts?

14 A I, right, he had tiny little scraps that
15 were healing.

16 Q Was there indication of some bug bites?

17 A Yes.

18 Q Okay, and you saw no evidence of old broken
19 bones?

20 A Correct.

21 Q The only broken bones were the skull
22 fractures?

23 A Correct.

24 Q Okay, as a pediatrician would the allergies
25 it was described to you he was treated for would that have

Dr. Abel - Cross Ex. by Ms. Grabert-Lowenstein

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1 made him maybe whiny during that period, maybe a little
2 uncomfortable?

3 A If children are uncomfortable they can
4 whine.

5 Q Okay, and likewise he was seen for stomach
6 problems on the 7th for the vomiting?

7 A Yes.

8 Q Could that make a child uncomfortable and
9 whiny?

10 A Yes.

11 Q Okay, you indicated the antihistamine would
12 make him groggy?

13 A That's a side affect some people have.

14 Q Okay, and, Doctor, how long would have
15 taken to, to make the injuries that you saw on the skull
16 fractures?

17 A Less than a minute.

18 Q Okay, and someone that didn't see the
19 mechanism, obviously, couldn't appreciate the force or what
20 was going on, correct?

21 A Well that's incorrect, the degree of damage
22 is an indication of a force.

23 Q I mean let me rephrase the question, if a
24 person didn't see the damage being inflicted they would
25 have no knowledge of the damage, correct?

Dr. Abel - Cross Examination by Mr. Galmore

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1 A No, that's incorrect, a medical person
2 that's seen the evidence would see the damage.

3 Q Okay, let me, let me rephrase again, I'm
4 sorry, it's getting kind of late in the afternoon?

5 A Okay.

6 Q If a layperson did not see the damage being
7 inflicted they would have no knowledge of the mechanism of
8 the damage?

9 A Correct.

10 Q Okay, and if someone did not see the
11 symptomology they would not appreciate that something had
12 been done to the child?

13 A If, if an observer didn't see any symptoms
14 in the child they wouldn't appreciate that something had
15 happened to the child?

16 Q Yes?

17 A Correct.

18 Q Okay, thank you, now in your extensive
19 history as a pediatrician and then a forensic pediatrician
20 have you gotten into the sociology behind when children,
21 especially toddlers, are hurt?

22 A I've done a lot of reading; there is no
23 profile of someone that hurts toddlers that is a hundred
24 percent accurate.

25 Q Okay, are there, from your consultations

Dr. Abel - Cross Examination by Mr. Galmore

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1 are there some more common scenarios as to when injuries
2 are inflicted?

3 A There are risk factors, risk factors are
4 well known, however, sometimes children are purposely hurt
5 by people with no known risk factors.

6 Q Okay, are one of those risk factors
7 somebody for a low tolerance to stress?

8 A Yes.

9 Q And including a low tolerance to the
10 demands of a toddler?

11 A Yes.

12 Q Okay, thank you, Doctor, I have no further
13 questions.

14 The Court: Mr. Galmore?

15 Mr. Galmore: Thank you, sir.

16 Cross Examination

17 By Mr. Galmore:

18 Q Dr. Abel, I believe you testified that you
19 were the director of the child abuse program at Children's
20 Hospital in Washington, right?

21 A Children's National Medical Center.

22 Q Yes, ma'am, when were you director of that
23 program?

24 A The year 2000 through 2003.

25 Q And when did you become director of the

Dr. Abel - Cross Examination by Mr. Galmore

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1 Violence Intervention and Prevention Program at MUSC?

2 A I came as the medical director in 2006 and
3 I became the director I believe in 2010.

4 Q So you were medical director and then you
5 became --

6 A Director.

7 Q Director?

8 A Correct.

9 Q Now you were called in to consult on this
10 case; is that correct?

11 A That's correct.

12 Q And who were you called in by?

13 A Dr. Tecklenburg.

14 Q And who is Dr. Tecklenburg?

15 A He's the intensivist, pediatric intensivist
16 at MUSC; he was taking care of this child.

17 Q Okay, so Dr. Tecklenburg was ^{VICTIM} [REDACTED]
18 physician at MUSC?

19 A He, yeah, he was the attending physician.

20 Q Okay, and is part of the consultation one
21 of the first things you need to do is try to establish a
22 history for the patient; is that correct?

23 A Yes.

24 Q And in this case you did that by talking
25 with the maternal grandmother and her boyfriend?

Dr. Abel - Cross Examination by Mr. Galmore

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- 1 A Correct.
- 2 Q All right, did Ms. Gorman refuse to speak
3 to you?
- 4 A Ms. Gorman is the maternal grandmother?
- 5 Q Yes, ma'am?
- 6 A No, she spoke with me.
- 7 Q Okay, did she have the choice to refuse to
8 speak to you?
- 9 A Yes.
- 10 Q And when she spoke with you I believe she
11 told you that she went to work at 5 a.m. that morning?
- 12 A I believe I testified to that, yeah.
- 13 Q Yes, ma'am, is that correct?
- 14 A That's correct.
- 15 Q Okay, did you get that same information
16 from the boyfriend?
- 17 A Yes.
- 18 Q So that particular piece of information was
19 verified by both people; is that correct?
- 20 A Yes.
- 21 Q Okay, now I believe you received
22 information that the patient ate breakfast at 9:30 and went
23 back to sleep and then ate lunch around noon and took a
24 nap?
- 25 A Yes.

Dr. Abel - Cross Examination by Mr. Galmore

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1 Q Okay, where did you get that information?

2 A That came from the mother's boyfriend.

3 Q Okay, now at this particular time ---

4 A The grandmother, excuse me, grandmother's
5 boyfriend.

6 Q Yes, this would have been at a time when
7 the grandmother was at work?

8 A That is correct.

9 Q Okay, were you able to independently verify
10 the claim that the child had breakfast at 9:30 and went to
11 sleep and had lunch at noon and went back to sleep again?

12 A No.

13 Q Well so what you're saying, were you, were
14 you able to contact or speak to any other people to, to
15 tell you that that is what happened?

16 A I spoke to the people that were telling me
17 they were the ones that was present and my job is to get
18 the medical history ---

19 Q Yes, ma'am?

20 A --- you know, there is law enforcement
21 investigation and DSS investigation and they may have done
22 other things, I don't know.

23 Q Okay, but on that particular issue of
24 waking up having breakfast, going back to sleep, waking up
25 and having lunch, going back to sleep, that information

Dr. Abel - Cross Examination by Mr. Galmore

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1 came from a single source; is that correct?

2 A Yes, that's from maternal grandmother's
3 boyfriend, yes.

4 Q I believe they also told you that the child
5 fell in the stroller a couple of weeks earlier ---
6

7 A Correct.

8 Q --- but they did not think that that was a
9 significant injury?

10 A Correct.

11 Q And they also told you that the puppy
12 knocked the child over but they did not think that was a
13 significant injury?

14 A Correct.

15 Q Did both people tell you both of those
16 incidents?

17 A Yes.

18 Q Okay, the social history says that the
19 mother returned home around 3:30 p.m. and the child was
20 asleep?

21 A The maternal grandmother?

22 Q Yes, well your, the report says mother but
23 I believe you're referring to the maternal grandmother?

24 A You're right, yes.

25 Q Okay, where did you receive that

Dr. Abel - Cross Examination by Mr. Galmore

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1 information, from whom?

2 A From the maternal grandmother.

3 Q Okay, was the boyfriend able to verify that
4 the maternal grandmother came home around 3:30 and the
5 child was asleep?

6 A Their times were very similar; I think one
7 of them said 3:30 and one of them said 4:00 but the stories
8 they both told were matching.

9 Q Okay, so they both told you that she had
10 went to work and come home later that day?

11 A Right.

12 Q I think you said you had an opportunity to
13 review the wellness records for ^{VICTIM} [REDACTED]; was that
14 correct?

15 A Yes.

16 Q Okay, and there was a gap in his, in his
17 records from nine months up until he was treated at Aynor
18 Family Practice on July 1st?

19 A Correct.

20 Q So he did not have any follow up visits for
21 eight months?

22 A I don't know, the mother wasn't there to
23 tell me if she had taken him to another doctor so I just
24 don't know.

25 Q Okay, but your records have an eight month

Dr. Abel - Cross Examination by Mr. Galmore

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1 gap in there?

