

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM COLLETON COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable James R. Barber, III, Circuit Court Judge

Appellate Case No. 2014-000922

Melvin Daniel,.....Respondent,

v.

State of South Carolina,.....Petitioner.

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF COLLETON

COURT OF GENERAL SESSIONS
No. 04 GS 15 0400

3
4 STATE OF SOUTH CAROLINA

5

6 versus

TRANSCRIPT OF RECORD

7

8 MELVIN DANIEL, II

9 Defendant

10

WALTERBORO, South Carolina
July 16-18, 2007

11

B E F O R E:

12

HONORABLE PERRY M. BUCKNER, Judge, and a Jury

13

14

A P P E A R A N C E S

15

For the State:

STEVE KNIGHT, Esq.
Solicitor

16

17

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1 (The within matter came before the Court on July
2 16, 2007)

3 THE COURT: All right, Solicitor, are you ready
4 to proceed?

5 SOLICITOR: Yes, Your Honor.

6 THE COURT: Call your case.

7 SOLICITOR: The State is ready in 2004 GS 14 0400,
8 The State versus Melvin Daniel, the Second, an Indict-
9 ment for homicide by child abuse.

10 THE COURT: Ladies and gentlemen of the jury panel,
11 I would ask, if you would, that you give me your atten-
12 tion, please.

13 The State has called the case of The State versus
14 Mel .in Daniel, Second. The Defendant is charged by this
15 piece of paper I hold in my hand called an Indictment.
16 The Defendant is charged with an offense called homi-
17 cide by child abuse.

18 The elements of that offense will be explained to
19 you by the Court if you are selected as a juror.

20 To this Indictment, the Defendant has pled not
21 guilty, and that plea places the burden upon the State
22 of South Carolina to prove each and every element of
23 the offense alleged in the Indictment, homicide by child
24 abuse, beyond a reasonable doubt.

25 It will be your duty, ladies and gentlemen, if

,r-1 you are selected as a juror in the trial of this case,
2 to determine whether the State has met that burden.

3 Ladies and gentlemen, I want to remind you that
4 earlier this afternoon when I was qualifying you, the
5 Clerk of Court administered an oath to you.

6 The responses that you are going to be giving me
7 during this portion of your jury services; that is, the
8 questions I'm going to ask you to determine your im-
9 partiality to serve as a juror in the trial of this
10 case, South Carolina versus Melvin Daniels, Second, also
11 will be covered by the oath. which the Clerk of Court
12 earlier administered to you, meaning that your responses
13 to my questions in this case will also be under oath.

14 Now, first of all, ladies and gentlemen, I would
15 like for you all to meet the attorneys that are going
16 to be trying this case, and I'm going to ask Defense
17 Counsel to introduce his client.

18 Please stand and face my jury and introduce your-
19 self and your office. Counsel for the State of South
20 Carolina?

21 SOLICITOR: Thank you, Your Honor. I'm Steven
22 Knight, and I'm with the Solicitor's Office here in
23 the Fourteenth Judicial Circuit. Our elected Solicitor
24 is Duffie Stone.

25 THE COURT: Counsel for the Defendant?

1 MR. BEACH: Ladies and gentlemen, I'm Harris
2 Beach, and I'm the Chief Public Defender for Colleton
3 County.

4 Sitting at the table with me is David Matthews,
5 who is a Deputy Public Defender, and Ms. Fran Pye, who
6 is our office manager and helps me administrate.

7 Also this is Melvin Daniels -- please stand --- he
8 is the Defendant in this case.

9 THE COURT: This is Mr. Melvin Daniel, Second, the
10 Defendant, and his attorney, Mr. Beach, Public Defender
11 of Colleton County.

12 There is another member of the Solicitor's Office
13 at the State's table. Would you introduce him, please?

14 SOLICITOR: Oh, I'm sorry. This is Mr. Charles
15 Bivens, our Investigator.

16 THE COURT: This is the Investigator for the Soli-
17 citor's Office seated at counsel table with Mr. Knight,
18 Deputy Solicitor for the Fourteenth Judicial Circuit.

19 All right, ladies and gentlemen, you have met the
20 attorneys and you have now met the Defendant. First of
21 all, ladies and gentlemen, I remind you that your
22 responses are under oath.

23 Is any member of my jury panel related by blood,
24 connected by marriage, or a close personal friend of
25 the Defendant, Melvin Daniel, Second? If so, please

1 stand at this time.

2 (No response)

3 Let the record reflect no one is standing.

4 You have met counsel for the State of South
5 Carolina, Steven Knight, Deputy Solicitor for the
6 Fourteenth Judicial Circuit Solicitor's Office. Of
7 course, the Solicitor is Duffie Stone, and he works
8 for Mr. Stone.

9 I ask, ladies and gentlemen, if any member of my
10 jury panel has ever been represented, is currently
11 represented by Steven Knight, the Deputy Solicitor
12 in the Solicitor's Office? If so, please stand.

13 (No response)

14 Any member of my jury panel or member of their
15 immediate family ever been employed in the past or
16 currently is employed by the Fourteenth Judicial Cir-
17 cuit Solicitor's Office? If so, please stand.

18 (No response)

19 Let the record reflect no one is standing in
20 response to my last two questions.

21 You have also met counsel for the Defendant, Mr.
22 Harris Beach, who is the Public Defender for Colleton
23 County.

24 Has any member of my jury panel ever been repre-
25 sented by in the past or is currently represented

1 by Mr. Harris Beach, Public Defender of Colleton County?

2 If so, please stand.

3 (No response)

4 Let the record reflect no one is standing.

5 Any member of my jury panel ever been represented

6 by any member of the Colleton County Public Defender's

7 Office? If so, please stand.

8 (No response)

9 Let the record reflect no one is standing.

10 Any member of my jury panel currently employed

11 or previously employed by the Colleton County Public

12 Defender's Office? If so, please stand at this time.

13 (No response)

14 Let the record reflect no one is standing.

15 Now, ladies and gentlemen, I will tell you that
16 this Indictment is not evidence of any of the allega-
17 tions it contains. It is simply the formal written
18 instrument by which the Defendant is brought into this
19 Court.

20 This Indictment charges the Defendant, Melvin
21 Daniel, Second, with the offense of homicide by child
22 abuse.

23 The Indictment alleges this offense occurred in
24 Colleton County on May 10, 2004, and involves the
25 death of Victim, a minor under the age of eleven. 12

1 The death allegedly occurred under circumstances
2 manifesting an indifference to human life.

3 I ask, ladies and gentlemen, has any member of
4 my jury panel heard about or knows anything whatso-
5 ever about the facts which are alleged in this case?
6 If so, please stand.

7 (Jurors standing)

8 THE COURT: Just a moment, maam. Everyone who
9 is up, remain standing. I will start -- if you will
10 come forward, please, maam, and counsel will come
11 forward.

12 Come forward to my Court Reporter, and everyone
13 else please remain standing. Come up one at a time.

14 (Juror coming forward for colloquy with the
15 Court as follows, one at a time:)

16 THE COURT: This is Penny Gantt, Juror 52.
17 Have you heard or do you know something about the
18 case?

19 JUROR: I read about it.

20 THE COURT: You read it where?

21 JUROR: In the newspaper.

22 THE COURT: What did you read?

23 JUROR: That the child was killed. (portion not
24 audible)

25 THE COURT: It's perfectly normal for you to read
the paper, but could you put aside everything you

1 read and decide this case solely upon the evidence
2 produced in the Courtroom from the witness stand,
3 the answers given on direct and cross examination?

4 JUROR: Yes.

5 THE COURT: Have you formed any type of opinion
6 as to the case as a result of what you read?

7 JUROR: No.

8 THE COURT: And you feel like you could be fair
9 to the State of South Carolina and the Defendant in
10 this case?

11 JUROR: Yes.

12 THE COURT: Maam, you can return to your seat.

13 (Juror returning to seat. Another juror coming
14 forward.)

15 THE COURT: Come forward, please, maam. Would
16 you give us your name and juror number?

17 JUROR: Andrey Canady, and I'm not sure of my
18 jury number.

19 THE COURT: Hold on a second. Juror Number 26.
20 Audrey K. Canady.

21 Ms. Canady, I would ask you what you have heard
22 or read about the case?

23 JUROR: I read about it in the paper.

24 THE COURT: Do you recall what you read? Was it
25 just talking about the charges in the case?

1 JUROR: Yes.

2 THE COURT: Did you form any opinion about the case
3 from what you read?

4 JUROR: Not really.

5 THE COURT: Can you put aside what you read --
6 it is perfectly normal for you to read the newspaper,
7 but can you put aside whatever you read and decide this
8 case solely upon the evidence you hear in this Court-
9 room when both sides are present with the right of
10 cross examination?

11 JUROR: Yes.

12 THE COURT: That is all we can ask of you. Can
13 you be fair and impartial if you are selected to serve
14 as a juror in this case to the State of South Carolina
15 and to the Defendant?

16 JUROR: I think so.

17 THE COURT: Do you believe you can decide this
18 case solely upon the evidence presented during the
19 trial of this case?

20 JUROR: Yes.

21 THE COURT: Thank you, maam. You may return to
22 your seat.

23 (Juror returning to seat. Another juror coming
24 forward)

25 THE COURT: Ms. Canady, would you come back up

1 for a moment?

2 (Ms. Canady coming back up.)

3 THE COURT: I just need to tell you that you
4 should not discuss with any other jury member anything
5 you may have read about this case. You may return
6 to your seat. Thank you.

7 (Ms. Canady returning to seat.),

8 THE COURT: Ms. Gantt, if you would come back for
9 a moment, please?

10 (Ms. Gantt returning to the bench.)

11 THE COURT: It is important that you not discuss
12 what you may have read about this case with any other
13 member of the jury panel.

14 This case must be decided solely upon the evidence
15 that is presented in this Courtroom, so please do
16 not share that with anyone else. Thank you.

17 (Juror Gantt returning to seat.)

18 THE COURT: Yes, sir, if you will come forward now?

19 (Juror coming to the bench.)

20 THE COURT: Please give us your name and juror
21 number, if you will?

22 JUROR: Dave Williams, Number 152.

23 THE COURT: Juror Number 152. Mr. Williams, I ask
24 if you have heard or read about this case or discussed
25 this case with anyone?

1 JUROR: I read about it. (Portion not audible
2 on tape)

3 And I know the Defendant's father, and his grand-
4 father.

5 THE COURT: The first thing I'm going to ask you
6 is, the fact that you know the father and grandfather,
7 would that in any way affect your ability to give the
8 State of South Carolina or the Defendant a fair and
9 impartial trial?

10 JUROR: I don't think it would.

11 THE COURT: It would or would not?

12 JUROR: Would not.

13 THE COURT: Could you listen to the evidence pro-
14 duced in this Courtroom and put everything else aside
15 and decide this case based solely on the evidence pre-
16 sented by the State and by the Defendant if there is
17 cross examination?

18 JUROR: Yes.

19 THE COURT: Are you certain of that?

20 JUROR: Yes.

21 THE COURT: You may return to your seat.

22 (Juror returning to seat. Another juror
23 coming forward.)

24 THE COURT: Yes, sir. Your name and juror number,
25 please?

1 JUROR: Tammy Linder.

2 THE COURT: Please speak up so my Court Reporter
3 can hear you, but not your fellow jurors.

4 Your name and juror number?

5 JUROR: Tammy Linder, Juror 91.

6 THE COURT: Tammy T. Linder, 91. Have you heard
7 about this case or read about it?

8 JUROR: I do know the child's grandmother.

9 THE COURT: Would that prevent you from being fair
10 and impartial in the trial of this case?

11 JUROR: Well, I know about it and I believe
12 he did it.

13 THE COURT: Please don't make a statement like that
14 to anyone else on this jury. I will excuse you
15 from the trial of this case.

16 You may return to your seat.

17 (Juror returning to seat.)

18 THE COURT: Juror Number 91 is disqualified from
19 service in this case only.

20 I had another juror standing over here. Yes, sir.
21 Come on up here.

22 (Another juror coming forward)

23 THE COURT: Your name and number, sir?

24 JUROR: Sammy Glover, Junior.

25 THE COURT: Number 57.

.I'.

1 Mr. Glover, I ask if you have read about or heard
2 anything whatsoever about this case?

3 JUROR: (Answer not audible)

4 THE COURT: Did you say you had heard about the
5 charges in this case?

6 JUROR: Yes, sir. I heard about it and read
7 about it in the paper.

8 THE COURT: The fact that you heard things about it
9 and read about it in the paper, did that cause you to
10 form any opinion as to the case?

11 JUROR. No, sir.

12 THE COURT: You don't know any of the people who
13 are involved?

14 JUROR: No, sir.

15 THE COURT: Can you put aside anything you may
16 have heard or read about the case, and decide this
17 case solely upon the evidence heard in the case when
18 both sides were present in direct examination and the
19 right of cross examination?

20 JUROR: Yes, sir.

21 THE COURT: And you haven't formed any opinion
22 as to the case from things you have heard or read?

23 JUROR: No, sir.

24 THE COURT: All right, sir. Thank you. You may
25 return to your seat.

1 (Juror returning to seat in Courtroom.)

2 THE COURT: Is there anyone else who stood up
3 in response to my last question?

4 If so, please approach the bench at this time.

5 (Juror coming forward)

6 THE COURT: I need you to speak so the lawyers
7 can hear you and the rest of the jurors not hear
8 you. Begin by giving me your name and your juror
9 number.

10 JUROR: Cheryl Lewis.

11 THE COURT: Do you know your number?

12 JUROR: No, sir.

13 THE COURT: Hold on one second. Number 90 is
14 your number. Cheryl J. Lewis.

15 Ms. Lewis, have you heard about the case or read
16 about the facts which are alleged in this case?

17 JUROR: Yes.

18 THE COURT: What is the source of what you have
heard?

20 JUROR: I know some of the family and I heard
21 about it.

22 THE COURT: Have you discussed the case with any-
23 one ?

24 JUROR: No, sir.

25 THE COURT: Do you know about the case?

r
1 JUROR: Just what I heard from the family.

2 THE COURT: Could you put aside what you have
3 heard about the case and the fact that you may know
4 some family members and decide this case upon what
5 you hear from the witness stand?

6 JUROR: Yes, sir.

7 THE COURT: You believe that you could be fair and
8 impartial to the State of South Carolina and to the
9 Defendant?

10 JUROR: Yes, sir.

11 THE COURT: Putting aside any knowledge you have
12 or any relationship with the family you may have?

13 JUROR: Yes, sir.

14 THE COURT: You are sure of that?

15 JUROR: Yes.

16 THE COURT: You may return to your seat.

17 (Juror returning to seat.)

18 (Conference at the bench between counsel and the
19 Court off the record)

20 THE COURT: Is anybody standing in response to my
21 last question, and that is whether anyone has heard
22 about, read about, or know anything whatsoever about
23 the facts which are alleged in this case? If so, please
24 come forward at this time.

25 (No response)

1 Let the record reflect no one else is standing.or
2 has come forward in response to my last question.

3 You all may return to your seats.

4 (Counsel returning to counsel tables)

5 THE COURT: Ladies and gentlemen, any member
6 of my jury related by blood, connected by marriage,
7 or a close personal friend of the victim in this case,
8 Victim? If so, please stand at this time.