2 A Yes, well is that eight months, it goes
3 from nine months to sixteen months, yeah.

4 Q Yes, ma'am?

5 A Yeah, so seven months.

6 Q Yes, ma'am?

7 A Yeah.

8 Q I think you received information from the
9 maternal grandmother that the child was malnourished?

10 A Correct.

11 Q Did you have an opportunity to weigh VICTIM [REDACTED]
[REDACTED] ?

13 A He was weighed at the hospital and his
14 weight was nine kilograms and that is less than the fifth
15 percentile which is underweight.

16 Q So he was in fact underweight?

17 A He was in fact underweight, now that's
18 after he had been, he had been in the home of the maternal
19 grandmother for several weeks but he was still underweight.

20 Q So you, your testimony is that his actual
21 weight to in your medical opinion was underweight?

22 A It was and compared to his previous growth
23 charts, I took all the data from the well child visits and
24 I plotted it and he had been average height for his age
25 each month but he had always been like the twenty fifth

Dr. Abel - Cross Examination by Mr. Galtore

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1 percentile, in other words the lower one quarter in terms
2 of weight but he had grown steadily and that pattern went
3 all the way to the ninth month and then the record stopped
4 and then when we're measuring him during the
5 hospitalization his height was normal. He's around the
6 fiftieth to seventy-fifth percentile but his weight is now
7 less than the fifth percentile.

8 Q Yes, ma'am, now let me ask you about the
9 photographs that you went over with the jury, the pictures,
10 you stated that some of them appeared to be ant bites; is
11 that correct?

12 A There were several.

13 Q Okay, and you stated that the parents,
14 excuse me, the maternal grandmother and her boyfriend did
15 not give you an explanation for those bruises?

16 A Correct.

17 Q Okay, can you tell the jury when these
18 bruises were inflicted?

19 A No.

20 Q Can you tell the jury who inflicted these
21 bruises?

22 A No.

23 Q Do you have any idea how many people
24 handled VICTIM from the time 911 was called until you had
25 an opportunity to see him on the 15th?

Dr. Abel - Cross Examination by Mr. Galmore

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1 A I don't know.

2 Q Do the records indicate that he was
3 unconscious during that entire period?

4 A Yes.

5 Q So he wouldn't have been able to get on the
6 stretcher on his own?

7 A Right.

8 Q He wouldn't have been able to get in the
9 helicopter on his own?

10 A Uh-huh.

11 Q So someone has to actually physically pick
12 him up and put him on a stretcher, is it possible that
13 these bruises are the result of several different people
14 handling the child?

15 A It would be unusual to get bruises on the
16 trunk in the process of resuscitation. Sometimes with
17 resuscitation, a vigorous resuscitation, children or adults
18 will get bruises here where the person's forcefully lifting
19 their chin to try to get the airway, sometimes they'll have
20 bruises on their extremities where people have tried to put
21 in I.V.'s especially at the I.V. sites like here on the
22 inner elbow or in a baby in his case I think I saw one like
23 that on his foot where it looked someone had tried to put
24 an I.V. in his foot.

25 Q Okay, so bruising does sometimes occur

Dr. Abel - Cross Examination by Mr. Galtore

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1 during resuscitative efforts?

2 A In, in specific locations, yes.

3 Q Based on your training and experience are
4 you able to give this jury an estimate for when the skull
5 fractures would have been inflicted?

6 A Skull fractures, there was no evidence of
7 healing but the healing of skull fractures is an area where
8 they don't heal like a long bone. When a long bone heals
9 there's a cuff of new bone formation that looks like an
10 onion that goes around where the fracture is that makes it
11 easier to figure out how old they are cause the
12 radiologists are used to looking at that, but the bones of
13 the head when they're fractured and they start to heal they
14 just sort of melt back together again slowly and it's
15 really very difficult to age healing. Now there's no sign
16 of any healing at all on these. We know that from the
17 blood products in the brain that shouldn't have been where
18 they were that the injury that associated with the bleeding
19 in the head and the skull fracture most likely were all
20 associated at the same time that, that it was less than
21 three days.

22 Q Okay?

23 A Now the degree of injury to the skull with
24 the shattering of the bones meant a tremendous amount of
25 force and I would say the child was unconscious, as I have

Dr. Abel - Cross Examination by Mr. Galmore

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1 said earlier he was unconscious. Now the problem to figure
2 out is which story is accurate about when he became
3 abnormal, when he started acting abnormal and so that's the
4 difficulty.

5 Q Right.

6 A We apparently have some people that
7 observed him the night before in the condition that was not
8 terribly abnormal so he, he did not have those skull
9 fractures the night before.

10 Q But your, your, your testimony, and correct
11 me if I'm wrong, is that these skull fractures can be no
12 older than three days?

13 A The blood says they're no older than three
14 days. The clinical story if you take the accuracy of the
15 other people that saw him at the swimming pool they
16 couldn't have been there. It would have been after that
17 because he could not have been acting normal.

18 Q Well, well let me say it like this, we've
19 had testimony that 911 was contacted on Monday the 14th at
20 6:06 p.m.

21 A Yes.

22 Q I'm trying to figure out when in
23 relationship to that time 6 p.m. when this injury would
24 have been inflicted on VICTIM [REDACTED] What is your medical
25 opinion?

Dr. Abel - Cross Examination by Mr. Galtore

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1 A My opinion it would have occurred that day,
2 possibly the night before, but after he was seen by other
3 people and was normal.

4 Q So are we talking three hours, six hours,
5 twelve hours?

6 A Again the problem with this is that the
7 history is coming from the defendants and so it's very
8 difficult to assess the veracity of the history.

9 Q Yes, the problem is the history, yes?

10 A Correct.

11 Q Well let's take the history out of it and
12 just look at the wound itself?

13 A Yes.

14 Q Without referencing the historical
15 information that was given to you, can you tell us to a
16 reasonable degree of medical certainty when the skull
17 fracture was inflicted?

18 A I would, if you have no history at all it
19 would have been fairly soon around the time the child was
20 brought to medical attention because he would have
21 proceeded to die if he hadn't been put on the respirator,
22 so my judgment is it would be that day.

23 Q Sometime that day that's your answer? I'm
24 not trying to put words in your mouth.

25 A That day, the middle of the night the night

Dr. Abel - Redirect Examination by Ms. Lively

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1 before, but it had to have been after he had neutral people
2 say he looked normal.

3 Q Okay, so your answer is some time after he
4 returned from the swimming pool?

5 A Yes.

6 Q Could hitting your head on the side of the
7 swimming pool, if it's a cement pool, could that cause
8 these type of skull fractures?

9 A This type of skull fracture would be if his
10 head had been slammed forcefully against the pool and the
11 problem is it's both sides of the head, so it would have
12 been two blows and that's not consistent with a normal
13 accident in a swimming pool and there's no history of an
14 accident in the swimming pool, to my knowledge.

15 Q Okay, so your testimony is that some time
16 after he returned from the pool up until the Monday at 6
17 p.m. somewhere in there is where the injury occurred?

18 A Yes.

19 Q Can you narrow it down any more than that?

20 A Not really.

21 Mr. Galmore: All right, thank you very much.

22 The Court: Let's wait and see if Ms. Lively has
23 any further --

24 Ms. Grabert-Lowenstein: I'm sorry, Your Honor.

25 The Court: Ms. Lively, do you have any further

Dr. Abel - Redirect Examination by Ms. Lively

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1 questions?

2 Ms. Lively: Yes, sir, I was just got used to
3 her going.

4 Ms. Grabert-Lowenstein: Sorry.

5 Redirect Examination

6 By Ms. Lively:

7 Q In regards to two issues, first of all do
8 you have any information in your records to show that
9 VICTIM had to be resuscitated or CPR given to him at any
10 time?

11 A Only as part of EMS being called the night
12 of the 14th.

13 Q Okay, and I'm specifically asking if
14 there's any indication that he received chest compressions
15 or resuscitation or did he just receive oxygen, in your
16 records does it show?

17 A It's not in my records; it's in the EMS
18 record.

19 Q Okay.

20 A And I could look in it if you want me to
21 look at it.

22 Q Okay, and if it's not in the EMS record
23 would it be that it didn't happen; could you tell us?

24 A I couldn't tell you.

25 Q Okay, will you look in the record then and

Dr. Abel - Redirect Examination by Ms. Lively

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1 tell us whether it's documented that he received CPR or any
2 type of resuscitative maneuvers on his body?

3 A You know, I don't have that record; do you
4 have that record?

5 Q I do.

6 Ms. Lively: If I may approach, Your Honor?

7 The Court: Certainly.

8 Ms. Lively: (Continuing)

9 Q So we would have to leave that up to the
10 EMT's; is that right?

11 A Yes.

12 Q Okay, that's fair. Well let me ask you
13 this, I'm looking over your consultation report in regards
14 to the timing, which we've gone over et nauseam, but let me
15 ask you this, when you did your final assessment based on
16 all the information you had, including the two-week-old
17 potential puppy dog stroller issue and the history that was
18 given to you by the defendants in your assessment, you were
19 able to give a clearer time line in regards to when you
20 believed this child would have had the inflicted injury;
21 would you please look at your report and refresh your
22 recollection for the jury?

23 A Yes.

24 Q Okay, and if you would, please, and I know
25 this case is from 2008 so read through that and refresh

Dr. Abel - Redirect Examination by Ms. Lively

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1 your recollection, based on all the information you were
2 given at that time, what was your opinion regarding the
3 time line for the injuries to this child based on the
4 information that was given to you?

5 A That the head injury was no more than three
6 days old and if timed by both the head imaging and the time
7 of the sudden change in his clinical status as given by the
8 maternal grandmother and her boyfriend was no more than
9 three hours old.

10 Q Three hours old from what?

11 A From the time he was taken to the outside
12 emergency department.

13 Q Okay, so three hours from the time he got
14 to the Conway E.R.?

15 A Right.

16 Q All right, which was, do you know was that
17 approximately 6:58 p.m.?

18 A I don't recall the exact time.

19 Q Okay, all right, and that was your
20 documentation from three years ago when you actually were
21 involved in your consult?

22 A Yeah, three and a half years ago, yeah.

23 Ms. Lively: Okay, thank you, Dr. Abel, that's
24 all.

25 The Court: Ms. Grabert-Lowenstein?

Dr. Abel - Recross Ex. by Ms. Grabert-Lowenstein

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Ms. Grabert-Lowenstein: Thank you, Your Honor.

Recross Examination

By Ms. Grabert-Lowenstein:

Q Doctor, if the child was sleeping normally at 4:30 p.m. does that lessen the time frame that the injuries could have occurred in?

A If the child is sleeping normally, one of the difficulties is that children with head injuries if the person doesn't tell anybody that they did a head injury and, and the child is unconscious it's very difficult for another observer who doesn't know about the head injury to realize that the child is unconscious.

Q But if indeed the report is accurate that the child was sleeping ---

A Yes.

Q --- and sleeping normally that would narrow down that, that time much less than the three hours, correct, Doctor?

A It's very difficult cause when you're sleeping you're not doing anything, you know, you're just laying there breathing and so it's hard to assess how normal a person is when they're asleep.

Q Let me ask you a hypothetical. Again, if you have the information that the child is sleeping normally that there's no sounds, nothing to indicate that

Dr. Abel - Recross Ex. by Ms. Grabert-Lowenstein

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1 he's not sleeping normally, that would lessen that time
2 frame a great deal from the three hours maximum, correct?

3 A That's very hard to answer because it's,
4 the signs of head trauma are changing consciousness,
5 sometime seizures, sometimes breathing abnormalities.
6 They, they don't all happen at once, so a child could have
7 a head injury and be quietly breathing and apparently
8 sleeping but actually unconscious and it would not be
9 possible for a person who didn't know that they had had the
10 head injury to realize it until later, until something more
11 started happening.

12 Q Right, and ---

13 A Yeah.

14 Q --- but you would expect to see, would you
15 not, breathing and, you know, breathing difficulties and
16 the seizure activity?

17 A I would expect that after the head injury
18 this child sustained he would be unconscious so he'd be
19 quiet, flaccid, probably still breathing and as the
20 swelling in the brain got worse and he's getting worse and
21 worse then he might start to breathe more slowly and
22 possibly have a seizure and become more abnormal as things
23 go on.

24 Q And, Doctor, is your hesitation the fact
25 that you weren't there, you didn't actually have an

Dr. Abel - Recross Ex. by Ms. Grabert-Lowenstein

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1 opportunity to see the exact sequence of what occurred?

2 A No, my hesitation is that your
3 characterization doesn't make sense.

4 Q I'm asking you if the facts are that
5 everything is normal at 4:30 wouldn't that lessen the time
6 frame for when the injuries could have occurred?

7 A You're assuming that the observer is able
8 to detect things that maybe aren't detectable yet.

9 Q Okay, and aren't you assuming that the
10 child being reported as sleeping normally is incorrect?

11 A I'm telling you that's a real possibility;
12 I don't know.

13 Q Okay, and you don't know because you
14 weren't there?

15 A Correct.

16 Q Okay, but the fact of the matter is this,
17 this injury didn't necessarily have to occurred at the full
18 end of the three hours?

19 A Can you rephrase that?

20 Ms. Lively: Your Honor, I just want to object
21 to asked and answered, it seems like it's just continuously
22 going on.

23 The Court: One more, one more, Ms. Grabert-
24 Lowenstein.

25 Ms. Lively: Thank you.

Dr. Abel - Recross Ex. by Ms. Grabert-Lowenstein

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1 Ms. Grabert-Lowenstein: (Continuing)

2 Q You indicated in your report that based on
3 everything no more than three hours?

4 A That's assuming that the history given by
5 the defendants was accurate.

6 Q And are you assuming that it wasn't?

7 A I'm, I'm saying I don't know.

8 Q Okay, and my point being that if it was
9 accurate that just reduces the time frame drastically from
10 the maximum of three hours?

11 A Yes.

12 Q Okay, thank you, Doctor, just a couple of
13 more questions. Could any of the bruises you observed have
14 occurred if, if VICTIM hit something as he was seizing?

15 A If he fell off of a, off of a bed and
16 landed on something, possibly; I didn't get any history
17 like that.

18 Q Okay, but that is, that is a possibility.
19 The other thing is if he's seizing and posturing as we've
20 heard testimony as and the paramedics were trying to work
21 on him would they have not had to restrain him to, to work
22 on him?

23 A Yeah, they would have to hold him down
24 enough to get an I.V. in and I believe they did get an I.V.
25 in.

Dr. Abel - Recross Examination by Mr. Galmore

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1 Q And could that have caused any of the
2 bruising?

3 A Usually the bruising with that kind of
4 thing would be on the extremities of being held or like I
5 mentioned if they have to tilt his chin up to put in that
6 intratrachial tube.

7 Ms. Grabert-Lowenstein: Okay, all right, I have
8 nothing further, thank you, Your Honor.

9 Mr. Galmore: Very briefly, Your Honor.

10 The Court: Yes.

11 Recross Examination

12 By Mr. Galmore:

13 Q Dr. Abel, if a child has been struck in the
14 head and lost consciousness and that child was not seizing
15 and not posturing is it possible that that child would
16 appear to be asleep?

17 A Yes.

18 Q Now if someone attempted to wake up a child
19 believing that this child was asleep and the child was in
20 fact unconscious and not seizing and not posturing, if that
21 person attempted to say pick the child up to wake him up
22 could that cause seizing?

23 A No.

24 Q Could it cause posturing?

25 A No, posturing is part of the seizing.

Dr. Abel - Recross Examination by Mr. Galmore

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1 Q Yes, ma'am.

2 A And so the seizures caused by brain wave
3 activity and in normally handling picking up a child
4 wouldn't cause a seizure even, even ---

5 Q Yes, ma'am.

6 A --- to my knowledge even in a brain damaged
7 child that had just been struck.

8 Mr. Galmore: Okay, thank you very much.

9 Ms. Lively: That's all, Your Honor.

10 The Court: You may step down, Dr. Abel.

11 Ms. Lively: May this witness be excused from
12 her subpoena?

13 The Court: Any objection?

14 Mr. Galmore: No, sir.

15 Ms. Grabert-Lowenstein: No objection, Your
16 Honor.

17 The Court: You're excused and released from
18 your subpoena, Dr. Abel, thank you for coming.

19 Witness?

20 Ms. Cote: Your Honor, we have to take up a
21 brief legal issue before we call our next witness.

22 The Court: All right.

23 (Whereupon, the jury retired to the jury room at
24 4:34 p.m.)