9 (No response)

10 Let the record reflect no one is standing.

11 I am informed, ladies and gentlemen, that the po-
12 tential witnesses in this case will be as follows, and
13 if they are present in the Courtroom when I call the
14 names please stand and face my jury panel, so they can
15 hear the name called and see your face at the time I
16 call the name.

17 Melvin Daniel, Second -- this is the Defendant,
18 Melvin Daniel, Second, of Walterboro.

19 You may be seated.

20 One, Delia Luat -- this is Dealia Luat, Walterboro,
21 South Carolina.

22 Abigail Williams, Walterboro, South Carolina.

23 Katie Hunt, Walterboro, South Carolina.

24 Amanda Bunch Campbell, from Colleton County. With
25 the Sheriff's Department.

1 Counsel, approach.

2 (Conference at the bench between counsel and the
3 Court off the record)

4 THE COURT: Ms. Campbell is employed as a nine
5 one one operator with the Colleton County Sheriff's De-
6 partment.

7 Jason M. Farmer, Summerville, South Carolina.

8 Arthur David Cook, Jr., from Hampton, South
9 Carolina.

10 Heather Aiken, Charlotte, North Carolina.

11 James Clyce, Walterboro Police Department,
12 Walterboro, South Carolina.

13 Dr. Joel Cochran, Charleston, South Carolina.

14 Dr. W. Alex Vandergrift, V A N D E R G R I F T,
15 Charleston, South Carolina.

16 Dr. Sarah Schuh, S C H U H, Charleston, South
17 Carolina.

18 Dr. Paula Keflar, K E F L A R, Charleston, South
19 Carolina.

20 Dr. Aaron Presnell, P R E S N E L L, Charleston,
21 South Carolina.

22 Any additional witnesses from the State of South
23 Carolina?

24 SOLICITOR: None from the State.

2;; THE COURT: From the Defense?

1 MR. BEACH: None from the Defendant, Your Honor.

2 THE COURT: Any member of my jury panel related
3 by blood, connected by marriage, or a close personal
4 friend of any of the potential witnesses in the trial
5 of this case whose names I have just called? If so,
6 please stand at this time.

7 (Juror standing)

8 Yes, maam, give me your name and juror number for
9 the record, please, maam.

10 JUROR: Lavonica Jones. I forgot my number.

11 THE COURT: One moment, please, maam. Number
12 79, counsel, Lavonica R. Jones. Number 79.

13 Are you related by blood to any of the witnes-
14 ses?

15 JUROR: Yes, sir.

16 THE COURT: Which witnesses are you related by
17 blood to?

18 JUROR: The lady in the glasses.

19 THE COURT: Mrs. Williams?

20 JUROR: Yes, sir.

21 THE COURT: How are you related to her? To Abigail
22 Williams?

23 JUROR: We are cousins.

24 THE COURT: What cousin are you?

25 JUROR: From third to eleventh.

1 THE COURT: The fact that you are third cousins to
2 Abigail Williams, a potential witness in the trial
3 of this case, would that in anyway affect your abil-
4 ity to give the State of South Carolina and the Defen-
5 dant, Melvin Daniel, Second, a fair and impartial
6 trial?

7 JUROR: No, sir.

8 THE COURT: You believe you could put that aside
9 and be fair and impartial, and decide this case solely
10 on evidence presented during the trial of the case?

11 JUROR: Yes, sir.

12 THE COURT: Thank you, maam. You may be seated.

13 (Juror seated. Another juror standing and then
14 taking a seat.)

15 JUROR: I decided to sit down.

16 THE COURT: Anyone else related by blood, connected
17 by marriage, or a close personal friend of anyone
18 whose name I have just called as a potential witness
19 in the case? If so, please stand at this time.

20 (No response)

21 Let the record reflect no one else is standing.

22 THE COURT: Has any member of my jury panel
23 formed any opinion about the facts which are alleged
24 in this case? If so, please stand at this time.

25 (No response)

1 Let the record reflect that no one is standing.

2 Has any member of my jury panel formed an opinion
3 about the alleged guilt or innocence of the Defendant
4 in this case? If so, please stand.

5 (No response)

6 Let the record reflect no one is standing.

7 Any member of my jury panel a former member of
8 the Colleton County Grand Jury which found the In-
9 dictments in this case? If so, please stand at this
10 time.

11 (No response)

12 Let the record reflect no one is standing.

13 Any member of my jury panel or any member of
14 their immediate family -- and by immediate family, I
15 mean spouse, mother, father, brother or sister --
16 ever been the victim of child abuse? If so, please
17 stand at this time.

18 (No response)

19 Let the record reflect no one is standing.

20 Any member of my jury panel or any member of
21 their immediate family ever been charged with child
22 abuse? If so, please stand, and that means ever been
23 charged by the state or federal government?

24 (No response)

25 Let the record reflect no one is standing.

1 Any member of my jury panel ever had a child re-
2 moved from his or her home as a result of an investi-
3 gation for possible child abuse? If so, please stand.

4 (No response).

5 Let the record reflect no one is standing.

6 Any member of my jury panel ever lost a child as
7 a result of abuse or neglect? If so, please stand
8 at this time.

9 (No response)

10 Let the record reflect no one is standing.

11 Any member of my jury panel or any member of
12 their immediate family ever lost a child by accidental
13 death or illness? If so, please stand.

14 (No response)

15 Let the record reflect no one is standing.

16 Any member of my jury panel or member of their
17 immediate family a member of or contributor to any
18 group which has as its main concern the promotion of
19 law enforcement or victim's rights?

20 These groups would include MADD, SADD, CAVE
21 or CADRE? If so, please stand at this time.

22 (No response)

23 Let the record reflect no one is standing.

24 Any member of my jury panel know of any bias or
25 prejudice they may have about the facts which are

1 alleged in this case, any attorneys who may be involved
2 therein, any of the potential witnesses involved in
3 the case? If so, please stand at this time.

4 (No response)

5 Let the record reflect no one is standing.

6 Any member of my jury panel know of any reason
7 whatsoever why they can't give the State of South
8 Carolina or the Defendant in this case, Melvin Daniel,
9 Second, a fair and impartial trial, based on the evi-
10 dence introduced during the trial of the case? If so,
11 please stand.

12 (No response)

13 Let the record reflect no one is standing.

14 Any additional voir dire from the State?

15 SOLICITOR: No, sir.

16 THE COURT: Any additional voir dire from the
17 Defendant?

18 MR. BEACH: None, Your Honor.

19 THE COURT: Very good. Counsel, it's my understand-
20 ing the strikes will be five and five. We'll be draw-
21 ing two alternate jurors, one and one on the alter-
22 nates. Is that correct from the State?

23 SOLICITOR: Yes, sir.

24 THE COURT: And is that correct from the Defendant,
25 Melvin Daniel, Second?

1 MR. BEACH: Yes, Your Honor.

2 THE COURT: Madam Clerk, would you give us a jury,
3 please.

4 Five and five on the jury, and two alternates. One
5 and one on the alternates.

6 Counsel, do not forget my Order concerning the
7 matter in Chambers which we will take up after jury
8 selection, because the burden will be upon each of
9 you to communicate my Order concerning witnesses.

10 CLERK: Ladies and gentlemen, when your name is
11 called, please come forward to the Clerk's table and
12 bring your belongings, and then turn and face the Court-
13 room.

14 (Whereupon, a jury was drawn and struck per the
15 attached jury strike sheet.)

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JURY STRIKE SHEET

State of South Carolina v. Melvin Daniel, II

Indictment Number: 04-GS-15-00400

Date of Trial: July 16 - 18, 2007

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1 THE COURT: Are there any matters of
2 law pertaining to the selection of the jury that need
3 to be decided before the jury is sworn for the State
4 of South Carolina?

5 MR. KNIGHT: None, Your Honor.

6 THE COURT: From the Defendant?

7 MR. BEACH: None, Your Honor.

8 THE COURT: Ladies and gentlemen of the
9 jury panel, we're not going to begin the trial of this
10 case until in the morning. It's five o'clock. I've
11 kept you here and I appreciate your patience. I'm
12 going to ask you briefly if you would go with Mr.
13 Beach. He's going to show you. Well, actually he's
14 going to take you this way - I'm so used to pointing
15 this way because we're in the new courthouse. It's
16 actually this way and tomorrow we're going to have a
17 partition up there. We've still got some equipment
18 that's on order but, Pat, isn't that right that it's
19 going to be here tomorrow? All right. I want you to
20 know where your jury room is. I don't want you to
21 discuss this case even amongst yourselves because you
22 haven't heard any evidence in the case and it would be
23 improper for you to do so. The reason I want you to
24 go to the jury room and I'm going to call you back in
25 just a moment, is because in the morning when I ask

1 you to report I don't want you to report to this
2 courtroom. I want you to report to the jury room. My
3 bailiff will be instructing you how to get in and out
4 of the courthouse and how to get to your jury room in
5 the morning because that's where I want you to report.
6 Now, I'm going to be right back with you in just a
7 couple of moments if you will go to your jury room.
8 While you're in your jury room, ladies and gentlemen,
9 I do want you to do one thing. I want you amongst
10 yourselves to select a foreperson of the jury. Now,
11 sir, you're my first alternate and ma'am, you're my
12 second alternate. And you're just as important as a
13 member of the jury. You'll be with the jury at all
14 times. If, for any reason, a juror becomes ill or for
15 some legal reason cannot continue to serve, you would
16 take their place on the jury. But any of the twelve
17 of you are eligible to be foreperson of the jury. The
18 duties of the foreperson. A foreperson presides in
19 the jury room just like a chairperson of a committee
20 would preside in a committee meeting. To see that
21 each and every member of my jury has a full and a fair
22 opportunity to voice their opinions in the jury room
23 once deliberations begin. It will also be the fore-
24 person's job to write the jury's verdict but I will
25 give you instructions about how to write the verdict

1 in my charge to you on the law at the conclusion of
2 the case. Finally, ladies and gentlemen of the jury,
3 it will be the foreperson's job to be the jury's
4 spokesperson out here in the courtroom should that
5 need arise during trial in this case. So, the
6 foreperson presides in the jury room to see that each
7 and every person gets a chance to speak, the fore-
8 person is the jury's spokesperson out here in the
9 courtroom and the foreperson writes the jury's
10 verdict for the jury. Any of the twelve of you that
11 have been selected as a juror with the exception of
12 my two alternates are eligible to be foreperson.
13 They're going to give you a piece of paper and a
14 pencil and I want you to quickly amongst the twelve
15 of you select the foreperson. Write that person's
16 name on a piece of paper, knock on your jury room,
17 door, give that to the bailiff and then I'll bring you
18 back into the courtroom. Please at no time discuss
19 this case. As I've told you, you have not heard any
20 evidence in the case and it would be improper for you
21 to discuss it amongst yourselves or with anybody else.
22 I'll be back with you in just a moment. You may
23 retire to your jury room at this time. You'll go with
24 Mr. Beach out this back side please. Everyone else
25 remain seated while the jury clears the courtroom.

1 (Jury retires from the courtroom)

2 THE COURT: All right, ladies and
3 gentlemen that were not selected as jurors in the
4 trial in this case Each of you should have in your
5 possession a card. Look and see if you have it with
6 the telephone number - what's the number here, Pat?
7 549-1775 is the number on the card. If you do not
8 have a card with that telephone number on it, please
9 raise your hand for me if you're here for jury
10 service. Everybody have it? It appears I don't have
11 any takers. Everybody's got one. All right. I'm
12 going to ask you to call the number on that card after
13 six o'clock tonight. There will be a taped message on
14 that number. It's one message for all jurors. Don't
15 call prior to six o'clock. And the reason for that is
16 so that I can give you the most up to date information
17 after we've worked all day. There will be a message
18 as to when I might need you to return. When I do ask
19 you to return, I ask you to be on time. That is, if
20 one of you are late, all the rest of you have to wait
21 until everybody is present. When I ask you to return
22 you'll be reporting to the area of the courtroom that
23 you're seated in now. That's reserved for my jurors.
24 When I ask you to return, be on time. Please, ladies
25 and gentlemen, call the number after six o'clock. It

1 may tell you to call back tomorrow night. It may tell
2 you to report at a certain time tomorrow. I don't
3 know yet. We'll be working after you're gone. Please
4 follow the instructions on that taped line by calling
5 after six o'clock. Are there any questions from any
6 of my jurors that were not selected as jurors in the
7 trial of the first case about the call back procedure?
8 Everybody understand it? Good. I want to thank you
9 for your patience during the selection of the jury,
10 the qualification, and the roll call. You are now
11 each of you excused for the balance of today. Call
12 the number on the card after six o'clock tonight. You
13 may leave the courtroom at this time. Everyone else
14 remain seated while the jurors leave.

15 THE COURT: All right, Counsel. I've
16 told you because you have your witnesses present. Mr.
17 Beach made motion on behalf of the Defendant to
18 seek sequestration of witnesses and I have his
19 written motion on the bench. It's dated July the
20 eleventh, 2007. Mr. Beach, you have your witnesses.
21 If I'm going to grant it, I'm going to make it equal
22 to both sides. That is, not only will the State's
23 witnesses be sequestered but the Defense witnesses.
24 The Defendant will be allowed to remain in the Court
25 room and so will the case manager, whoever that is ...

1 All right. Mr. Cripes. Will be allowed to remain in
2 the Courtroom otherwise you will meet now to instruct
3 your witnesses and give them a location in the Court
4 room that they are to report so that when their time
5 comes to be called as a witness, you can immediately
6 send someone to that room to retrieve them. I can get
7 them home in a timely fashion. They are also to be
8 instructed that they cannot discuss anyone else's
9 testimony prior to their testimony with them until
10 they are excused or authorized by the Court. Do you
11 understand, Mr. Beach?

12 MR. BEACH: Yes, Your Honor.

13 THE COURT: Do you understand Mr.
14 Knight?

15 MR. KNIGHT: Yes, but I would like to
16 address one issue on that.

17 THE COURT: Yes.

18 MR. KNIGHT: One of my witnesses, Miss
19 Heather Aiken, is the mother of the child. I think
20 pursuant to the victim's bill of rights, she would be
21 entitled to be in the Courtroom.

22 THE COURT: Mr. Beach, do you have any
23 objection to her remaining in the Courtroom?

24 MR. BEACH: No, Your Honor.

25 THE COURT: In that case, she will be

1 allowed to remain without objection from the Defendant
2 in lieu of motion to seek sequestration. All right.
3 I'm going to give you a moment now to confer with your
4 witnesses and then notify the Court where your
5 witnesses are going to be located. And I want my
6 bailiffs to be told so that they can retrieve them.

7 THE COURT: My concern now is for Mr.
8 Beach's sake. He's got four witnesses and only one of
9 which is going to be his client is one of the four.
10 He's got three witnesses that are going to have to be
11 put in a room where they are not exposed to the jury.
12 Now, I've got attorney/ client conference rooms but
13 that's where my jury is. Do you have any other room
14 for them?

15 CLERK: We've have the visitor/
16 plaintiff rooms downstairs.

17 THE COURT: Are they being used this
18 week by Family Court?

19 CLERK: No, sir.

20 THE COURT: All right. Use one of
21 those two rooms for Mr. Beach so that you can go
22 immediately there and get the witnesses and come back.
23 Mr. Beach, I just don't want them put in a situation
24 with them coming in and out where they can be exposed
25 to that.