25 Ms. Cote: Thank you, Your Honor, this is an

Ms. Bessant - Direct Examination by Ms. Lively

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1 Ms. Grabert-Lowenstein: No, I understand that.

2 The Court: For an un-subpoenaed witness.

3 Ms. Grabert-Lowenstein: Right, Your Honor, I
4 understand that and I don't believe that that will be an
5 issue.

6 The Court: All right, are you ready to go?

7 Ms. Lively: Yes, sir, Your Honor.

8 (Whereupon, the jury returns to the courtroom at
9 9:35 a.m.)

10 The Court: All right, we have our jurors back
11 in the courtroom. Ms. Lively?

12 Ms. Lively: Thank you, Your Honor, the State
13 would call Marsha Bessant to the stand.

14 **Marsha Regina Bessant**

15 **being first duly sworn, testified as follows:**

16 Madam Clerk: Please state your full name and
17 spell your last name for the Court?

18 The Witness: My full name is Marsha Regina
19 Bessant, and --

20 Madam Clerk: Spell your last name.

21 The Witness: My last name is spelled b-e-s-s-a-
22 n-t.

23 **Direct Examination**

24 **By Ms. Lively:**

25 Q Ms. Bessant, will you just make sure you

Ms. Bessant - Direct Examination by Ms. Lively

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1 kind of scoot up so we can hear you?

2 A Okay, is that better?

3 Q That's much better, thank you, now, Marsha,
4 tell the jury who you are and where you live?

5 A My name is Marsha Bessant. I've lived here
6 all my life and my parents, my grandparents, and great
7 grandparents. I live ---

8 Q Are you working?

9 A Yeah, I work for my father and --

10 Q What area of Horry County do you live in?

11 A I live on [REDACTED], it's like upper
12 Conway lower Aynor right off 501 down behind Larry Hardee
13 Auto Sales.

14 Q Okay, and do you have any children?

15 A I have one daughter, she will be fourteen
16 in January.

17 Q Okay, now, Marsha, do you know the
18 defendants Julia Gorman and Robert Palmer?

19 A Yes, I do.

20 Q Okay, first of all how do you know Julia
21 Gorman?

22 A I know Julia Gorman from Robert and Robert
23 was friends with my brother and they moved down here from
24 Virginia.

25 Q Who's they?

Ms. Bessant - Direct Examination by Ms. Lively

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1 A Robert and Julia.

2 Q Okay?

3 A Moved together. My brother was friends
4 with Robert and they brought, you know, Julie to my home,
5 you know, cause she didn't have no friends here and she was
6 new and, you know, we would have coffee, and you know, do
7 girl things while they would, you know, go hunting,
8 fishing, do boy things.

9 Q Okay, and what kind of a, well did ya'll
10 become friends?

11 A Yeah, we become friends, you know.

12 Q And what, if anything, did you know about
13 her family?

14 A Not very, very little.

15 Q Okay, and had you ever met her daughter
16 Cesalee, who's seated right here?

17 A Yes, I had met Cesalee when she come [sic]
18 down with VICTIM [REDACTED] They come to my home and --

19 Q Well before that let me just ask you, had
20 you spent a lot of time with Mr. Palmer when he was hanging
21 out with your brother?

22 A No, they were usually the boys would go or
23 the men and like the women would be together.

24 Q Okay, and were they living together, Robert
25 and Julia at that time?

Ms. Bessant - Direct Examination by Ms. Lively

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1 A Yes, they were.

2 Q And where were they living?

3 A Off Highway 319 and they were living in a
4 home rented by the same man that the mobile home was rented
5 by but he had a house and then when her other two children
6 left to go Hawaii, Kyle and Kayla, they moved into the
7 single wide trailer like two, two doors down, like two, two
8 houses down.

9 Q And when you say the two children, Kyle and
10 Kayla, whose two children are you referring to?

11 A Those would be Julia's children.

12 Q Okay, and what were their ages; do you
13 recall?

14 A Kayla was about ten and Kyle was twelve.

15 Q Okay, were you aware if Mr. Palmer had any
16 children?

17 A Yes, I was aware that he had a son Dylan
18 with Amanda Tyler.

19 Q And how old was Dylan around that time?

20 A Approximately three.

21 Q Okay, now, Marsha, whenever, do you recall
22 spending some time with, well before Cesalee actually came
23 in June of 2008, please tell the jury what the relationship
24 that you observed was like between Robert and Julie.

25 A Very stressed, Julie was, there was a lot

Ms. Bessant - Direct Examination by Ms. Lively

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1 of problems, financial.

2 Q Who told you that?

3 A Julie, Julie had told me, you know ---

4 Mr. Galtmore: Objection, hearsay, Your Honor.

5

6 The Court: I'll admit it.

7 Ms. Lively: Thank you.

8 Q (Continuing) What did she tell you, Marsha?

9 A She would tell me that, she told me they

10 had a joint checking account and it was her account and she

11 had put Robert on the account and, you know, he would take

12 money out because, you know, he could and she would check

13 sometimes on my home computer, you know, I can't believe

14 he's taken this money out, and, and he ---

15 Q Where was he working at the time?

16 A I don't think he had a job at the time, she

17 was the only one working and she was working at the ---

18 Ms. Grabert-Lowenstein: Objection, speculation,

19 lack of foundation.

20 The Court: All right.

21 Ms. Lively: Okay.

22 Q (Continuing) Do you know for sure whether

23 he was working or not at that time?

24 A I do not.

25 Q Okay, and whenever, would you have

Ms. Bessant - Direct Examination by Ms. Lively

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1 conversations with Julie about, about any other issues with
2 herself, Robert, or anything?

3 A Yes, she was like distraught. Robert would
4 want to go out like with his friends and she would cook
5 dinner, he wouldn't come home, and she would, you know,
6 call me crying, you know, Robert took money out the bank or
7 I cooked he didn't come home, and --

8 Q And how did she handle those situation when
9 she was talking to you; what were those conversations like?

10 A I mean she would, she cry and it would, she
11 was very upset and, you know, I told her, you know, as a
12 friend to that if he was doing those things, you know, to
13 pack his crap, I said a different word, but and put it on
14 the porch or go home, take his name off your checking
15 account and, you know, and she never did any of those
16 things.

17 Q Okay, and whenever, when did you learn that
18 Cesalee and VICTIM were coming into town?

19 A Julie had told me maybe two weeks before
20 Cesalee and VICTIM had arrived.

21 Q Okay, and how, and how was she when that
22 conversation regarding meeting, well do you know if she had
23 ever seen her grandson?

24 A No, I mean maybe through pictures but never
25 in person.

Ms. Bessant - Direct Examination by Ms. Lively

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1 Q Okay, and so when she told you that a
2 couple of weeks before they got there that he was coming
3 how did she act?

4 A She acted happy, you know.

5 Q And how did you feel knowing about their
6 relationship about Cesalee coming with VICTIM [REDACTED]

7 Ms. Grabert-Lowenstein: Objection, relevance.

8 The Court: What's the relevance of that?

9 Ms. Lively: The relevance, Your Honor, is that
10 she was aware of Julia and Palmer's problems financially.

11 The Court: You asked her how she felt.

12 Ms. Lively: I'm sorry?

13 The Court: Didn't you ask her how this witness
14 felt about it?

15 Ms. Lively: Yes, and her own personal feelings
16 regarding having ---

17 The Court: Why don't you ask her if she had any
18 concerns about it.

19 Ms. Lively: Right.

20 The Court: Why don't you ask her that if she
21 had any concerns?

22

23 Ms. Lively: (Continuing)

24 Q Did you have any concerns regarding Cesalee
25 and VICTIM [REDACTED] coming knowing their, what you had heard Julie

Ms. Bessant - Direct Examination by Ms. Lively

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1 say about their financial problems?