1 MR. BEACH: Yes, sir. I think that
2 will work fine, Your Honor.

3 THE COURT: Find out which you want for
4 Mr. Pagent and make sure . You're going to use the
5 Solicitor's office.

6 MR. KNIGHT: There's a conference room
7 next to the Solicitor's office. That's where we'll
8 go. He's going to take them now.

9 THE COURT: Mr. Beach, do you want to
10 pick one room downstairs so you can show your
11 witnesses?

12 (Conversation off the record)

13 THE COURT: I've been handed by the
14 bailiff a note from the jury they've selected__ Juror
15 127, Donald Starche is foreman. Any objection to
16 making it a court's exhibit? From the Defendant?

17 MR. BEACH: No, Your Honor.

18 THE COURT: Any objection from the
19 State?

20 MR. KNIGHT: Not from the State.

21 THE COURT: Court's exhibit number one.

22 (Court's exhibit one admitted in evidence without
23 objection - foreman selection)

24 THE COURT: Would you bring in the jury
25 please.

1 (Conversation off the record)

2 (Jury returns to the Courtroom)

3 THE COURT: We have brand new chairs
4 for you, ladies and gentlemen. Those are the old
5 chairs that have been redone in the Courthouse. You
6 can feel how slick the wood is. Put your hands on
7 each side. I've already got my two alternates. Now,
8 let me help ya'll a little bit. Mr. Starcher,
9 congratulations on your election as foreperson of the
10 jury. That's going to be your seat throughout the
11 trial of the case right there. And that means - in
12 light of the way we are coming in to the jury room,
13 you're probably going to have to come in first. The
14 rest of you can sit anywhere you want to. I ask you
15 to file all the way down so nobody's got to crawl over
16 anybody. Particularly on that back row. It's
17 dangerous when you sit down and somebody's got to
18 crawl over you to get to the end. And I want you
19 sitting in closest proximity to this witness stand.
20 You'll notice it's located on the same side of the
21 courtroom that you're located in so you can observe
22 the witnesses, you can watch the witnesses, you can
23 pay close attention to the witnesses which is part of
24 your duty. Now, ladies and gentlemen, I told you we
25 weren't going to start . If you want to sit by

1 somebody, ladies and gentlemen, just line up that way
2 in the jury room and you can come out and sit by who-
3 ever you want to. My two alternates will be seated
4 just outside there. There's six of you jurors on the
5 front row with the foreperson seated in his seat and
6 six of you jurors on the second row. But just file
7 all the way down so nobody's got to crawl over anybody
8 and I don't want anybody falling coming in and out of
9 the courtroom during the trial of the case. And my
10 alternates will come in last and those will be your
11 two seats. Sir, you are my first alternate and ma'am,
12 you are my second alternate. And as I told you,
13 you'll be with the jury at all times throughout the
14 trial of the case and you're just as important as a
15 member of the jury because if someone becomes ill or
16 for some reason can't continue to serve you would take
17 their place on the jury. Now, I told you we weren't
18 going to start this trial, in fact, I'm not even going
19 to swear you until in the morning. When you report
20 back in the morning, I'm going to ask you to report to
21 your jury room. You now know where it is. It's new.
22 Brand new. That was never a jury room before. Our
23 jury room used to be back here and this door doesn't
24 actually go anywhere but to an elevator now, ladies
25 and gentlemen, so it's completely different and we're

1 having to adjust to some new surroundings and we're
2 working on it. Pat and I have just been discussing
3 some ways we could make it more convenient for you and
4 user friendly. So, when you report back in the
5 morning I want you here prior to nine-thirty because I
6 want to start on time so everybody needs to be here
7 and we'll have something for you to drink back there
8 and some snacks for you if you get here. They'll have
9 coffee for you. You'll see that Mr. Beach and Ms.
10 Cobb and Mr. Pagent are gonna take excellent care of
11 you while you are on the jury. Now, while you are on
12 the jury this week, I'm going to ask you - I don't
13 know whether there will be anything in the newspaper
14 or on the radio or on television about this case but
15 I'm going to ask you not to read such, watch such, or
16 listen to such. You must decide this case solely upon
17 evidence introduced in this courtroom when both sides
18 are present with the right of cross examination and
19 not on any extraneous matter outside the courtroom and
20 one side isn't present so please don't read the news-
21 paper, watch television, or listen to the radio about
22 any account of this case because that would be
23 improper. I don't want it to affect your ability to
24 be fair and impartial, which is why each of you were
25 selected as jurors in the trial of this case. During

1 the trial of this case, I ask you not to discuss this
2 case with anybody. Not only amongst yourselves
3 because I'll tell you when it's time for you to
4 discuss it amongst yourselves at the end of the case.
5 It's most important that you keep an open mind and not
6 decide the case until all the evidence has been
7 presented during the trial of the case. Not only do I
8 not want you to talk amongst yourselves about it I
9 don't want you to even discuss it with a family
10 member. I know people are curious. I understand.
11 I've been doing this a long time. I practiced law
12 twenty-six years. I've been on the bench now I'm
13 starting my seventh year as a judge. And so it seems
14 like my sons love to tell me ... Their nice way to put
15 it, ladies and gentlemen, is, dad you're past the
16 speed limit now so that's the nicest way they put it
17 and I've had the experience of people ... I know people
18 are curious so if somebody comes up to you and says,
19 hey, I hear you're on the jury. Just tell them Judge
20 Buckner said I can't discuss the case. If somebody
21 persists in wanting to talk to you about the case, you
22 get their name and you give it to me and I'll handle
23 that problem for you, ladies and gentlemen. That
24 person won't bother you anymore. I don't want any of
25 you discussing this case with anyone throughout the

1 trial of the case. You must decide this case solely
2 on evidence introduced in this courtroom when both
3 sides are present with the right of cross examination.
4 Any questions about that from anyone? Everybody
5 understand that? All right. Now, I'm going to ask
6 you to report back to your jury room prior to - that
7 means before nine-thirty in the morning so we can
8 start on time. Hope each of you have a pleasant
9 evening. I'll look forward to seeing you in the
10 morning. I thank you for your patience during the
11 selection today and the qualification and the roll
12 call. There is a reason we follow certain procedures
13 like that in the courtroom. To try to be fair to both
14 sides of the parties before the Court and I thank you
15 for your patience during that time. You are now
16 excused until nine-thirty. Thank you and you may
17 leave with the bailiff at this time.

18 (Jury excused for the evening) All else
19 remain seated while the jury leaves. Anything on the
20 record concerning this case for the state of South
21 Carolina before we adjourn please?

22 MR. KNIGHT: No.

23 THE COURT: Anything on the record from
24 the Defendant before we adjourn for the evening?

25 MR. BEACH: No, sir.

1 THE COURT: Counsel, I'll expect you to
2 be ready to go at nine-thirty AM in the morning. It
3 is my understanding that both of you believe we can
4 complete the testimony and trial this case hopefully
5 by mid-day Wednesday. Is that correct from the State?

6 MR. KNIGHT: Yes.

7 THE COURT: Correct from the Defendant?

8 MR. BEACH: I think that's going to be
9 pushing it, Your Honor.

10 THE COURT: Well, I'm trying to Mr.
11 Beach. I've got five more probation matters that
12 haven't been done that I've pushed this morning to try
13 to complete. I've got a plea with out of town lawyers
14 that want to complete. I have twelve bond issue
15 treatments that are scheduled for Thursday and I have
16 five bond hearings. All of which I have to complete
17 by four o'clock on Thursday so I ask your cooperation
18 because I intend to start you at nine-thirty in the
19 morning on time and I intend to work you. If that
20 means going into tomorrow evening, please be prepared
21 to have your witnesses ready to go as soon as the
22 State rests its case because I intend to move it
23 because I've got so much work I have to complete this
24 week. Do you understand?

25 MR. BEACH: Yes, sir.

1 MR. KNIGHT: Your Honor?

2 THE COURT: Yes, sir.

3 MR. KNIGHT: While I'm here. You'll
4 stipulate to Dr. Kessler's testimony as the Pediatric
5 Radiologist.

6 THE COURT: Yes. Have we got a written
7 stipulation as to content?

8 MR. KNIGHT: No. But I'll have one by
9 then. I have her coming at four o'clock tomorrow. I
10 can move Dr. Presnell in at four o'clock tomorrow
11 afternoon.

12 THE COURT: That's fine. I suggest you
13 get on the telephone in light of what he's telling me
14 he's willing to stipulate to. You need to show him a
15 written stipulation.

16 MR. KNIGHT: He's .

17 THE COURT: I know he's familiar with
18 it but just for the record so that I know what's
19 agreed to so that I can enforce it if need be.

20 MR. KNIGHT: Yes, sir.

21 THE COURT: All right.

22 MR. KNIGHT: That's what I'll do. Is
23 get Dr. Presnell in.

24 THE COURT: Mr. Beach, you understand
25 I'm going to push to try to complete this trial as

1 soon as I can with the understanding that I may need
2 to work you into the evening hours tomorrow. Rhonda,
3 I'm planning on giving you some time off later this
4 week but I intend to work you tomorrow. Do you under-
5 stand? So come and bring a lunch. Pat and I will be
6 providing the jury lunch here in the courtroom along
7 with, if necessary, people trying this case because I
8 don't intend for anybody to leave. We're working
9 straight on through tomorrow. Anything else on the
10 record from the State?

11 MR. KNIGHT: No.

12 THE COURT: Anything else on the record
13 from the Defendant?

14 MR. BEACH: No, sir.

15 THE COURT: All right. Mr. Linton, I
16 know you've got these matters you want to take up. My
17 best guess right now, Mr. Alexander wants to take a
18 plea Wednesday afternoon with an out of town attorney.
19 They're coming at two o'clock. It is my intention
20 also to take up your matters Wednesday afternoon. It
21 wouldn't be before three o'clock. Please have all
22 your people here. Have your people transport them if
23 they're in custody so that I can take those matters up
24 Wednesday afternoon with you because they scheduled
25 too much Thursday. Do you understand?

1 THE COURT: Thank ya'll very much.
2 This court stands adjourned until nine-thirty AM
3 tomorrow morning.

4 (Court resumes the next morning at 9:35)
5 (Jury brought to courtroom)

6 THE COURT: Good morning. I'm starting
7 about five minutes behind schedule but I wanted you to
8 know that we will run on schedule during this trial.
9 Before we begin this trial, ladies and gentlemen, I
10 want to tell you that this trial probably will be
11 different from what you might expect. You know, most
12 people, many people do not have the chance to attend
13 an actual court session as each of you are doing now.
14 And you may think from watching television, such shows
15 as Cold Case and CSI or going to a movie or reading a
16 book that trials are always full of high drama and
17 intense action and riveting circumstances. While all
18 of these things may be true, a trial is not for
19 entertainment. A trial, ladies and gentlemen, is a
20 fundamental part of our democracy. It is a search for
21 the truth in an effort to make sure that justice is
22 done between the parties before the Court. Searching
23 for the truth and making sure that justice is done is
24 often slow. It is often deliberate. It is often
25 repetitive. The exact opposite of what many of you

1 may have seen on a television show or read in a book
2 or watched in a movie. This courtroom, ladies and
3 gentlemen, and each courtroom in our state is a place
4 of honor. It is dedicated, ladies and gentlemen, to
5 the protection and the preservation of citizen's
6 rights through what many people have called the
7 greatest justice system in the entire world. The
8 attorneys appearing before you, ladies and gentlemen,
9 are advocates for the parties that they represent but
10 first and foremost the attorneys are officers of this
11 court and as officers of this court they took an oath.
12 They are sworn as officers of this court to uphold the
13 integrity and the fairness of our judicial system.
14 And to help you, ladies and gentlemen, the jury in a
15 search for the truth, you should expect the attorneys
16 to be professional. You should expect, ladies and
17 gentlemen of the jury, the attorneys to be ethical.
18 You should expect the attorneys to be competent and
19 prepared in the representation of their client's
20 interests. Remember in just a moment, ladies and
21 gentlemen, I'm going to give you an oath administered
22 by the Clerk and in that oath, ladies and gentlemen,
23 you also are going to take an oath just like the
24 attorneys. And that is to try this case and to reach
25 a fair and a just verdict and you, ladies and

1 gentlemen, by the oath that you are about to take as
2 jurors are also expected to be professional, to be
3 reasonable, and to be ethical in the discharge of your
4 duty as jurors. Before we even begin the trial.

5 Before I even give you the oath as jurors, I want to
6 thank each and every one of you for accepting what I
7 believe to be a very important responsibility. A jury
8 service. And I want to thank each and every one of
9 you for your contribution today to our justice system
10 in our State. Thank you, ladies and gentlemen.

11 Madam Clerk, would you please swear the jury?

12 CLERK: Yes, sir.

13 (Jurors sworn in for jury duty)

14 THE COURT: All right, Mr. Foreman and
15 ladies and gentlemen of the jury, we are about to try
16 the case of the State of South Carolina versus Melvin
17 Daniel II, who is the Defendant. I introduced you to
18 Mr. Daniel earlier in my questions to you to determine
19 your impartiality to serve as a juror in the trial of
20 this case. The Defendant is charged by this piece of
21 paper that I hold in my hand. We call it an
22 indictment. It is filed in this court. The Defendant
23 is charged with the crime of Homicide by Child Abuse.
24 The elements of that crime I **will** explain to you in my
25 charge to you on the law at the conclusion of the

1 case. You should understand that this indictment,
2 this piece of paper, is simply the charge by which the
3 case is brought into this Court and that it is not in
4 any sense evidence of any of the allegations that it
5 contains. Now, the Defendant has pled not guilty to
6 the indictment. The State of South Carolina therefore
7 has the burden of proving each of the essential
8 elements of the offense in the indictment beyond a
9 reasonable doubt. And it will be your duty, ladies
10 and gentlemen of the jury, to decide whether the State
11 has met that burden. It is your solemn responsibility
12 ladies and gentlemen, to determine the guilt or the
13 innocence of the Defendant and your verdict, ladies
14 and gentlemen of the jury, must be based solely on the
15 evidence as it is presented to you in this trial and
16 on the law as I instruct it to you to be during the
17 trial and at the conclusion of the trial in my charge
18 to you on the law at the conclusion of the trial.
19 Now, in just a minute the Deputy Solicitor of our
20 circuit, Stephen Knight, will make what is called an
21 opening statement in which he will explain to you the
22 issues in the case or at least what he contends to be
23 the issues in the case and following that the Public
24 Defender of Colleton County, Mr. Harris Beach, will
25 make an opening statement on behalf of the Defendant.

1 Now, I will tell you right now, ladies and gentlemen,
2 although the attorneys have worked hard to prepare the
3 case for you today and I told you the attorneys are
4 advocates for the clients that they represent and what
5 the attorneys tell you in opening statements or in
6 closing arguments to you at the conclusion of the case
7 is not evidence in this case. They are advocates for
8 their clients. They worked hard. I want you to
9 listen carefully to them but what they tell you is not
10 evidence. And in the opening statement it is only
11 their contention as to what the issues are based on
12 evidence that will be introduced during the trial of
13 the case. The evidence in this case will be presented
14 to you, ladies and gentlemen, and upon which only you
15 will be permitted to make a decision by the testimony
16 of the witnesses from the witness stand. Sworn
17 testimony from the witness stand or by some exhibit
18 which may be introduced into evidence such as a photo-
19 graph or a model. But as to the exhibit, you will not
20 be allowed to view any exhibit until you hear me say,
21 it is in evidence. That means it will be available to
22 you for your consideration during your deliberations
23 in your jury room at the conclusion of the case so
24 I'll be the gatekeeper as to evidence. If you hear me
25 say that an exhibit is in evidence, it will be with

1 the case. And in that connection, ladies and gentle-
2 men of the jury, let me emphasize and tell you again
3 that you and you alone are the sole judges of the
4 facts in this case and if you should gather from any-
5 thing that I might say or do during the course of this
6 trial that I have any opinion whatsoever as to the
7 facts in this case, please erase that from your mind
8 because as I've said, you, ladies and gentlemen of the
9 jury, you twelve and you alone - the jury - are the
10 sole judges of the facts in this case based on
11 evidence introduced during the trial of the case.
12 Now, how do you go about determining what the true
13 facts are as a jury? In determining the facts in this
14 case, ladies and gentlemen, you as a jury will of
15 necessity have to pass upon credibility, which is a
16 fancy legal term meaning believability of the
17 witnesses who will take this witness stand right
18 beside you. By way of illustration, ladies and
19 gentlemen, so you know I'm the sole judge of the law
20 and you're the sole judge of the facts, one way to
21 illustrate it is it will be my responsibility as a
22 presiding judge to rule as a matter of law as to
23 whether certain testimony is admissible or not. But
24 once I've allowed the testimony to be admitted into
25 evidence, whether or not you believe the testimony is

1 you in your jury room during your deliberations. So
2 evidence may take many forms, ladies and gentlemen.
3 It may be testimony from the witness stand or it may
4 be some exhibit that one of the parties in the case
5 offers into evidence and I admit into evidence. Now
6 into consideration of the evidence, you as a jury
7 ladies and gentlemen, should remember that under the
8 Constitution of the state of South Carolina and of the
9 United States, you and you twelve jurors alone are the
10 sole judges of the facts in this case. And the same
11 law that makes you the sole judges of the facts based
12 on evidence introduced during the trial of the case,
13 makes me, ladies and gentlemen, the sole judge of the
14 i-a-w. I can't invade your province, ladies and
15 gentlemen of the jury, and tell you what the facts are
16 or make any comment to you about the evidence. And
17 you should not invade my province, ladies and
18 gentlemen of the jury, and differ with me about what
19 the law is. Everything that I say during the course
20 of this trial, ladies and gentlemen of the jury, is
21 being taken down by my court reporter, Ronda Cummings,
22 right down here below me, ladies and gentlemen. And
23 if I make a mistake as to the law and a party to this
24 case can appeal the case to the Appellate Court and if
25 the Appellate Court agrees that I've made a mistake

1 on the law, they'll reverse the case and send it back
2 for a new trial. So don't you worry about whether or
3 not I've told you the law correctly, ladies and
4 gentlemen of the jury. That is somebody else's worry.
5 Not yours. Your job is to take the law as I give it
6 to you and apply it to the evidence as you find it to
7 be or the facts as you find it to be based on evidence
8 introduced during the trial of the case and that would
9 be from the witnesses who testify on the witness stand
10 and any exhibits that are introduced into evidence and
11 after doing that, you will render your verdict, a true
12 and a just verdict under the solemn oath that you just
13 took as jurors. Now, from time to time during the
14 trial of this case, you may hear one of the attorneys
15 say something like, Your Hono I believe we have a
16 question of law or a matter of law we'd like to
17 discuss with you. Or you might hear one of the
18 attorneys say, Your Hono may we approach the bench?
19 Or sometimes I myself might find it necessary to ask
20 the attorneys to approach the bench and I might find
21 it necessary to ask that you be excused from the
22 courtroom and sent, as I did yesterday to your jury
23 room for a little while, while the attorneys and I
24 discuss a matter of law. Now, the reason for this is
25 just what I told you. We're not trying to hide

1 anything from you. It's because as I told you, you're
2 the sole judges of facts in this case and sometimes
3 when I'm discussing a matter of law with the attorneys
4 by necessity, I have to make a comment to the
5 attorneys about the facts in the case in order to rule
6 on whether or not a particular piece of law applies to
7 this case or not. Now, as I told you I'm not supposed
8 to make any comment to you, the trial jury, about what
9 I think the facts are. So the practice in this state
10 is to either talk to the attorneys out of your hearing
11 at the bench, which is why I have this microphone here
12 that turns on and off, or ask you to step to your jury
13 room while I talk with the attorneys so that you will
14 not be influenced in any way by anything that I might
15 say or do in ruling on whether or not a particular
16 piece of law applies to this case or not. So we're
17 not trying to hide anything from you, ladies and
18 gentlemen, we're trying to ensure that you have an
19 open mind and are not influenced by something that is
20 not in evidence during the trial of this case so don't
21 think that when I ask you to step to your jury room or
22 if I take up a matter with the attorneys at the bench,
23 that we're doing anything but following the rules in
24 trying to protect you so that you will decide the case
25 solely upon evidence introduced during the trial of

1 solely a matter for you, the jury, to determine.
2 You're the sole judges of the facts. I'm the sole
3 judge of the law. And in passing upon the credibility
4 or the believability of the witnesses who will testify
5 during the trial in this case, you have the right as a
6 jury to take into consideration the interests of any
7 witness, the bias of any witness, the prejudice of any
8 witness, the opportunity for the witness to have
9 observed the matters about which he or she may testify
10 You may even take into consideration, ladies and
11 gentlemen of the jury, the demeanor or the appearance
12 of the witness while the witness is on the witness
13 stand. Anything that is in evidence, ladies and
14 gentlemen of the jury, you have the right as the jury
15 to consider in determining the credibility or the
16 believability of the witnesses who will testify during
17 the trial of this case. And that means, Mr. Foreman
18 and ladies and gentlemen of the jury, it is your duty,
19 Your solemn duty now under the oath which you just
20 took from the Deputy Clerk of Court, to pay close
21 attention to the witnesses, to observe the witnesses,
22 to listen to the witnesses. Don't let your thoughts
23 wander, ladies and gentlemen. Give strict attention
24 to the witnesses who are going to testify during the
25 trial of this case. So that at the conclusion of all

1 the evidence in this case and all the testimony and
2 after the closing arguments by the attorneys in this
3 case and after my charge to you on the law that
4 applies to this case at the end of the trial, You, as
5 a jury, will then be in a position from listening to
6 determine what the true facts are from the evidence
7 and to apply the law as I give it to you at the
8 conclusion of the case and as I charge it to you at
9 the conclusion of the case and during the trial to the
10 facts as you as a jury find them to be based on
11 evidence introduced during the trial of the case and
12 thus then render a true and a just verdict. The word
13 verdict, ladies and gentlemen of the jury, comes from
14 the Latin word, ~~re~~dicto, meaning literally to speak
15 the truth. Now, ladies and gentlemen, you must not
16 consider anything that you may have read or heard
17 about this case outside this courtroom whether before
18 or during this trial. And as I instructed you
19 yesterday before you left, I don't know whether there
20 will be anything in the newspaper, radio, or
21 television. Please do not read such, watch such, or
22 listen to such. You must decide this case solely upon
23 evidence introduced during the trial of this case when
24 both sides are present with the right of cross-
25 examination. And not on any extraneous matter and

1 until this case is submitted to you under my
2 instructions at the conclusion of the trial. You must
3 not discuss it with anyone. Not even a member of your
4 own family and after it is submitted to you, ladies
5 and gentlemen, you must discuss it only with your
6 fellow jurors in your jury room. It is important,
7 ladies and gentlemen, for each of you as a jury that
8 you keep an open mind and not decide the case until
9 the entire matter has been submitted to you under my
10 instructions at the conclusion of the case. Now,
11 ladies and gentlemen, it will be your added duty Mr.
12 Foreman to write the jury's verdict but I will give
13 you . You will preside in the jury room just as I
14 told you just as a chairperson of a committee would
15 preside. It's your job to see that each and every
16 member of my jury has a full and a fair opportunity to
17 voice their opinions in the jury room once the
18 deliberations begin. You will also be the jury's
19 spokesperson, if necessary, out here in the courtroom.
20 It will be your duty to write the verdict but I will
21 give you further instructions in my charge to you on
22 the law at the conclusion of the case about how to
23 write the jury's verdict. Now, there are a couple of
24 things that I want you to be aware of, ladies and
25 gentlemen, that I think are very important. Some

1 housekeeping matters before we begin so that if you
2 have any questions about anything you will understand.
3 First is, that it's very important. We're in a brand
4 new courtroom. It's very important that you be able
5 to hear. My lawyers know that I've shot a shotgun all
6 my life and I'm deaf in my right ear, ladies and
7 gentlemen, from doing it practically. And so I speak
8 loud. You can tell I don't need a microphone when I
9 talk. I'm used to it because people that have hearing
10 problems speak up but if at any time any member of my
11 jury, particularly Madame alternate and Mr. alternate
12 down there, if you are at the end of the box and you
13 can't hear something although we have these micro-
14 phones, raise your hand for me. I'll be watching all
15 fourteen of you throughout the trial of the case.
16 I want my jury to be able to hear at all times
17 throughout the trial and we can adjust the
18 amplification of the microphones so don't worry about
19 that. Just raise your hand because I'll be watching.
20 I want you to be able to hear. If something is
21 admitted into evidence and the attorneys know that
22 they are not to show anything to you without coming
23 through me. But if it is admitted into evidence you
24 are going to hear me say it's in evidence and that
25 means it's available to you for your consideration

1 and if you can't see the exhibit, raise your hand for
2 me. I want my jurors to be able to hear and to see at
3 all times throughout the trial of the case. So let me
4 know by raising your hand if you cannot hear or see.
5 Now, Mr. Foreman, we don't allow jurors normally to
6 ask questions here in the courtroom. If at any time
7 the jury has a question, here is the procedure that we
8 will follow. If you are not already in your jury
9 room, the jury will retire to its jury room. You as
10 the foreman will write the question on a piece of
11 paper. You will give it to my bailiff. He will bring
12 it out to me. I will then rule as a matter of law
13 whether or not the question can or cannot be answered.
14 Just as I would any question asked by either side
15 during the trial of the case. Now, we do not allow
16 cell phones or beepers, ladies and gentlemen of the
17 jury, while you are on jury duty. You are probably
18 wondering why we are so strict about that and I'll
19 tell you. It's not just the noise and I'm embarrassed
20 to say .. I know you're all probably have this same
21 I'm embarrassed to say that I own two cell phones.
22 They're in my truck downstairs and I don't bring them
23 into the court house. If my jury can't have cell
24 phones then I figure I shouldn't have one either. But
25 the reason for that is not just noise in here.

1 In a county far from Colleton, we had a jury go out
2 before we prohibited cell phones to deliberate and
3 they were discussing the case and they were discussing
4 a medical issue. One of the jurors said, you know, my
5 brother is a doctor and I'll just call him on my cell
6 phone and ask his opinion about this. Obviously that
7 is improper, ladies and gentlemen. You must decide a
8 case solely upon evidence introduced when both sides
9 are present and know about the evidence and have the
10 right of cross examination. So cell phones are
11 strictly prohibited as are beepers while you are on
12 jury duty. I would strongly urge you not to bring them
13 with you. They're not permitted in your jury room and
14 they're not permitted in your possession while you are
15 serving as a juror so I ask your cooperation on that
16 and I think you understand the reasons why. Ladies
17 and gentlemen, I'd ask that you pay the closest
18 possible attention now to the evidence that's going to
19 be presented to you in just a moment. I'd ask that
20 you do not take notes. You're probably wondering why.
21 I've tried it both ways. I've allowed my jury to take
22 written notes and I'm a note taker. You'll see I keep
23 a pen in my hand. I play piano so I constantly do my
24 fingers. The reason is this. I've found that if the
25 written note taker makes an error in the written

1 notes, the notes can be harmful rather than helpful
2 once deliberations begin in your jury room. The time
3 tested system is for each of you to listen and listen
4 carefully. I'm sure each of you will do that. We'll
5 now begin the trial of the case. Mr. Knight?

6 MR. KNIGHT: May it please the Court,
7 Your Honor?

8 THE COURT: Yes, sir.

9 MR. KNIGHT: Mr. Foreman and ladies and
10 gentlemen of the jury, briefly I'm going to give you
11 an overview of what the law is in this case. As His
12 Honor will charge you at the end of the case in a much
13 better fashion that I can but Homicide by Child Abuse
14 is one causes the death of a child under eleven years
15 old while committing child abuse. And the death
16 occurs on circumstances manifesting an extreme
17 indifference to human life. That's what you've got to
18 follow during the course of this trial. Now, on May
19 the tenth of 2004, here in Colleton county, Heather
20 Aiken, who you see here in the courtroom\ had two
21 children. A daughter and a son. The son was [REDACTED]
22 [REDACTED], fourteen months old. On the ninth of May of
23 2004, the Defendant, Melvin Daniels, spent the night
24 with Ms. Aiken. They had a relationship for a few
25 months. How long exactly I'm not sure. The next

1 morning, Ms. Aiken was preparing to go to work. She
2 takes her daughter with her and leaves the custody and
3 control of Victim, this fourteen month old
4 toddler, with the Defendant. When she left that
5 morning to go to work, she had a healthy baby. She
6 got a call at eleven, eleven-thirty to come home.
7 Victim won't respond. When she got home, she tried to
8 awaken the baby and then called 911. You will hear
9 the testimony from the Ms. Campbell, who works the 911
10 and took the message from Ms. Aiken. You'll hear
11 about the EMS people, the first responders, the second
12 responders who came there and treated this child. And
13 of course, ultimately medovaced the child to the
14 Medical University of South Carolina. You'll also
15 hear from Detective Clites as to what he did involved
16 in this case. And ultimately you will hear this
17 afternoon, because of a scheduling situation, several
18 doctors who will give their opinions as based upon
19 their examinations, the findings, and their opinions
20 as to what caused the death of this child. And
21 finally you'll hear from the Pathologist, Dr. Presnel
22 as to her conclusion based upon the autopsy. Now,
23 you are on this little journey and as His Honor told
24 you before, you are seeking the truth. Looking for
25 the truth. And that's the only thing you can do in

1 this case is to search for the truth. You're not
2 not searching for doubt. There's doubt in anything
3 and everything. But searching for truth. Because at
4 the conclusion of the trial, I'm going to ask you to
5 return a verdict of guilty against the Defendant,
6 Melvin Daniels for Homicide by Child Abuse.
7 Thank you.

8 THE COURT: Mr. Beach?

9 MR. BEACH: May it please the Court.

10 Yes, sir. Ladies and gentlemen, as the judge told you
11 yesterday, this is the first trial in this courthouse
12 as it has been renovated. And I was rather hoping
13 that the first trial that ya'll would have would be
14 something that was rather simple and that you could
15 just get into and get out of real quickly. This isn't
16 that type of case. I represent the Defendant who is
17 seated over at the Counsel table and he has pled not
18 guilty to a charge of Homicide by Child Abuse. And
19 this is not a simple case. It's not a simple case
20 because of the horrendous penaltis as a result of it.
21 That's not a reason it's not an easy case.