2 Ms. Grabert-Lowenstein: Objection, relevance.

3 The Court: I'm going to allow it.

4 Ms. Lively: (Continuing)

5 Q Did you have any concerns?

6 A You know, I thought maybe it would, you
7 know, make her happy to see her daughter and her grandson
8 and, you know, but financially and her stress level I felt
9 like, I feel like, you know, I didn't know that Cesalee was
10 going to stay a month. I thought just a visit, you know,
11 I didn't realize she was staying a month.

12 Q Okay, that's fair, and so, Marsha, did you
13 have the opportunity when Cesalee got here with VICTIM [REDACTED] to
14 spend some time with them?

15 A Yes, I did.

16 Q Okay, tell the jury the first time that you
17 actually met Cesalee and VICTIM [REDACTED]

18 A The first time I had met Cesalee and VICTIM [REDACTED]
19 Julie had drove them to my house and they stayed about an
20 hour. Cesalee was, I give Cesalee a big Texas cinnamon bun
21 and she kind of, you know, pinched off little pieces and
22 give to VICTIM [REDACTED] and he was like right at his mother's, you
23 know, arms, you know. She wouldn't let him like get away
24 or I mean, you know, she was, he was clinging to his
25 mother, you know.

Ms. Bessant - Direct Examination by Ms. Lively

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1 Q And was this, this was the first time you
2 met him?

3 A This is the very, the very first time I had
4 met him.

5 Q Okay, and how, how long was it you said
6 they were there in your house?

7 A Forty-five minutes to an hour.

8 Q And based upon your observations was
9 Cesalee attentive to the child?

10 A She was very attentive, you know. She, the
11 whole time that they were there VICTIM was in her arms or
12 if he would get down I have ceramic tile flooring in the
13 kitchen and she was like, you know, very careful to hold
14 him and like, you know, so that he wouldn't fall.

15 Q Was he walking at that time?

16 A Yeah, he was walking.

17 Q What were your observations of his physical
18 appearance?

19 A He seemed a little tired, you know, but he
20 could have just woke up or he just like clung to Cesalee
21 like, you know, he was in a new environment and, you know,
22 he had never been in my home or met me and he just, I mean
23 he just like clinged to his mother like, you know, he felt
24 safe and I would, you know, say, hey, buddy, and, you know,
25 try to get him to interact and he would just kind of just

Ms. Bessant - Direct Examination by Ms. Lively

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1 shy away.

2 Q But did he react to you?

3 A Yeah, I mean he would, you know, with a
4 smile or, you know, and he would say Mama to Cesalee and --

5 Q And what, if anything, before Cesalee got
6 there and you met her and VICTIM did Julie tell you about
7 Cesalee?

8 A She said that she would be happy to have
9 time with her alone, that Cesalee would be happy to have
10 time with Julie alone because Kyle and Kayla, Julie's other
11 two children, were gone.

12 Q So that was part of timing of her coming or
13 do you know?

14 A Yes, that was when she was coming, that
15 Cesalee would be happy to have her, Julie all to herself.

16 Q Okay.

17 A And --

18 Q Now after that visit did you have an
19 opportunity to spend any time with Cesalee and
20 again?

21 A Yes, I did, we had went to the Myrtle Beach
22 State Park one day.

23 Q Okay, do you remember about when that was?

24 A Seems like it was like later on that week
25 or maybe the beginning of the next week.

Ms. Bessant - Direct Examination by Ms. Lively

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1 Q So sometime in June 2008?

2 A Yes, it was the day the photos were taken.

3 Ms. Lively: Okay, if I may approach, Your
4 Honor?

5 The Court: Yes.

6 Ms. Lively: (Continuing)

7 Q I'm going to show you one of these State's
8 Exhibit 10 and State's 8, they're both in evidence and ask
9 you which one of these do you recognize as being the day
10 that you were at the beach with them? I know it's been a
11 long time; do you recall?

12 A I recall going to the beach and --

13 Q If you don't that's okay?

14 A I can't remember Cesalee. I feel like she
15 was wearing this pink bathing suit but I can't be for sure.

16 Q That's fine, that's fine, but you did go to
17 the beach with them?

18 A I did, yes.

19 Q Okay, and who all was with ya'll whenever
20 you went to the beach?

21 A It was me, Julia, Cesalee, and VICTIM [REDACTED]

22 Q Okay, now, Marsha, tell this jury what you
23 observed, the behaviors of VICTIM [REDACTED] whenever you were there
24 at the beach that day?

25 A Well he, you know, Cesalee played in the

Ms. Bessant - Direct Examination by Ms. Lively

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1 sand with him and, you know, he smiled and like he would
2 like get, try to get away and she would, you know, make
3 sure he didn't get too far. She was real attentive a lot
4 after him and, you know, she, he seemed to enjoy the day at
5 the beach, you know.

6 Q And while he, while, how long were ya'll
7 there; do you remember?

8 A Probably an hour and forty minutes to two
9 hours.

10 Q Okay, and during that time while you were
11 there who was the one that watched over and, and caretaker
12 for VICTIM [REDACTED]

13 A Cesalee.

14 Q Did you ever see her with VICTIM [REDACTED] get
15 frustrated or punish him in any way?

16 A Never.

17 Q And how was [REDACTED] towards his mother? Did
18 you ever see him be hit at her or bite her or anything like
19 that?

20 A No, I never saw any of that.

21 Q Now whenever, were you aware that Cesalee
22 was leaving the Horry County area without VICTIM [REDACTED]

23 A No, I was unaware of that.

24 Q Okay, when, if ever, did you become aware
25 of that?

Ms. Bessant - Direct Examination by Ms. Lively

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1 A After it was on the news that's when I
2 become aware of that.

3 Q Did you ever visit with Julie and Robert
4 Palmer in their home after Cesalee had left VICTIM [REDACTED] there?

5 A No.

6 Q Had you ever seen any of their pets in
7 their home?

8 A Yes, I saw an English bulldog.

9 Q Okay, and had you ever had any interaction
10 with this dog?

11 A Well I saw the dog and I'm not a real dog
12 person so, no, I mean I might have petted him once or twice
13 but --

14 Q And had you, you might have already
15 answered this but let me make sure, did you ever see VICTIM [REDACTED]
16 and the bulldog together?

17 A No, I don't think so, no.

18 Q Now you said that you realized that Cesalee
19 had left VICTIM [REDACTED] after you saw the news, don't tell us about
20 what you saw on the news, but when was the next time after
21 that, if any, that you had any contact with Julia Gorman?

22 A In jail, I went, I came to visit her in
23 jail.

24 Q Okay, and will you, please, tell the jury
25 what, if anything, she said to you about VICTIM [REDACTED] during that

Ms. Bessant - Cross Ex. by Ms. Grabert-Lowenstein

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1 visit?

2 Mr. Galtore: Your Honor, that would be hearsay.

3 The Court: Understand, I'm going to allow it.

4 Ms. Lively: (Continuing)

5 Q You can tell me what it was that she told
6 you in regard to VICTIM when you visited her in the jail?

7 A Well she, she didn't really say much of
8 about VICTIM She was just distraught and crying and
9 worried about Robert, you know, and she would call him
10 "Joe-Joe" that was his like nickname she would call him, is
11 he okay, and, you know, she was very concerned about
12 Robert.

13 Q Okay, did she ever say anything to you
14 about VICTIM then?

15 A She did mention that he, the dog knocked
16 him into the dog cage and she was, you know, crying and
17 crying and --

18 Q And did you ask her what happened or did
19 she just offer that?

20

21 A She just offered that, and I didn't ask her
22 what happened.

23 Q Did Julia ask you to do anything for her
24 while you were there?

25 A Yeah, on one of the visits she had wanted

Ms. Bessant - Cross Ex. by Ms. Grabert-Lowenstein 594

1 me to go and print some pictures out of Robert and send to
2 her and I would not. I printed some pictures of the kids
3 and I sent those but I would not send any of Robert.

4 Ms. Lively: Just a second, okay. Thank you,
5 Marsha, I appreciate it, please, answer any questions the
6 defense may have for you.

7 Cross Examination

8 By Ms. Grabert-Lowenstein:

9 Q Good morning, Marsha, you described phone
10 calls where Julia was distraught and crying, how many of
11 those type of phone calls did you and she exchange?