22 MR. KNIGHT: Your Honor?

23 THE COURT: Just a moment. Counsel
24 approach.

25 (Conversation out of hearing)

1 THE COURT: Mr. Foreman and ladies and
2 gentlemen of the jury, you heard a reference. I told
3 you what the attorneys tell you is not evidence and it
4 is not. It is only their contentiOn. You heard a
5 reference to penalties for the offense which we are
6 trying. You are not to consider that in any fashion
7 whatsoever in your deliberations. I want you to
8 forget that remark. It is not in evidence and it is
9 not something that you are permitted to consider in
10 determining your deliberations in this case. The
11 objection is sustained. Please return to Counsel
12 bench.

13 MR. KNIGHT: Thank you, Your Honor.

14 THE COURT: Mr. Beach, you may now
15 resume your opening. Please do not refer to any that
16 is not admissible.

17 MR. BEACH: Thank you, Your Honor.
18 When you are making your deliberations, there is one
19 thing in this case that permeates everything and that
20 is the fact that there is a dead child. You know, we
21 look at these cases and we see the faces of this
22 beautiful little child who's no longer with us. What
23 I ask you to do is to not let that influence what you
24 are thinking about. What you are looking into in your
25 search for the truth. Because what you are looking

1 for is we know that this child is no longer with us.
2 What we are looking for is what happened. Did this
3 man do what they say he did? And we're going to come
4 back and as the Solicitor said he's going to ask you
5 for a verdict of guilty. We're going to ask you for
6 a verdict of not guilty. Because it is the duty of
7 the State in this case to prove beyond a reasonable
8 doubt that he killed this child and that he did it
9 through child abuse. Our contention is going to be
10 that the child fell, that the child had fallen several
11 times, that the child's cumulative injuries caused him
12 to expire. And we ask you not to allow the fact that
13 we agree. The fact that there is a dead child to
14 color your looking into and what you are searching for
15 because you are searching for the truth. You're
16 searching for what happened. You're searching for
17 what happened to this child and whether this man did
18 what he's charged with. That's what you're looking
19 for so we ask you to look at that very carefully and
20 to remember that opinions are just opinions and the
21 opinions that you have are the opinions that matter.
22 They're the ones that are going to be called the
23 verdict. That's what you're going to do. So,
24 opinions don't make a whole lot of difference. It's
25 the evidence and what we look at. Now, the State

r-\.:
1 said, there is no reasonable doubt, but we think it is
2 here in this case and that it needs to be disposed of
3 to the benefit of the Defendant.

4 Please, listen to the evidence and listen to the
5 Judge, and we will try to finish this case as quickly
6 as we can and get it to you.

7 Thank you very much.

8 THE COURT: Call your witness.

9 MR. KNIGHT: The State would call Amanda Bunch
10 Campbell.

11 THE COURT: I want you to speak into that micro-
12 phone and it is amplifying your voice so that all m;y
13 jurors can hear you.

14 I'd like you to begin by stating your full name
15 and spelling your last name for the Court Reporter who
16 is seated right below you.

17 AMANDA CAMPBELL, being duly sworn,
18 testified as follows:

19 CLERK: Your name?

20 WITNESS: Amanda Campbell. C A M P B E L L.

21 THE COURT: Is the amplification on?

22 MR. KNIGHT: I don't think so, Your Honor.

23 THE COURT: I don't think it is either. Hol on
24 just a minute. Try it again for me.

25 WITNESS: Amanda Campbell, C A M P B E L L .

1 THE COURT: Still not on. Can everyone
2 hear her? Can you hear her down at the end? Turn it
3 up some more if you can please. All right, Counsel.
4 Your witness.

5 Q. Ms. Campbell, who are you employed with?

6 A. Colleton County Sheriff's Office.

7 Q. And how long have you been employed with the
8 Colleton County Sheriff's Department?

9 A. September this year will be six years.

10 Q. And in what capacity are you employed with the
11 Sheriff's Department?

12 A. I am a supervisor. Sheriff's supervisor.

13 (loud noise)

14 THE COURT: We've got it now.

15 Ms. Campbell, that's our new courthouse. We're trying
16 very hard to make sure we've got it adjusted. Hold on
17 a second. All right. Try it again. Go ahead,
18 Counsel. I'm sorry.

19 Q. What do you do at the Sheriff's Department as a
20 supervisor?

21 A. I supervise at one time two other employees to
22 make sure everything runs smoothly. If they have any
23 questions they can come to me with them.

24 Q. In what department?

25 A. Communications.

lr----. Q. 1 Is that 911?

2 A. Yes, sir.

3 Q. Okay. Were you working with the Sheriff's
4 department on or about May the tenth of 2004?

5 A. Yes, sir.

6 Q. Do you recall if you received a call around
7 eleven or eleven-thirty that morning?

8 A. Yes, sir.

9 Q. And are those calls taped?

10 A. Yes, sir. They are recorded..

11 Q. I ask you if you can identify this, please ma'am.

12 A. Yes.

13 Q. And what is that?

14 A. This is a copy of the 911 call that I took that
15 morning from Druid Hills. A call that I took.

16 THE COURT: Any objection?

17 MR. BEACH: No objection.

18 THE COURT: Offer it as State's one?

19 MR. KNIGHT: State's Exhibit number
20 one. I move it into evidence to publish it.

21 THE COURT: No objection as to State's
22 one?

23 MR. BEACH: No objection, Your Honor.

24 THE COURT: Ladies and gentlemen of the
25 jury. State's Exhibit number one will be admitted

1 into evidence without objection. State's Exhibit one
2 in evidence. You may publish to the jury at this
3 time.

4 (State's Exhibit one admitted into evidence with
5 out objection -- being the 911 call tape)

6 MR. KNIGHT: Thank you, Your Honor.

7 THE COURT: If I can get it in.

8 (State's exhibit one played before the jury)

9 Q. You recognize your voice on that tape?

10 A. Yes, sir.

11 Q. Please answer any questions Mr. Beach may have?

12 THE COURT: Cross examination?

13 MR. BEACH: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. BEACH:

16 Q. Is this the only time that you talked with anyone
17 from that house that day?

18 A. Yes, sir.

19 Q. Do your logs indicate that anyone else spoke with
20 anyone from that particular location that day?

21 A. I'm not sure.

22 Q. But you didn't talk with anyone else?

23 A. No, sir. I didn't.

24 Q. So your only testimony here is that you received
25 that tape and that's what they told you on the tape?

1 A. Yes, sir.

2 Q. So you didn't go to the scene or anything?

3 A. No, sir.

4 Q. You did no follow up or anything on it?

5 A. No, sir.

6 Q. I have no other questions. Thank you, ma'am.

7 THE COURT: Redirect?

8 MR. KNIGHT: No, sir. May Ms. Campbell
9 be excused to go back to the Sheriff's Department and
10 go to work?

11 THE COURT: No objection. Counsel
12 approach.

13 (Conversation off the record)

14 THE COURT: Ms. Campbell, you may step
15 down and you are excused from the courtroom. Mr.
16 Knight wants to speak with you briefly before you
17 leave.

18 THE COURT: Call your next witness.

19 MR. KNIGHT: Jason Farmer.

20 Jason Farmer, being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. KNIGHT:

24 Q. State your full name for the record.

25 A. Jason M. Farmer.

1 THE COURT: I need to amplify your
2 voice if you put that back on. I want you to begin
3 by stating your full name and spell your last name for
4 the court reporter please.

5 A. Yes, sir. My name is Jason M. Farmer. F A R M E R

6 THE COURT: Your witness, Counsel.

7 MR. KNIGHT: Thank you, Your Honor.

8 Q. Mr. Farmer, who are you employed with, sir?

9 A. I'm currently employed with the City of
10 Charleston Fire Department, sir.

11 Q. And how long have you been employed with the City
12 of Charleston Fire Department?

13 A. Approximately three years, sir.

14 Q. Prior to that who were you employed with?

15 A. Colleton County Fire and Rescue, sir.

16 Q. In what capacity?

17 A. I was the shift commander with the rank of
18 Captain, sir.

19 Q. What training and experience do you have in EMS
20 work?

21 A. I was an EMT at age eighteen, an EMT intermediate
22 at age nineteen, and a paramedic at age twenty. I'm
23 currently thirty-four years old.

24 Q. What is an EMT?

25 A. Emergency Medical Technician, sir.

1 Q. On or about the tenth day of May, 2004, who were
2 you employed with?

3 A. 2004. That would be Colleton County Fire and
4 Rescue, sir.

5 Q. Did you have an occasion to go to El Druid Hills,
6 to resolve a call?

7 A. Yes, sir.

8 Q. And what did you find when you got there?

9 A. Originally was dispatched to a child, unconscious
10 who had fallen. Initially when I arrived on scene
11 with Engine 101, I remember a young white female
12 meeting me out in the breezeway just to the entrance
13 of the apartment. Guided me into the apartment. I
14 entered the apartment and there was a couch to the
15 right and an unresponsive child lying on the couch.

16 Q. Describe the child, please?

17 A. The child I guess maybe would be approximately a
18 year to year and a half old. Unresponsive, lying on
19 his back. A large hematoma at the top of his forehead
20 and unresponsive to any stimuli.

21 Q. What were your observations of the child laying on
22 the couch?

23 A. Initially there was a couple of things that got
24 my attention. One was a large hematoma to the top of
25 the head and the other one was the child had what's

1 called a discognizant gaze. When I approached the
2 child, the child wasn't looking around. The eyes were
3 fixed and the eyelids were somewhat dropped. When I
4 touched the child, the child didn't respond and didn't
5 move. The child was breathing at that point and I
6 realized it was a critical condition child. I grabbed
7 the child, maintained its c-spine and went to meet the
8 ambulance as they were pulling up.

9 Q. Was there a variance in the respiratory system?

10 A. Yes, sir. The child had a decreased respiratory
11 system or respiratory rate which told me that the head
12 trauma was severe along with the discognizant gaze
13 reflected a severe head trauma incident. Those were
14 my two primary concerns and my first major
15 observations as far as the child's condition.

16 Q. Was there a variance in blood pressure?

17 A. If I remember correctly, we were not able to
18 obtain a blood pressure because the child one, being
19 small. It's very hard to deal with a blood pressure
20 on that size of a pediatric patient but with the
21 variance in his decreased respiration rate, airway
22 management was one of our primary concerns and a
23 child compensates very well more so than an adult, so
24 when they show signs of deterioration it's real
25 late in the game and we were real late in the

1 game at that point so airway management was our
2 main concern.

3 Q. Was the child clothed?

4 A. Yes, sir. He was.

5 Q. Were the clothes wet or dry?

6 A. If I can remember correctly, sir, the clothes
7 were dry.

8 Q. Was the couch dry?

9 A. The couch was dry. The only thing that was not
10 dry on the child, if I can remember correctly, was his
11 hair. His hair seemed to be wet.

12 Q. You described your observation of a large
13 hematoma. Where was that?

14 A. It was in an unusual location. It was the top,
15 just above the forehead.

16 Q. Above the forehead.

17 A. So right about in this area here.

18 Q. Don't just tell me what it is. Can you identify
19 that?

20 A. That looks like the child and the hematoma would
21 have been right at the top.

22 MR. KNIGHT: Your Honor, include this
23 as State's Exhibit number two into evidence.

24 THE COURT: Any objection?

25 MR. BEACH: No, Your Honor.

1 THE COURT: Ladies and gentlemen of the
2 jury, State's Exhibit number two will be admitted into
3 evidence. State's two in evidence. You may now
4 publish to the jury.

5 MR. KNIGHT: Could he step down, Your
6 Honor?

7 THE COURT: He may step down but if you
8 do, Mr. Farmer, you're gonna leave the microphone and
9 your back's gonna be to the court reporter. I'm going
10 to ask you to please speak up so that she can hear you
11 as well as the parties on the other side of the court
12 room because she needs to take down what you're
13 saying. Is that portable mike working? Hand it to
14 him. Well ... Just one minute, Mr. Farmer. We've got
15 a little amplification problem. Mr. Beach, if you
16 want to come around you may do so outside the jury box
17 so you can view what's being shown to the jury.

18 Q. Mr. Farmer, I show you State's Exhibit number two
19 which is into evidence, would you show the jury where
20 the large hematoma on Victim was at so they can
21 see it?

22 A. Yes, sir. The hematoma that he is describing is
23 at the top of the forehead. Right where the forehead
24 starts to round off and the hairline is. A large,
25 unusually large hematoma located right here in this

1 area.

2 Q. Thank you, sir. Take you stand please. Mr.
3 Farmer, did you observe any other contusions or
4 lacerations about the various parts of the body of
5 this fourteen month old child, Victim?

6 A. No, sir. I don't remember any other injuries
7 that was notated or anything else that we found other
8 than the hematoma at the top of the head.

9 Q. Do you recall how many people were at the apart-
10 ment when you arrived at El Druid Hills?

11 A. The only people that I remembered, sir, was a
12 younger white female and a taller black male. That's
13 the only ones that I remember.

14 Q. Mr. Farmer, if you would be so kind as to answer
15 any questions that Mr. Beach may have.

16 A. Yes, sir.

17 CROSS EXAMINATION

18 BY MR. BEACH:

19 Q. Mr. Farmer, what's a hematoma?

20 A. A hematoma is a collection of blood underneath
21 the skin causing a swelling.

22 Q. It's a bruise. Isn't it?

23 A. Yes, sir.

24 Q. And that's consistent with something hitting the
25 forehead?

- 1 A. If that's what a hematoma is. Yes, sir.
- 2 Q. Yes. So, if he fell and hit his head there would
3 be a hematoma around that That's what a hematoma
4 would be. Where he hit the head?
- 5 A. If he fell striking his head somewhere but then
6 the side back, wherever he struck would be a hematoma.
7 Yes, sir.
- 8 Q. And you said his head was wet?
- 9 A. If I remember correctly sir, his hair - his upper
10 head and his hair was wet. That area.
- 11 Q. Would that be consistent with someone putting a
12 cloth on his head or wetting his head?
- 13 A. It could be. Yes, sir.
- 14 Q. Now, you say you didn't see any other evidence of
15 any damage to the child. No other bruises or any-
16 thing?
- 17 A. Not that I can recall, sir.
- 18 Q. But you would have noted that at the time. Is
19 that correct?
- 20 A. Only if it was something major. Yes, sir.
- 21 Q. So you didn't see any major bruising or anything
22 that caused you concern other than the hematoma on his
23 head?
- 24 A. That was a life threatening focus. Yes, sir.
- 25 Q. Have you had any . Let me rephrase that. When

O

1 you got the child to the ambulance, did you have any
2 connection with the child or any contact with the
3 child after that?

4 A. No, sir. Well, when we got to the ambulance, I
5 road with the ambulance crew to the landing zone. I
6 called for meducare to fly in to evacuate the child
7 to the children's hospital.

8 Q. And that was your last contact with the child?

9 A. When the helicopter crew took over. Yes, sir.

10 Q. Okay. Was the child's forehead . I know there
11 was a hematoma there but was the skin broken?

12 A. No, sir. There was no open wound.

13 Q. No blood or anything?

14 A. No, sir. No scrapes, no abrasions, no
15 lacerations.

16 Q. And that could be consistent with a fall?

17 A. It would be consistent with heavy trauma. I
18 assume that if there was a fall, from what I've seen
19 in the past, I would assume there would be some sort
20 of abrasions or anything to go along with that.

21 Q. Thank you, sir.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. KNIGHT:

25 Q. Mr. Beach asked you about other injuries. Were

1 there any injuries to the nose?

2 A. No, sir.

3 Q. To the chin?

4 A. No, sir.

5 Q. That's all I have.

6 THE COURT: Recross limited to
7 redirect?

8 MR. BEACH: Nothing on recross, Your
9 Honor.

10 THE COURT: As to this witness?

11 MR. KNIGHT: May he be excused, Your
12 Honor?

13 THE COURT: Any objection?

14 MR. BEACH: No objection, Your Honor.

15 THE COURT: Please counsel the witness.
16 You may step down, Mr. Farmer. Mr. Knight needs to
17 speak with you for one second before you leave the
18 courtroom. Thank you very much. You are excused from
19 the courtroom.

20 A. Thank you, sir.

21 THE COURT: Call your next witness.

22 MR. KNIGHT: They're going to get him
23 Your Honor.

24 THE COURT: Arthur David Cook. Please
25 spell your last name for the Court. Your witness.

1 Arthur David Cook, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KNIGHT:

5 A. My full name is Arthur David Cook, Junior. Last
6 name is spelled C O O K.

7 Q. Mr. Cook, who are you employed with?

8 A. Currently I am employed by

9 Q. I'm sorry?

10 A. Currently I am employed with the Hampton City
11 Police Department.

12 Q. That's in Hampton County?

13 A. Yes, sir.

14 Q. And how long have you been employed with Hampton
15 County?

16 A. Since March of this year.

17 Q. Prior to that, who were you employed with?

18 A. Worked in Colleton County Fire and Rescue before
19 going to Yemassee.

20 Q. What training do you have in EMS work?

21 A. I'm currently a nationally registered and state
22 paramedic.

23 Q. On or about May the tenth of 2004, were you
24 employed with the Colleton County Fire and Rescue?

25 A. Yes, sir. I was.

1 Q. Did you have an occasion to respond to a call at
2 El Druid Hills here in Colleton County?

3 A. Yes, sir. I did.

4 Q. What, if anything, did you observe when you got
5 there?

6 A. Initially when my unit arrived, I was the
7 paramedic on the ambulance. I noticed my captain, Mr.
8 Farmer, coming across the yard with a small child or
9 infant in his hands coming back toward my unit. And
10 basically what I did, I got out of the passenger seat
11 and went straight to the back of the unit where we do
12 patient care at and started working patient care with
13 him, who is also a paramedic.

14 Q. And did Captain Farmer have a baby in his arms?

15 A. Yes, sir.

16 Q. What, if anything, did you observe about this
17 toddler?

18 A. As he was walking across, I noticed he was limp
19 as no movement and was currently unresponsive and
20 unconscious.

21 Q. Once the child was in your unit - your medical
22 unit, what, if anything, did you observe about the
23 child?

24 A. I did observe because I was doing airway ■
25 noticed he had a hematoma on his forehead or scalp

1 area that was pretty large and some unusual red dots
2 of some sort around the hematoma which is unusual
3 because I've seen all types of hematomas since '96
4 and I don't see that often and basically I was just
5 around the head area and that's what I noticed.

6 Q. Right. Now, where were these red dots?

7 A. I want to say just above the hematoma on his
8 forehead.

9 Q. I show you State's Exhibit number two. Is that
10 the child that you treated in your unit on May the
11 tenth, 2004?

12 A. Yes, sir.

13 Q. Where were the red dots? Can you show them?

14 THE COURT: Let him look first.

15 Q. Would you be so kind to step down to look at
16 State's Exhibit number two?

17 THE COURT: You may come around, Mr.
18 Beach. Hold on. He's going to hand you a portable
19 mike so that you can speak up so my court reporter
20 can hear what you're saying.

21 A. Okay.

22 Q. Can you show the jury in State's Exhibit number
23 two where those red dots were?

24 A. As I can recall the red dots generally were just
25 above the hematoma which is the little knot on his

1 head. I want to say he had probably two or three red
2 dots on that particular day. Because I was mainly
3 dealing with the head, which is the airway to breathe
4 for him. That's why I can recall that unusual event
5 that I had never seen before.

6 Q. Thank you. Take your seat, please. Did you
7 observe any other facial trauma on this child?

8 A. No, sir. Not as far as I can recall. No facial
9 trauma such as nose or mouth injuries. Just the main
10 thing I observed was that hematoma on the head.

11 Q. Thank you. Mr. Cook, if you'd be so kind and
12 answer any questions Mr. Beach has. Okay?

13 A. Yes.

14 CROSS EXAMINATION

15 BY MR. BEACH:

16 Q. The red dots that you said you noticed, were
17 they How would you describe them? Were they big
18 dots? Were they small pinpricks or how would you
19 describe them?

20 A. They weren't big dots. The way I would describe
21 them a pin type dot. The small pinpoint texture type.

22 Q. Did you test them to see if they were actually
23 defects in the skin or if they would come off?

24 A. No, sir. I didn't.

25 Q. Did you rub them or anything?

r.

1 A. No, sir. My main concern was the airway at that
2 point - present time. I just observed that.

3 Q. So you don't know what these red dots were?

4 A. No, sir. I didn't do any tests on the red dots.

5 Q. You don't know whether he might have had some
6 sort of - something happen to his skull prior to that.
7 Is that correct?

8 A. No, sir.

9 Q. It's not necessarily at the same time as the
10 hematoma.

11 A. No, sir. Not necessarily. It was just something
12 unusual that caught my eye while I was dealing with
13 the airway.

14 Q. Did you see any other injuries to the child other
15 than the hematoma?

16 A. No, sir.

17 Q. And the hematoma was where? How would you
18 describe that?

19 A. Pretty much on the forehead just above the eye.

20 Q. Would you say that was consistent with a fall?

21 A. It's some type of injury resulting from a fall or
22 some type of injury.

23 Q. I have no other questions. Thank you, sir.

24 THE COURT: Redirect?

25 MR. KNIGHT: No, sir.

1 THE COURT: As to this witness?

2 MR. KNIGHT: May he be excused, Your
3 Honor?

4 THE COURT: Any objections Mr. Beach?

5 MR. BEACH: None, Your Honor.

6 THE COURT: You may step down. You are
7 excused from the courtroom. Leave my exhibits here
8 and Mr. Knight will need to speak with you for one
9 moment before you leave. Thank you, sir.

10 A. Yes, sir.

11 THE COURT: Mr. Foreman and ladies and
12 gentlemen of the jury, so you'll know, normally we
13 start at nine-thirty and I always take a mid-morning
14 break and let you stretch your legs, use the restroom.
15 Also I'll take one in mid-afternoon for you. We're
16 going to work until approximately one o'clock. During
17 this break, the clerk will be coming in to the jury
18 room and taking a lunch order from you because I'm
19 going to be serving you a delicious lunch during your
20 lunch break so please do not discuss the case. Talk
21 about the weather. Talk about anything. Just don't
22 talk about the case. I'll be back with you in just a
23 couple of moments and we will resume the trial after
24 you've had a break and used the restroom, stretched
25 your legs and taken a lunch order we'll resume. You

1 may retire to your jury room at this time. Thank you
2 very much.

3 (Jury retires to the jury room)

4 THE COURT: Anything on the record from
5 the State before we adjourn for lunch?

6 MR. KNIGHT: No, Your Honor.

7 THE COURT: From the Defendant?

8 MR. BEACH: Nothing, Your Honor.

9 THE COURT: I want to see Counsel in
10 chambers.

11 (Conversation off the record in chambers)

12 THE COURT: Counsel, please approach.

13 (Conversation off the record)

14 THE COURT: Is the State ready to
15 proceed?

16 MR. KNIGHT: Yes, sir.

17 THE COURT: Is the Defendant ready to
18 proceed?

19 MR. BEACH: Yes, Your Honor.

20 (Jury returned to the Courtroom)

21 THE COURT: All right, Mr. Foreman. I
22 see the clock is still intact and we will now continue
23 with testimony in the trial of this case. You may
24 call your next witness, Solicitor.

25 MR. KNIGHT: I call Heather Aiken.

1 THE COURT: Begin by stating your full
2 name and spelling your last name for the Court.

3 Heather Aiken, being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. KNIGHT:

7 A. Heather Michelle Aiken. A I K E N

8 Q. Ms. Aiken, may I call you Heather?

9 A. Um-hmm.

10 Q. Heather, where do you reside? Where do you live?

11 A. Charlotte, North Carolina.

12 Q. On May the tenth, 2004, where did you live?

13 A. I lived on Ten Tree Hills on Beech Road.

14 Q. Is that here in Colleton County?

15 A. Um-hmm.

16 THE COURT: You have to say yes or no.

17 A. Yes.

18 Q. Do you know Melvin Daniels?

19 A. I do.

20 Q. Did you know him in May of 2004?

21 A. Yes.

22 Q. What was your relationship with Melvin Daniels?

23 A. We were seeing each other.

24 Q. Seeing each other? For how long?

25 A. I'm not sure.

1 Q. Okay. Did Melvin Daniels spend the night with
2 you on May the ninth of 2004?

3 A. He did.

4 Q. Did you go to work on May the tenth, 2004?

5 A. I did.

6 Q. Where did you work at?

7 A. Hampton Inn.

8 Q. And how long had you been working there?

9 A. I started in April of 2003.

10 Q. How many children did you have May of 2004?

11 A. Two.

12 Q. Two children. And their names?

13 A. My daughter is Minor and my son Victim.

14 Q. On the morning of May the tenth of 2004, what did
15 you do with Minor?

16 A. After I got ready for work I took her with me and
17 dropped her off at Melvin's sister's house for school
18 because her - my daughter and her daughter went to the
19 same school so she dropped her off when she took her
20 daughter to school.

21 Q. What, if anything, did you do with Victim?

22 A. I was running late so Melvin said just to leave
23 him there at the apartment with him and he would watch
24 him for me so I left him there with him.

25 Q. Was anyone at the apartment when you left other

I.

1 than Melvin and Victim?

2 A. No.

3 Q. What time did you go to work?

4 A. I clocked in right about seven.

5 Q. On May the tenth, how old was Victim?

6 A. He was fourteen months.

7 Q. Approximately how much did he weigh?

8 A. About twenty something.

9 Q. Twenty. When did Victim start

10 A. walking? Around eleven months.

11 Q. How was the general health of Victim when you left
12 for work on May the tenth of 2004?

13 A. He was a healthy little boy,

14 Q. Had he had any accidents within the last couple
15 of weeks before May the tenth?

16 A. Yes. He had - we were sitting on the couch one
17 day and he fell off the couch.

18 Q. And did he sustain an injury as a result of that
19 fall?

20 A. No.

21 Q. Did he have any hematomas or contusions on his
22 head?

23 A. No.

24 Q. Within that two week period prior to May the
25 tenth, was there any dramatic change in his behavior?

1 A. No.

2 Q. Was he irritable during that two week period?

3 A. No.

4 Q. Was he lethargic during that two week period?

5 A. No.

6 Q. After the fall off the couch in that two week
7 period, did he lose consciousness?

8 A. No.

9 Q. During that period of two weeks prior to May the
10 tenth, did he vomit?

11 A. No.

12 Q. Have any convulsions during that two week period?

13 A. No.

14 Q. As a result of that fall two weeks prior to May
15 the tenth, did you take him to the doctor?

16 A. No.

17 Q. Okay. Did you take Victim to the doctor in the
18 last three weeks prior to May the tenth, 2004?

19 A. Did I take him to a ..

20 Q. To a doctor.

21 A. Like for a regular checkup?

22 Q. For any reason?

23 THE COURT: Please get a little closer
24 to that mike and speak up for me.

25 A. I don't recall taking him to the doctor.

1 Q. When you left on May the tenth, did he have any
2 bruises or hematomas across his forehead?

3 A. No.

4 Q. I show you what's been marked as State's Exhibit
5 number two. Can you identify that please?

6 A. That's my son.

7 Q. And in State's Exhibit number two, do you see
8 that hematoma across the forehead?

9 A. Yes.

10 Q. When you left for work, was that hematoma on his
11 forehead?

12 A. No.

13 Q. Who was the primary medical provider for Victim
14 prior to May the tenth?

15 A. Edisto Pediatrics.

16 THE COURT: Edisto Pediatrics. Speak
17 up a little. Even I can't hear.

18 A. Edisto Pediatrics.

19 Q. Okay. Had you ever allowed Melvin to baby-sit
20 Victim before or Minor? Either one?

21 A. Yes.

22 Q. What was the relationship between Victim and Melvin
23 Daniels?

24 A. What was the relationship between them?

25 Q. Yes. Did they get along? Upset?

- 1 A. He got along with my son.
- 2 Q. Did your son get along with him?
- 3 A. He cried usually when he tried to pick him up or
- 4 something.
- 5 Q. Did you have other babysitters during that time
- 6 period prior to May the tenth, 2004?
- 7 A. I did.
- 8 Q. And who babysitted young Victim
- 9 A.
- 10 Q. If you don't recall, just say I don't recall.
- 11 A. I don't recall.
- 12 Q. Okay. Did you ever punish Victim?
- 13 A. Yes. I maybe popped him on his hand if he done
- 14 something wrong or, you know, he done something to his
- 15 sister. Made her cry. I would pop him and make him
- 16 sit down.
- 17 Q. Where was the child at the time you left for work
- 18 that morning?
- 19 A. After I got ready and was about to walk out the
- 20 door I took him into my bedroom and laid him down on
- 21 the bed.
- 22 Q. Who' was in that bed?
- 23 A. Melvin.
- 24 Q. How was the child acting?
- 25 A. Acting as?

1 Q. Happy. Sad.

2 A. Well, he started crying because I was about to
3 leave.

4 MR. KNIGHT: Beg the Court's indulgence
5 for one moment.

6 Q. On the tenth of May of 2004, how long did you
7 stay at work?

8 A. Approximately about four hours until eleven or
9 so.

10 Q. Why did you leave?

11 A. Because I got a phone call saying that my son
12 wasn't breathing and I had to go home.

13 Q. Did you, in fact, go home?

14 A. I did.

15 Q. And did you, in fact, call 911?

16 A. I did.

17 Q. When you left for work on May tenth, how would
18 you describe Victim's health?

19 A. He was a healthy child and did not have any
20 health problems.

21 Q. Thank you. Answer any questions Mr. Beach may
22 have for you.

23 CROSS EXAMINATION

24 BY MR. BEACH:

25 Q. First of all, let me tell you how sorry I am

- 1 for your loss. But I do need to ask you just a few
2 questions. How long had you and Mr. Daniels been
3 going together before this incident happened?
- 4 A. Less than a year.
- 5 Q. I'm sorry. I couldn't hear you.
- 6 A. Less than a year.
- 7 Q. Less than a year? All right. Were ya'll living
8 together?
- 9 A. No.
- 10 Q. Where was he living?
- 11 A. He was staying with his sister.
- 12 Q. And where does his sister live?
- 13 A. She lived in an apartment complex.
- 14 Q. Nearby or across town?
- 15 A. Across town.
- 16 Q. Now, how often would he stay with you?
- 17 A. Like spend the night?
- 18 Q. Yes.
- 19 A. Not very often. Not on a daily basis.
- 20 Q. Okay. And were you seeing anyone else at the
21 time?
- 22 A. No.
- 23 Q. Was he seeing anyone else at the time?
- 24 A. Not that I know of.
- 25 Q. So ya'll were pretty much exclusive boy and

1 girlfriend?