12 A Several.

13 Q Were any of them lengthy?

14 A Yes.

15 Q So was she crying during the entire phone
16 call?

17 A The last phone call she was just squalling,
18 I mean crying the whole time. I couldn't hardly, like she
19 was crying so hard I could not like understand all of the
20 words but it was, you know, Robert, Robert, Robert, Robert.

21 Q She was, she was stressed about the
22 relationship and to your knowledge she never did anything
23 about the relationship, correct?

24 A No, I told, I mean, no, I offered her
25 advice to go home take his name off the checking account

Ms. Bessant - Cross Examination by Mr. Galtmore

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1 and, you know, part company, and, you know, that wasn't
2 what she wanted to hear.

3 Q Okay, and that isn't what she did?

4 A No.

5 Q Would that be correct?

6 A She did not.

7 Q How many times total did you see VICTIM
8 when he was here, well let me, and actually let me more
9 specific, how many times did you see VICTIM and Cesalee
10 together when he was here?

11 A Twice.

12 Q Okay, and both of those occasions did he
13 want to be with his mom?

14 A Yes, he was very clingy to his mother.

15 Ms. Grabert-Lowenstein: Okay, no further
16 questions.

17 The Court: Mr. Galtmore?

18 Cross Examination

19 By Mr. Galtmore:

20 Q Ms. Bessant, you know Robert, right?

21 A Yes.

22 Q And you met Julie through Robert?

23 A Yes.

24 Q Is that correct?

25 A Yes, that is correct.

Ms. Bessant - Cross Examination by Mr. Galtmore

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1 Q How long have you known Robert?

2 A I have known Robert since we were in sixth
3 grade.

4 Q So you went to middle school together,
5 elementary school together?

6 A No, I don't believe, we didn't go to
7 elementary school, like middle school.

8 Q Did you go to high school together also?

9 A Yes.

10 Q And you said he played with your brother;
11 is that correct?

12 A Uh-huh.

13 Q Do you have any friends to reward by your
14 testimony today?

15 A Do I have any friends to reward?

16 Q Yes, ma'am.

17 A Am I going to receive a reward, you have to
18 bring that down to a level I can, I'm not sure what you're
19 asking, I'm sorry.

20 Q Are you testifying for the benefit of
21 Robert Palmer today?

22 A No, I am not.

23 Q So you have no friends to reward in this
24 courtroom?

25 A Absolutely not.

Ms. Bessant - Cross Examination by Mr. Galmore

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1 Q You have no enemies to punish in this
2 courtroom?

3 A Absolutely not.

4 Q But you knew Robert since sixth grade and
5 you knew Julia because Robert introduced you to her?

6 A Yes, that's correct.

7 Q How long have you known Julia?

8 A A year, maybe more.

9 Q Okay, and you've known Robert since sixth
10 grade; would you consider yourself to be a good friend of
11 Robert's?

12 A No.

13 Q Just a passing acquaintance of Robert's?

14 A Just a passing acquaintance, I mean he
15 dated one of my girlfriends in middle school and then he
16 married my brother's ex-wife's best friend.

17 Q That would be Amanda?

18 A That will be Amanda.

19 Q Did you testify in their divorce?

20 A No, I did not.

21 Q Well when Amanda and Robert got divorced
22 you didn't testify in that hearing?

23 A I did not.

24 Q Before Cesalee and VICTIM got here how long
25 had you been friends with Julia?

Ms. Bessant - Cross Examination by Mr. Galmore

598

1 A Approximately a year, maybe a little
2 longer, a little longer.

3 Q And what type of things would you all do?

4 A We would have coffee, we would cook, eat,
5 hang out, go to the mall.

6 Q Well how often would you interact with
7 Julia, once a week, once a month?

8 A Maybe two times a week, maybe some weeks
9 more, maybe some weeks less.

10 Q Would Robert be there on those occasions?

11 A Usually he would be hanging out with my
12 brother doing hunting, fishing.

13 Q Did Robert introduce Julie to other people?

14 Ms. Grabert-Lowenstein: Objection, lack of
15 foundation and relevance.

16 The Court: Just ask her if she knew if she did.

17 Mr. Galmore: (Continuing)

18 Q Do you know if Robert introduced Julia to
19 other people other than just you?

20 A Well I feel, you know, sure that he did;
21 he's from here and, you know, I'm sure, I know that he was
22 in, he introduced her to his family.

23 Q Let me, let me, you said you all would go
24 out for coffee?

25 A We would have coffee at my house a lot

Ms. Bessant - Cross Examination by Mr. Galmore

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1 cause she didn't have a coffee maker cause she said Robert
2 didn't drink coffee and I was like if my coffee pot broke
3 I'd be at Walmart at 12:00 to buy me a coffee pot cause,
4 you know, I love coffee.

5 Q So that was you and her or that was you and
6 Robert or you and her and Robert?

7 A Me and her, that was a conversation between
8 me and her.

9 Q And you and Julie would go out on
10 occasions?

11 A Yeah, we would go out, you know, shopping,
12 you know.

13 Q Did you go out with Robert?

14 A We, we went out together maybe three, four
15 times.

16 Q Okay, as a group?

17 A As a group.

18 Q But it would be fair to say that you knew
19 Robert more than you knew Julia?

20 A Yes.

21 Q Now you were not at their home on July
22 14th, 2008, when VICTIM [REDACTED] was injured, were you?

23 A No, I was not.

24 Q And you can't tell us who injured VICTIM [REDACTED]
25 can you?

Ms. Bessant - Cross Examination by Mr. Galmore

600

1 A No, I cannot.

2 Q You can't tell us if it was Robert or if it
3 was Julia?

4 A No, I cannot.

5 Q You can't tell us if, tell us if it was the
6 dog or something else?

7 A No, I cannot.

8 Q Now when did you say you first met Cesalee
9 and VICTIM [REDACTED]

10 A At my home probably I guess a week after
11 Cesalee arrived.

12 Q And you were able to judge VICTIM [REDACTED]
13 demeanor; how did you describe him?

14 A He, you know, seemed like just clingy to
15 his mother and like, at my home is that what you're asking?

16 Q Yes, ma'am.

17 A His demeanor was, you know, he seemed
18 normal, I mean, you know, I didn't like nothing stood out.

19 Q Did you testify on direct examination that
20 he seemed tired?

21 A Yeah, he seemed tired.

22 Q And you only had met VICTIM [REDACTED] for two times,
23 right?

24 A Yes, that is correct.

25 Q Okay, I think you testified that you have a

Ms. Bessant - Cross Examination by Mr. Galmore

601

1 child also?

2 A Yes, I do.

3 Q Did your child ever spend the night at
4 Robert and Julia's?

5 A One time on Kayla's birthday party, she
6 stayed the night one time.

7 Q Did your child have any complaints about
8 conditions when your child spent the night at Robert and
9 Julia's house?

10 A No, she did not, she said Robert made
11 pancakes and she seemed to have a good time there.

12 Q Did she say that Julia struck her?

13 A No, she did not.

14 Q Did you ever see Julia strike VICTIM [REDACTED]

15 A No, I did not.

16 Q So the first time you saw Julia with VICTIM [REDACTED]
17 was with Cesalee at your house for an hour or so?

18 A Yes, correct.

19 Q How did he interact with Julia; you told us
20 how he interacted with his mother, how, how was he with his
21 grandmother?

22 A Well they didn't, they didn't interact a
23 lot. VICTIM [REDACTED] was clinging to Cesalee like, you know, and
24 she was feeding him a Texas cinnamon, she'd just pinch off
25 little pieces and give it to him and, you know, he really

Ms. Bessant - Cross Examination by Mr. Galmore

602

1 just stayed kind of in her arms the whole time.

2 Q So you didn't really get an opportunity to
3 see her, see Julia with VICTIM [REDACTED]

4 A No.

5 Q Okay, the next time you saw VICTIM [REDACTED] was when
6 they went to Myrtle Beach State Park; is that correct?

7 A Yes, that is correct.

8 Q And you took them to Myrtle Beach State
9 Park?

10 A No, Julia drove.

11 Q She drove, okay, did you get an opportunity
12 to observe VICTIM [REDACTED] interaction with Julia at Myrtle Beach
13 State Park?