2 A. I guess if you want to call it that.

3 Q. Now, you have two children. Minor is your
4 daughter?

5 A. Um-hmm. Yes.

6 Q. Go ahead.

7 A. Yes.

8 Q. And Minor is older than Victimwas?

9 A. Yes.

10 Q. How old was Minor at the time?

11 A. She was around four.

12 Q. Okay. Was she going to school?

13 A. Yes.

14 Q. All right. Now, how often had the Defendant
15 babysat for you?

16 A. Just a few times.

17 Q. What are a few times? A dozen over a year?

18 A. No. Not that many.

19 Q. Okay. And where would he baby-sit for you? At
20 your house?

21 A. There or either we would be over at his sister's
22 house and we had to run somewhere and he would stay
23 there and watch them.

24 Q. Did you trust him with the child?

25 A. I did.

1 Q. And did he ever do anything to show any mistrust
2 from the child? Did he give you any reason to mis-
3 trust him?

4 A. No.

5 Q. Now, the child as I understand it was fourteen
6 months old?

7 A. Yes.

8 Q. And he was a typical boy, wasn't he?

9 A. Yes.

10 Q. And did he run around a lot and have a lot of
11 accidents?

12 A. He did.

13 Q. Did he ever fall on his head?

14 A. Yes.

15 Q. Is it true that he fell off a bed or something
16 just the day before this happened?

17 A. No. I don't recall that.

18 Q. How about the day before that when ya'll were all
19 together?

20 A. I don't know.

21 Q. Haven't you and the Defendant talked about taking
22 the child to see the doctor because he'd fallen a
23 couple of times?

24 A. Not that I know of.

25 Q. You remember telling him that or anything when

1 you talked about that?

2 A. I don't remember.

3 Q. Okay. Now, did you see the Defendant after the
4 death of your child?

5 A. I did.

6 Q. Did ya'll get back together?

7 A. Back together as boyfriend and girlfriend?

8 Q. Yes.

9 A. I don't recall that.

10 Q. But you did see him. Is that correct?

11 A. I did.

12 Q. Did you see him socially?

13 A. I did.

14 Q. Was he around your other child?

15 A. He was.

16 Q. Did you have any problem with him being around
17 your other child?

18 A. No.

19 Q. And so isn't it true that Haven't you
20 expressed on several occasions that you don't think
21 he harmed your child?

22 A. I didn't think he would harm my child on purpose.

23 Q. All right. Are you still seeing him?

24 A. No.

25 Q. You moved to Charlotte, I believe it is?

1 A. Yes.

2 Q. And who do you live with in Charlotte?

3 A. Me and my daughter and my boyfriend.

4 Q. Do you have any other children now?

5 A. My daughter.

6 Q. Other than your daughter?

7 A. No.

8 Q. Okay.

9 MR. BEACH: Give me just a moment,

10 Your Honor.

11 Q. Heather, I'm going to show you a photograph and

12 ask you if you can identify it.

13 A. I think it's ...

14 Q. Do you recall that photograph?

15 A. Um-hmm. Yes.

16 Q. And did you do anything with that photograph?

17 THE COURT: Step back so the jury can

18 see the witness.

19 MR. BEACH: I'm sorry.

20 A. I gave it to Melvin.

21 Q. Was this after Victim's

22 death? Yes.

23 MR. BEACH: Your Honor, we would offer

24 this as Defense Exhibit number one.

25 THE COURT: Show it to Counsel.

1 MR. KNIGHT: No objection, Your Honor.

2 She's identified it.

3 THE COURT: Defendant's Exhibit number
4 one will be admitted into evidence without objection.
5 Defendant's Exhibit one in evidence. You may now
6 publish to the jury.

7 Q. I'm going to ask you to read what's on the back
8 of this photograph to the jury if you would.

9 A. It says to Melvin. Here's something to remember
10 me by when I'm not around. I will always love you,
11 Heather.

12 Q. Did you ever send him any emails telling him that
13 you were still in love with him after Victim death?

14 A. I believe so.

15 Q. Are you still in love with him?

16 A. No.

17 Q. Ya'll are through?

18 A. Yes.

19 Q. Okay. And this is the same fellow that you are
20 saying harmed your child?

21 A. Yes.

22 MR. BEACH: Just a moment, Your Honor.

23 Q. I have no other questions, Your Honor. Thank
24 you, ma'am.

25 THE COURT: Redirect?

1 REDIRECT EXAMINATION

2 BY MR. KNIGHT:

3 Q. Defendant's Exhibit number one. You wrote that
4 after the death of Victim. Correct?

5 A. Yes.

6 Q. And you'd been seeing the Defendant for about a
7 year before this. Is that correct?

8 A. Yes.

9 Q. And you were in love with him. Isn't that
10 correct?

11 A. Yes.

12 Q. Okay. Thank you. That's all I have.

13 THE COURT: Recross limited to
14 redirect.

15 MR. BEACH: Just a moment, Your Honor.
16 No questions, Your Honor.

17 THE COURT: As to this witness,
18 Solicitor?

19 MR. KNIGHT: That's all I have for her,
20 Your Honor.

21 THE COURT: You don't want her to be
22 excused?

23 MR. KNIGHT: No. She's been in the
24 courtroom.

25 THE COURT: I understand. You may step

1 down and resume your place in the courtroom. Call
2 your next witness.

3 MR. KNIGHT: Jim Clites.

4 THE COURT: State your full name and
5 spell your last name for the court reporter.

6 Jim Clites, being duly sworn,
7 testified as follows:

8 A. Jim Clites. C L I T E S.

9 Q. Mr. Clites, who are you employed with?

10 A. Walterboro Police Department.

11 Q. In what capacity, sir?

12 A. Sergeant over investigations.

13 Q. Were you employed with the Walterboro Police
14 Department on or about May the ten, eleven, and
15 twelve of 2004?

16 A. Yes, sir.

17 Q. And in what capacity?

18 A. Investigator.

19 Q. Did you have an occasion on May the tenth of 2004
20 to interview one Melvin Daniel the second?

21 A. Yes, sir. I did.

22 Q. And did he provide you with a statement?

23 A. Yes, sir.

24 Q. I ask you if you can identify this please, sir.

25 A. Yes, sir. It's the statement he gave.

1 Q. State will allow into evidence without objection,
2 Your Honor.

3 THE COURT: Any objection, Mr. Beach?

4 MR. BEACH: None, Your Honor.

5 THE COURT: Number three. State's
6 Exhibit number three, ladies and gentlemen of the
7 jury, will be admitted into evidence without
8 objection. State's three in evidence you may now
9 publish.

10 Q. Sergeant Clites, would you please publish this?
11 Read this to the jury, please sir.

12 A. Yes, sir. On May the tenth, 2004. The place is
13 MUSC, the Medical University of South Carolina. The
14 time started is seventeen-twenty, which is five twenty
15 PM. I, the undersigned, Melvin Daniel the second. I
16 am twenty-one years of age, being born on March
17 thirtieth, 1983, in Bellflower, California. I now
18 live at 200 Dorsey Street, Apartment F-6. I have been
19 warranted and advised by Sergeant Clites, a person who
20 has identified himself as a Walterboro Police Officer.
21 I declare that the following voluntary statement is
22 to the aforesaid person of my own free will and with
23 out promise or hope of reward or without fear or
24 threat of physical harm without coercion, favor with
25 out leniency or to the offer of leniency by the person

r,

1 or persons whom so ever.
2 Mr. Daniel wrote - between the hours of eight-thirty
3 AM and ten-fifteen AM, myself and Victimwere playing.
4 I fixed Victimand myself something to eat. He had
5 eaten everything I had give him. He went back into
6 his sister's room and started playing again. I went
7 back to the computer doing what I was doing on the
8 computer. I went to check on him a couple of times.
9 He was fine. So I returned back to the computer to
10 turn it off. Then I started playing with him. The
11 both of us were running around the house when he
12 tripped over a cable that were between the hallway
13 and his sister's room. I picked him up, put some ice
14 on him. He cried a little bit and it was over. He
15 laid down on the couch and watched cartoons. Nothing
16 seemed wrong with him so I didn't bother him. I took
17 a shower and returned to the living room and found
18 him asleep. I tried to wake him up just to make sure
19 he was okay. Hewas moving him arms and legs but no
20 reaction like he was fine so I kept trying to wake him
21 up. No reaction so I put him in a cold bath to try to
22 wake him up. Still nothing so I called my sister to
23 help me. When my sister came, the same thing I had
24 got from him, she did so we called Heather and she
25 came home. We couldn't wake him and she called 911.

1 And it's signed by myself as a witness and it's also
2 signed by Melvin Daniel at five-fifty PM on the tenth
3 of May, 2004.

4 Q. That's all I have for this witness, Your Honor.

5 THE COURT: Cross examination?

6 MR. BEACH: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. BEACH:

9 Q. Sergeant Clites, is this the only statement that
10 you took from him?

11 A. Yes, sir.

12 Q. And was that statement videotaped?

13 A. No, sir.

14 Q. Or was that just a statement that he wrote out?

15 A. It was just a statement that he wrote out at the
16 hospital.

17 Q. Okay. Was anybody else present when he made this
18 statement?

19 A. I'm unsure if his sister was there or Heather. I
20 remember talking to all of them but I'm not exactly
21 sure who was there when he did the writing.

22 Q. Did anyone else make any statements?

Yes, sir.

23 A.

Did anyone make any written statements?

24 Q.

Yes, sir.

25 A.

(";

1 Q. Okay, and in any of those statements did anybody
2 say that he had harmed the child?

3 A. No one indicated that, no, sir.

4 Q. Did he indicate that in his statement that he
5 gave you here?

6 A. No, sir, he did not.

7 Q. Did he indicate anything other than the child had
8 tripped over the cable and had fallen and that that
9 was the extent of the injury?

10 A. That's correct?

11 Q. I have no more questions.

12 THE COURT: Redirect?

13 MR. KNIGHT: No, sir. That is all we have for this
14 witness.

15 THE COURT: You may step down.

16 Call your next witness.

17 MR. KNIGHT: The State and Defendant have reached a
18 stipulation for the next witness, and I've given Mr.
19 Beach a copy of it.

20 THE COURT: Approach.

21 (Conversation off the record)

22 THE COURT: All right, ladies and gentlemen. I
23 have told you that you are the sole judges of the facts
24 and that is true, but every now and then in a trial
25 the attorneys for each of the parties are able

1 to stipulate to certain facts and in this case we have
2 a stipulation to certain facts. That being the
3 testimony of Doctor Paula Kessler, who is a Pediatric
4 Radiologist. Rather than require the witness to
5 appear at trial, the parties have agreed factually
6 what her testimony would be so it would not be
7 necessary for you to have to determine that in
8 listening to the witness. That factual stipulation or
9 agreement as to her testimony will now be published
10 by Counsel for the State of South Carolina.

11 MR. KNIGHT: May it please the Court.

12 STIPULATION of DR. PAULA KESSLER

13 BY MR. KNIGHT:

14 Films were reviewed by Dr. Paula Kessler, a Pediatric
15 Radiologist, who had testified that a full skeletal
16 survey shows no evidence of acute bony or chronic
17 bony injury.

18 THE COURT: Do you want to alter the
19 stipulation as an exhibit or a court's exhibit?

20 MR. KNIGHT: Exhibit.

21 MR. BEACH: No objection, Your Honor.

22 THE COURT: State's number four, Mr.
23 Beach. Without objection. Is that correct?

24 MR. BEACH: That's correct, Your Honor.

25 THE COURT: Ladies and gentlemen, the

1 stipulation that was just read to you will be State's
2 Exhibit number four in evidence without objection.
3 Call your next witness.

4 MR. KNIGHT: Your Honor, at this time
5 as you know, because of the schedule with the doctors
6 my next doctor cannot arrive until two o'clock.

7 THE COURT: Ladies and gentlemen of the
8 jury, we are at a point in the trial now where I'm
9 going to stop. Your lunch is not going to be here for
10 approximately a half hour. Although we try to
11 anticipate it, we have a number of witnesses who are
12 coming from out of town who will not arrive here until
13 two. You have to try and anticipate how long people
14 will take so I'm going to give you an extra long lunch
15 break. We're going to stop now and we're going back at
16 two o'clock. I hope your lunch is going to get here.
17 I asked them to move it up for you and they're working
18 on that as hard as they can because we always try to
19 plan your time. During your lunch break, if I have
20 smokers on the jury, I'll allow you to go outside and
21 smoke but I'm going to ask you not to discuss the
22 case. Not with each other or with any one else during
23 the lunch break. I want you to have time to enjoy
24 your lunch. I hope to get it here in timely fashion
25 so we can start back promptly at two o'clock.

1 Thank you for your patience. You may now retire to
2 your jury room and I'll have your lunch served in
3 there for you. Thank you very much.

4 (Jury retired to jury room)

5 THE COURT: Mr. Knight, anything on the
6 record from the State? I'm going to serve your lunch
7 in here as well. I hope you filled out a lunch order
8 so we can move. Anything on the record from the State
9 outside the presence of the jury before we adjourn for
10 lunch.

11 MR. KNIGHT: No, sir. Not as to what
12 we've done so far. I think to expedite matters for
13 this afternoon, I'd like to show you the photographs
14 we have in camera so you can make some decision there.
15 There is a substantial number of them. I've got them
16 numbered. Mr. Beach has had the opportunity to
17 review these, Your Honor. I gave him a disc last week
18 and he's seen the other still photos he had in his
19 file also.

20 THE COURT: Is it your intention to
21 try to admit each of the photographs that you're going
22 to hand to the Court?

23 MR. KNIGHT: Your Honor, I'm not going
24 to push my luck.

25 THE COURT: That's a

1 smart thing to do, Mr. Knight. Don't push your luck.

2 MR. KNIGHT: I try not to do that, Your
3 Honor but I want to know which ones I can and which
4 ones I cannot. I think ..

5 THE COURT: Mr. Beach, are you
6 objecting to all the photographs?

7 MR. BEACH: No

8 THE COURT: Or do you want to look at
9 them and tell me which ones you object to. I made you
10 aware, Mr. Beach last night and Mr. Knight when we
11 met in chambers, that the case of State versus
12 Fletcher. That's found at southeast second-five-
13 seventy-two. It's an opinion, I believe, of the Court
14 of Appeals and cert was granted .. I don't believe
15 there is any opinion yet even though cert was granted
16 by the South Carolina Supreme Court and I need you
17 both aware of it. I'll be happy to review the
18 photographs and determine in light of that opinion
19 which I think involves a similar situation. I made
20 you aware of it last night. If you want to look at
21 what Mr. Knight has and tell me which ones you object
22 to.