14 A Yes, we laid out, me and Julie, and Cesalee
15 was the main, you know, she, she took care of VICTIM [REDACTED] and
16 watched over him, you know. She wasn't like laying out,
17 you know, and Julia, you know, would play with him a little
18 bit, you know, but for the most part Cesalee watched him.

19 Q Was there anything abnormal about Julia's
20 behavior towards VICTIM [REDACTED] at Myrtle Beach State Park?

21 A No, nothing that stands out abnormal.

22 Q Did there come a time that you donated some
23 clothes to Cesalee?

24 A Yes.

25 Q Why was that?

1 A Because her, I think her luggage had got
2 lost and Robert come and picked them up for her.

3 Q Was there a time that you were with Julia
4 when she bought children's clothes for VICTIM [REDACTED]

5 A Yes, that was before we went to the Myrtle
6 Beach State Park. I do not know who purchased the clothes
7 because I was speaking with Jenna, the owner of the store.
8 I know a stroller was purchased and some baby clothes, that
9 was before we went to the Myrtle Beach State Park.

10 Q When you said a stroller was purchased; do
11 you recall if this was the stroller?

12 A Yes, that was the stroller I'm pretty sure.

13 Mr. Galmore: And for the record I'm showing the
14 witness State's Exhibit 22 for identification purposes.

15 Q (Continuing) So this, you're pretty sure
16 this is the stroller that was purchased?

17 A I'm pretty sure and it had like, it would
18 fold over and had a hook over the top.

19 Q Yes, ma'am, do you know who purchased that
20 stroller?

21 A I do not know who purchased the items; I
22 was speaking with the store owner.

23 Q Well did Julia, well let me ask it like
24 this, did Cesalee know of any stores in Myrtle Beach?

25 A This was a store in Conway.

Ms. Bessant - Cross Examination by Mr. Galmore

604

1 Ms. Lively: Objection as to speculation, Your
2 Honor.

3 The Court: I'll allow her to answer.

4 Ms. Lively: Thank you.

5 Mr. Galmore: (Continuing)

6 Q Was there anything unusual about the fact
7 that clothes were being purchased for ^{VICTIM} [REDACTED]

8 A No, I mean you purchase clothes for
9 children all the time; they're constantly growing, that did
10 not seem unusual to me.

11 Q All right, now you talked about the
12 finances in their home; do you know if Robert was working
13 during this time?

14 Ms. Grabert-Lowenstein: Objection, lack of
15 foundation.

16 Mr. Galmore: Your Honor, she ---

17 The Court: I'll let her answer it, of course
18 she's been asked this question already but let her answer
19 it again.

20 The Witness: (Continuing)

21 A I don't know, at times maybe yes, at times
22 maybe no.

23 Q Do you know if Julia was working at the
24 time?

25 A Yes, she was working at the Bass Pro Shop.

Ms. Bessant - Cross Examination by Mr. Galmore

605

1 Q You mentioned the dog, the English -

2 A Bulldog.

3 Q Bulldog, is this the dog that you're
4 referring to?

5 A That is the dog.

6 Mr. Galmore: And for the record I'm showing the
7 witness State's Exhibit Number 18 for identification
8 purposes.

9 Mr. Galmore: (Continuing)

10 Q Did you have an opportunity to observe
11 VICTIM [REDACTED] interact with the bulldog?

12 A No.

13 Q Did you have an opportunity to see the
14 bulldog interact with any children?

15 A I seen the bulldog but only for a, a brief
16 while because they were so proud of the dog they wanted me
17 to see it and I stopped by, I'm not a dog lover, and I act,
18 you know, act enthused for them, you know, I petted him and
19 but I'm not a dog lover.

20 Q Well let's, let's talk about your dealings
21 in this case, how is it or when did you first speak to the
22 police about this case?

23 A I do not know the exact date but it was
24 with the lady at the back of the courtroom in Ms.
25 Lowenstein's office, Carla, I believe is her name.

Ms. Bessant - Cross Examination by Mr. Galmore

606

1 Q Would it be Carmen?

2 A Maybe, it's been a while.

3 The Court: I think he was talking about Ms.
4 Grabert-Lowenstein.

5 Mr. Galmore: No, I was talking about Carman
6 Mureddu.

7 The Witness: (Continuing)

8 A And it was at the lawyer's office ---

9 Q Okay?

10 A --- where we met.

11 Q Was this, was this the, the day that you
12 heard about everything on the news?

13 A No, this was after the news.

14 Q Was it the day that VICTIM [REDACTED] was taken to the
15 hospital?

16 A I didn't even know that VICTIM [REDACTED] had been
17 taken to the hospital or anything was wrong with him until
18 I seen their pictures, you know, on the news. I mean I had
19 no idea that the child had been to MUSC or anything.

20 Q Yes, ma'am.

21 A I had no knowledge of that whatsoever.

22 Q How long after you saw everything on the
23 news did you first speak to Ms. Mureddu and Ms. Grabert-
24 Lowenstein?

25 A I was working in the Farm, it's a

Ms. Bessant - Redirect Examination by Ms. Lively

607

1 subdivision of D. L. Horton, and I can't remember how long
2 after it was, I just, I can't remember.

3 Q Do you think it would have been a year
4 after you saw everything on the news?

5 A I don't think it would have been that long.

6 Q You think it would have been less than a
7 year?

8 A Less than a year, I can't be sure on that
9 time, I mean --

10 Q And so when everything happened in July
11 14th, did the police come to talk to you?

12 A No.

13 Q The only time someone came to talk to you
14 was when Ms. Mureddu and Ms. Grabert-Lowenstein contacted
15 you?

16 A Yes.

17 Q And what, what were you asked to do?

18 A To, you know, give information, any
19 information of knowledge I had of the situation.

20 Q Well who asked you to do that, which of
21 these ladies?

22 A I mean ---

23 Q The investigator or the defense lawyer?

24 A The investigator, I mean she would ask me
25 questions and I would answer them.

Ms. Bessant-Recross by Ms. Grabert-Lowenstein/Mr. Galmor 608

1 Q Well let me back up, when your phone rang
2 and someone was asking you about this case who was that;
3 was it the investigator or was it the defense attorney?

4 A The investigator.

5 Q Okay, did she ask you to come into her
6 office?

7 A No, she, well, yes, she asked could I meet
8 her at Ms. Carla --

9 Q Grabert-Lowenstein?

10 A Grabert-Lowenstein's office, that's where
11 we met.

12 Q So the Solicitor's investigator asked you
13 to meet her at the defense attorney's office?

14 A Yes.

15 Q And you agreed to do that?

16 A Yes.

17 Mr. Galmore: No further questions, Your Honor.

18 The Court: Ms. Lively?

19 **Redirect Examination**

20 **By Ms. Lively:**

21 Q Marsha, there was some questions about the,
22 the bulldog and several more questions about financial;
23 were you aware of how much they paid for that bulldog?

24 A Yes, Julia had told me \$1600 and I bout
25 fell out, I can't imagine paying \$1600 for any dog.

Mr. Whiteis - Direct Examination by Ms. Cote

609

1 Q And whose dog was it supposed for?

2 A For Robert.

3 Ms. Lively: Thank you.

4 Ms. Grabert-Lowenstein: Very briefly, Your
5 Honor.

6 **Recross Examination**

7 **By Ms. Grabert-Lowenstein:**

8 Q Ma'am, did Ms. Mureddu ask you all the
9 questions at my office? Was she the one who asked you the
10 questions that you answered at my office?

11 A Yes.

12 Q Were you truthful with her?

13 A Yes.

14 Ms. Grabert-Lowenstein: Thank you, no further
15 questions.

16 Mr. Galmore: Very briefly, Your Honor.

17 **Recross Examination**

18 **By Mr. Galmore:**

19 Q Are you saying that Ms. Gorman had \$1600 in
20 the bank with which to buy a dog?

21 A Yes.

22 Mr. Galmore: Thank you, no further questions.

23 The Court: All right, you may step down, any
24 further need for this witness?

25 Ms. Lively: No, Your Honor, I'd ask that she be

Mr. Whiteis - Direct Examination by Ms. Cote

610

1 released from her subpoena.

2 Mr. Galmore: We have no use for her.

3 Ms. Grabert-Lowenstein: No further use, Your
4 Honor.

5 The Court: You are excused and released from
6 your subpoena, thank you for coming.

7 A Thank you, Your Honor.

8 Ms. Cote: Brad Whiteis.

9 Brad Whiteis

10 being first duly sworn, testified as follows:

11 Madam Clerk: Please state your full name and
12 spell your last name for the Court?

13 The Witness: Full name is Brad Whiteis, w-h-i-
14 t-e-i-s.

15 Direct Examination

16 By Ms. Cote:

17 Q Mr. Whiteis, where are you employed?

18 A The Department of Social Services here in
19 Horry County.

20 Q And what's your position there?

21 A I currently supervise the child protective
22 services investigations unit.

23 Q Can you, please, tell the jury a little bit
24 about how an investigation goes or comes about or your
25 procedure involving a case involving child abuse?

Mr. Whiteis - Direct Examination by Ms. Cote

611

1 A Sure, it all starts with our cps hotline;
2 we've got a child protective services phone that people
3 call in and make child abuse and neglect reports. The
4 reports are taken by a hotline receptionist kind of a
5 person, operator. When they take the report it's brought
6 to me to see if it meets the criteria for an investigation.
7 If it doesn't meet the criteria we log the report but
8 nothing is done at that point. If the case is enough for
9 us to look into I accept it for an investigation and assign
10 it to an investigator.

11 Q Were you involved or were you working at
12 DSS in July of 2008?

13 A I was.

14 Q Did you come to be involved in an
15 investigation involving a child named VICTIM [REDACTED] VICTIM [REDACTED]

16 VICTIM [REDACTED]?

17 A I did.

18 Q How did you become to be involved in that
19 investigation?

20 A That morning on the 15th the report was
21 taken, one was forwarded to me, took for review. Of course
22 within looking on it within a few seconds I knew it was
23 enough for us to look into, so that's how it started.

24 Q I'm sorry, I didn't mean to interrupt?

25 A That's okay, that's how it all started with

Mr. Whiteis - Direct Examination by Ms. Cote

612

1 me.

2 Q Okay, and what was the first step you took
3 when you began your investigation?

4 A The first step would have been to
5 immediately assign an investigator to go out, you know, the
6 intake is the investigations that we get when they come
7 they're rated as far as how serious they are. Of course a
8 case like this would have been rated high, however, one
9 thing that we as the majority of how we look at things when
10 we know rated is child safety, and since the child was at
11 the hospital at the time was technically safe we didn't
12 really have a long time, actually we have twenty four hours
13 to, to go out, but I did send Yvette Brown, assigned to her
14 and sent her right out to MUSC at the time.

15 Q And what was the next thing after assigning
16 the case to Ms. Brown, what did you personally do?

17 A I sent Yvette to MUSC; she got out there
18 pretty quick, got in the car and headed out there. I
19 wanted to call MUSC just to kind of see how things were
20 going and I called over there to the charge nurse over at,
21 I guess it was the intensive care unit for the pediatrics.

22 Q And did you speak with a nurse there?

23 A I did, I spoke with Chris Kluserman, would
24 have been the charge nurse.

25 Q Okay, and after speaking with her what was

Mr. Whiteis - Direct Examination by Ms. Cote

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1 your next step?

2 A At that point I called Ms. Gorman.

3 Q And did you speak with Ms. Gorman?

4 A I did.

5 Q And what did your, what did she say to you
6 in that conversation?

7 A My call to her was not too much of an
8 investigative nature, it was just to since we knew the
9 child was MISC. It's not, it's not uncommon but it doesn't
10 happen too much in other cases where we'll call the parent
11 but since the child was already at the hospital I did
12 telephone Ms. Gorman. It was basically just to get some
13 information from her, demographics, things of that nature.

14 Q What information did she give you?

15 A We went over a few things, you know, I
16 really didn't ask too many questions. I mean I asked her
17 where she lived, who she lived with, things of that ---

18 Q Who did she ---

19 A --- nature.

20 Q I'm sorry?

21 A You're fine.

22 Q Who did she tell you that she lived with?

23 A She told me that she lived with her, her
24 paramour Robert Palmer.

25 Q Okay, and did she tell you how VICTIM the

Mr. Whiteis - Direct Examination by Ms. Cote

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1 child you were investigating, his condition, did she tell
2 you how ^{VICTIM} [REDACTED] came to live with her and Mr. Gorman, Mr.
3 Palmer?

4 A She did, she told me that the mother, I
5 guess Cesalee is her name, had dropped the child off with
6 her back on July 2nd, 2008. We didn't get too much into
7 the specifics of that, and again going back, you know when
8 I was talking with Ms. Gorman I didn't want to get into too
9 much with her and the reason why is cause I knew she was
10 going to be speaking with, with my investigator up at the,
11 at the hospital and I knew Horry County Police was up
12 there, too, but she, she had just advised me that she got
13 the child on July 2nd.

14 Q Did she tell you how long she and Mr.
15 Palmer had been together?

16 A She did, she told me four years.

17 Q Did she tell you about her working, was she
18 working at the time?

19 A She did, she told me she worked full time
20 at Bass Pro Shop. I, the only thing we really got into as
21 far as her employment I asked her what her most recent
22 schedule was, what, what day she had worked, hours and so
23 forth.

24 Q Did she give you that information?

25 A She did.

1 Q What was that?

2 A She advised me, of course I'm speaking with
3 her on a Tuesday, she told me that she had worked the last
4 three days, which would have been, of course, Monday,
5 Sunday, and Saturday, the 14th, 13th, and 12th, working
6 from 5:45 in the morning until 3 p.m. in the afternoon.

7 Q And did she tell you who kept or who took
8 care of VICTIM while she was working these hours?

9 A She did, she told me that when she was at
10 work Robert watched the child, babysat the child.

11 Q Okay, and did he work according to her?

12 A He was unemployed.

13 Q According to her who were the primary
14 caregivers of

15 A Just her and Robert.

16 Q Nobody else?

17 A Nobody else.

18 Q Now going to that Monday July 14th, what
19 did she tell you about that day

20 A And again I didn't ask too many questions
21 about it, I just kind of let her tell me what had happened
22 cause I knew she was going to be speaking with our
23 investigator. She, she advised me that the day before,
24 Monday the 14th, she would have got off work about 3:00.
25 She said she got home. She said that the child was asleep.

Mr. Whiteis - Cross Examination by Mr. Galmore

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1 She told me that she had checked on him shortly thereafter,
2 after she got home. She told me that the child was acting
3 weird, "weird." She told me about the it was foamy saliva
4 coming from his mouth. She says when she noticed this she
5 took the child to Robert and told him something was wrong.
6 She said after that the child started to have some form of
7 a seizure and that's when she called 911.

8 Q And did you independently investigate the
9 fact that 911 was called?

10 A I did.

11 Q Did you find out what time that call was
12 made?

13 A The call was made at 6:06 p.m.

14 Q And what did you do after you spoke with,
15 oh, well did Julia give you a cause for VICTIM condition?

16 A She did not and I, nor did I ask her.

17 Q After you spoke with her did you do
18 anything else in your investigation?

19 A I knew that we were dealing with a matter
20 that, of course, law enforcement needed to be involved in.
21 I wasn't sure if an actual police report had been
22 completed, so I called over to county dispatch. Officer
23 Singleton, I believe his name was, came out to my office
24 and once we started having a conversation within the first
25 thirty seconds he already, he was already able to confirm

Mr. Whiteis - Cross Examination by Mr. Galmore

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1 that a report was done and a detective was already assigned
2 to the case, so he left. There was no need for me to speak
3 with him anymore.

4 Q And after speaking with him was that the
5 extent of your involvement in the case?

6 A That's right.

7 Ms. Cote: Beg the Court's indulgence, thank
8 you, I have no further questions, please answer any
9 questions the defense may have.

10 The Court: Ms. Grabert-Lowenstein?

11 Ms. Grabert-Lowenstein: I have no questions,
12 Your Honor.

13 The Court: Mr. Galmore?

14 Mr. Galmore: Thank you, sir.

15 Cross Examination

16 By Mr. Galmore:

17 Q Is it Whiteis?

18 A Whiteis.

19 Q Whiteis?

20 A Whiteis.

21 Q Yes, sir, okay?

22 A Close enough.

23 Q Mr. Whiteis, as a DSS supervisor are you
24 authorized to arrest?

25 A No.