23 MR. BEACH: Yes, sir.

24 THE COURT: And on what grounds.

25 (Conversation off the record)

1 MR. BEACH: A lot of them are
2 repetitive which

3 THE COURT: Well, there is no need to
4 do anything cumulative.

5 MR. KNIGHT: I understand.

6 MR. BEACH: We don't have an objection.

7 THE COURT: I don't have and I want to
8 make sure that Mr. He's taking it up at this time
9 but I haven't heard a witness yet who needs the
10 photographs in order to form an opinion so obviously
11 I'm in a little bit of a preliminary stage. Mr.
12 Knight is very aware that I am not going to put in any
13 cumulative matters and that's why he's trying to do
14 his job as lawyer and not ask for more than he thinks
15 that the Court's going to allow and I know you're
16 trying to do your job for your client, Mr. Beach, and
17 not put in something that you feel like would be
18 improper and the concern I have here is that obviously
19 the admission of the photographs are in my discretion.
20 I have to balance as you know, Mr. Beach, prejudicial
21 effect of any graphic photographs against the
22 appropriative value but admitting testimony which
23 serves to corroborate other testimony is certainly not
24 an abuse of the trial judge's discretion. I haven't
25 heard that other testimony yet. Photographs, Mr.

"
1 Beach, which are admitted simply to arouse sympathy,
2 prejudice of the jury I feel should be excluded if
3 they are irrelevant or not necessary to establish a
4 material fact in this case. To constitute what I
5 think is unfair prejudice, Mr. Beach, it's going to
6 have to be ... The photographs have to create a
7 tendency to suggest a decision on an improper basis.
8 And that usually is an emotional basis rather than
9 something that is in evidence.

10 MR. BEACH: Yes, sir.

11 THE COURT: But if the photographs or
12 things which document injuries to the child which
13 corroborate testimony from people who visualize these
14 injuries and the photographs demonstrate the trauma
15 to the child. To depict the severity of the child's
16 injuries and the result of trauma, particularly in
17 light of the statement which was introduced as State's
18 number three in which the Defendant described that
19 there was play going on and tripping over a cable in
20 that statement. If those photographs are necessary
21 to depict the severity of a bruise and the result of
22 trauma from the bruise which is inconsistent with
23 those resulting from an accident or play, they may
24 very well be admissible if not cumulative. I would
25 encourage you to take a look and then offer to me

1 what photographs you believe you should object to or
2 if you can agree to them, so be it. I understand I'm
3 going to hear quite a bit of expert testimony this
4 afternoon and it's hard for me to put the cart before
5 the horse other than listen to the argument of
6 Counsel.

7 MR. KNIGHT: Yes, sir.

8 MR. BEACH: Yes, sir. Basically our
9 position is that we know that the Court is going to
10 introduce a picture of that hemorrhaging. We just
11 don't think it should be plying.

12 THE COURT: I don't ply and you
13 know what, Mr. Knight is going to agree to that too,
14 Mr. Beach, because I'm not about to allow plying
15 and he already knows that. I would suggest that the
16 two of you agree on it right now so we can move on
17 or if you want to wait and I'll take it up at the time
18 I have to hear the testimony because I've got to know
19 how somebody's basing it. I know Mr. Knight's going
20 to argue that to me and I assume that's what I'm going
21 to hear. I've got to hear it in evidence in order to
22 understand how it's going to collaborate testimony
23 that I haven't heard yet which I understand is going
24 to come from an expert this afternoon.

25 MR. KNIGHT: Yes, sir.

1 THE COURT: Ya'll want to take a look
2 at it and think you can agree on a number.

3 MR. KNIGHT: We'll be glad to do that.

4 MR. BEACH: Glad to do that.

5 THE COURT: All right then.

6 MR. BEACH: We'll just take a break
7 and during the break we'll take a look at it.

8 THE COURT: All right. Has Mr.
9 Alexander got any plea since he was anxious to take up
10 matters. All right. Ya'll are excused until two
11 o'clock. Your lunch will be served here. Let me know
12 by one forty-five if you were able to agree on an
13 admission of photographs. If you were not, I'll take
14 that matter up with you between one forty-five and two
15 o'clock and Mr. Knight Counsel approach.

16 (Conversation off the record)

17 THE COURT: This case is in recess.
18 The Defendant is in custody with Mr. Pageant until two
19 o'clock. I expect ya'll to report back to me at one
20 forty-five on the pictures.

21 MR. BEACH: Yes, sir.

22 (Court is in recess for lunch)

23 THE COURT: Pat, I want you to do
24 something. Vicky, you go take a seat in that first
25 chair where Mr. Beach sits. Pat, come up here and

1 sit on the witness stand. I want you to take a look.
2 Harris Beach has complained to me that the Defense
3 cannot see the witness. Now, Vicky, sit down in that
4 chair and tell me if ya'll can see Pat.

5 Vicky: I have to admit that we did adjust the chairs.

6 THE COURT: Oh, did you? You got it up
7 higher.

8 Vicky: We moved the chair up as high as it would go.

9 THE COURT: Because I don't want the
10 Defendants not being able to see the witness. If we
11 have to we'll get a new microphone and a chair and
12 raise it up but they're not going to feel as
13 comfortable not having that

14 Vicky: I can see her eye and top of her head and the
15 side of her face but the rest I can't.

16 THE COURT: So we need to have it
17 raised probably another six inches for you to see the
18 face of the person.

19 Vicky: Yes. We'll do it.

20 THE COURT: Okay. Thank you.

21 (Court resumes without the presence of the jury)

22 THE COURT: Solicitor, are you ready to
23 proceed?

24 MR. KNIGHT: I'm still looking for a
25 doctor, Your Honor.

1 THE COURT: He's not present?
2 MR. KNIGHT: No, sir.
3 THE COURT: Do you have another witness
4 you can call?
5 MR. KNIGHT: No, sir. The next one
6 will not be here until three o'clock.
7 THE COURT: Solicitor, do you have any
8 idea where your doctor is? Can you reach him by
9 telephone?
10 MR. KNIGHT: He called at one o'clock
11 and said he was on his way.
12 THE COURT: It's two-fifteen. I don't
13 think it'd take more than an hour and fifteen minutes
14 to get from Charleston.
15 MR. KNIGHT: Your Honor, I gave him a
16 map quest on how to get here.
17 THE COURT: You don't have a cell phone
18 number for him
19 MR. KNIGHT: No, sir. I just have his
20 office number.
21 THE COURT: You might want to call his
22 office and see if they can reach him by cell phone or
23 let a deputy do that. Now, I understand for the
24 record, Solicitor, that you have reached an agreement
25 over lunch concerning certain photographs. Is that

f1

1 right, Mr. Beach?

2 MR. BEACH: That's correct, Your Honor.

3 THE COURT: Solicitor, do you want to
4 publish that agreement for the record?

5 MR. KNIGHT: Yes, we have a number of
6 photographs and if you want to I can - which ever way
7 you want me to do it. By number or designation.

8 THE COURT: Well, they're going to end
9 up getting a number from the court reporter. Have you
10 premarked any of them?

11 MR. KNIGHT: No, sir.

12 THE COURT: Why don't you do that
13 first.

14 MR. KNIGHT: He's here, Your Honor.

15 THE COURT: Is the State ready to
16 proceed?

17 MR. KNIGHT: Yes, sir. Your Honor,
18 before we agreed on five through twenty-one
19 photographs to be introduced without objection.

20 THE COURT: Do you need to look at
21 these now that they've been marked by the court
22 reporter, Mr. Beach? Or are you satisfied these are
23 the .

24 MR. BEACH: I'm satisfied with it, Your
25 Honor.

1 THE COURT: All right. They will be
2 State's Exhibit five through twenty-one. At the time
3 you intend to introduce them, have the witness
4 identify what they are looking at for the record, and
5 Refer it. I understand Mr. Beach has no objection to
6 five through twenty-one and then I'll tell the jury
7 it's in evidence before you publish it. Do you under-
8 stand?

9 MR. KNIGHT: Yes, sir.

10 THE COURT: Very good. Other than
11 that are you now ready to proceed?

12 MR. KNIGHT: Yes.

13 THE COURT: Is the Defendant ready to
14 proceed?

15 MR. BEACH: The Defendant's ready,
16 Your Honor.

17 THE COURT: Very well. Bring us the
18 jury please.

19 (Jury returned to the courtroom)

20 THE COURT: Mr. Foreman and ladies and
21 gentlemen of the jury, I hope everyone had a pleasant
22 lunch. We've been working while you were at lunch,
23 ladies and gentlemen, to try to shorten the time that
24 your presence may be required. I apologize that we
25 are running behind the schedule that I set but we had

1 to wait on the attendance of some additional witnesses
2 and I'm mindful of your time, ladies and gentlemen,
3 and I promised you I wouldn't waste it and I don't
4 intend to. Thank you for your patience. We will now
5 continue with testimony in the trial of this case.
6 Call your next witness, Solicitor.

7 MR. KNIGHT: The State calls Joel
8 Cochran.

9 THE COURT: Have a seat there for me
10 please and if you'd begin by stating your full name
11 and spelling your last name for the court reporter.

12 Joel Cochran, being duly sworn,
13 testified as follows:

14 A. Joel Brian Cochran. C O C H R A N.

15 THE COURT: Your witness, Counsel.

16 A. Thank you.

17 MR. KNIGHT: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. KNIGHT:

20 Q. Mr. Cochran, what's your occupation, sir?

21 A. I'm one of the attending physicians at the
22 Medical University of South Carolina.

23 Q. And what field do you specialize in?

24 A. I specialize in Pediatric Intensive Care.

25 Q. And are you board certified?

1 A. Yes, sir.

2 Q. Are you board certified in any other areas?

3 A. Im board certified in Pediatrics and Pediatric
4 Intensive Care.

5 Q. Okay. And how long have you been at the Medical
6 University of South Carolina?

7 A. Fourteen years.

8 Q. In Pediatrics?

9 A. Yes, sir. In Pediatric Intensive Care.

10 Q. Are you licensed to practice medicine in South
11 Carolina?

12 A. Yes, sir.

13 Q. What's your education background?

14 A. I went to college, went to medical school, did
15 seven years with post-medical school education
16 including an internship, a residency, and a fellowship
17 which is a specialization in intensive care in
18 Pediatrics.

19 MR. KNIGHT: I offer him as an expert in
20 Pediatric critical care medicine.

21 THE COURT: Any objection?

22 MR. BEACH: None, Your Honor.

23 THE COURT: Ladies and gentlemen of the
24 jury, you are about to hear the testimony of a witness
25 who claims to have special knowledge, skill, training,

1 or education in the field of pediatric intensive care
2 medicine and who is intending to give an opinion as to
3 matters in which the witness claims to be so skilled.

4 In determining the weight to be given to such opinion,
5 ladies and gentlemen, you should consider the
6 qualifications and the credibility or believability of
7 the expert witness and the reasons given for his or
8 her opinion. You are not bound by any expert opinion.
9 You give it the weight, if any, to which you deem it
10 should be entitled. Normally, ladies and gentlemen of
11 the jury, the law does not permit witnesses to get on
12 the witness stand and give opinion testimony but if a
13 witness by virtue of training, skill, education, or
14 experience is found to be so qualified as a matter of
15 law in this case without objection, they may give an
16 opinion. But you are not bound by that opinion. This
17 is an exception to the opinion rule which we call the
18 expert opinion rule. You give it the weight, if any,
19 to which you deem it should be entitled. Thank you.
20 You may proceed. Counsel, the witness is qualified
21 without objection.

22 Q. Dr. Cochran, were you working on May the tenth,
23 2004, at the Medical University of South Carolina?

24 A. Yes, sir.

25 Q. Were you called to examine a fourteen month old

1 child by the name of Victim?

2 A. Yes, sir.

3 Q. What were your observations in examining this
4 child, sir?

5 A. I'm not sure what you mean by observations.

6 Q. What did you find as a result of your
7 examination?

8 A. Let me review what I wrote. When we first
9 encountered the baby, the baby had already been placed
10 on the ventilator and had come up to the intensive
11 care unit and we had reviewed a CAT scan, which is a
12 special x-ray of the brain and the CAT scan showed
13 that the patient had a large amount of blood inside
14 the brain and there was a lot of swelling of the
15 brain. Also we noticed when we looked at the back of
16 the baby's eyes, that there were what are called
17 retinal hemorrhages, which are bleeding within the
18 retinas themselves.

19 Q. Did you observe whether or not there was any
20 exterior damage to the facial area which would cause
21 the retinal hemorrhaging to the back of the eyes?

22 A. To the best of my recollection, there was no
23 other signs of trauma.

24 Q. Doctor, the retinal hemorrhaging, that is in the
25 back of the eyes?

1 A. Yes, sir.

2 Q. Could that be an old injury or a recent injury?

3 A. It depends on the patient and it depends on the
4 hemorrhage but in this case, these were recent
5 hemorrhages.

6 Q. Okay. Did you observe whether or not the child
7 had a hematoma on the forehead?

8 A. I'd have to review my records.

9 Q. Please sir.

10 A. I don't see anything in the records of that.

11 Q. Okay. Doctor, was this a severe injury?

12 A. Yes, sir.

13 Q. Is this severe injury consistent with a simple
14 trip and fall over a cord?

15 A. No, sir.

16 Q. Okay, sir. Doctor, did I ask you to review the
17 medical records of this child from the day he was born
18 up until May the tenth?

19 A. Yes, sir.

20 Q. I ask you, are these the medical records sir?

21 A. Yes, sir.

22 Q. Okay.

23 MR. KNIGHT: The State will offer

24 these, the medical records of the minor child, **Victim**

25 **██████████** without objection.

1 THE COURT: Any objection, Mr. Beach?

2 MR. BEACH: We reviewed them, Your
3 Honor. I have no objection to those.

4 THE COURT: These are State's twenty-
5 two?

6 MR. KNIGHT: Yes, sir.

7 THE COURT: Ladies and gentlemen of the
8 jury, State's Exhibit number twenty-two will be
9 admitted into evidence without objection. State's
10 twenty-two in evidence. You may publish to the jury.

11 Q. Dr. Cochran, as a result of reviewing State's
12 Exhibit number twenty-two, do you have an opinion of
13 whether or not that child was a healthy child up to
14 May tenth of 2004?

15 A. The child was a healthy child.

16 Q. Healthy child. Okay. Dr. Cochran, did you also
17 pronounce Victim dead?

18 A. Yes, sir.

19 Q. Within the bounds - within the reasonable bounds
20 of medical certainty, is this a severe injury in your
21 opinion?

22 A. Yes, sir.

23 Q In the bounds of reasonable medical certainty, is
24 this injury the result of a simple slip and fall?

25 A. No, sir.

!!

1

MR. KNIGHT: Answer any questions Mr.

2 Beach may have.

3 CROSS EXAMINATION

4 BY MR. BEACH:

5 Q. Doctor, you say you don't remember the hematoma
6 on this child?

7 A. I don't have my admission notes with me so I
8 don't recall. It was three years ago. I don't recall
9 if there was a hematoma to the forehead or a bruise to
10 the forehead.

11 Q. Would it be safe to say that what you remember
12 today is based on your notes and based on what you
13 wrote down at that time?

14 A. Partly.

15 Q. Do you really have an independent recollection of
16 this young child?

17 A. Somewhat.

18 Q. Now, when you saw him you say you saw these
19 retinal injuries and you say they were recent. Is
20 that correct?

21 A. Yes. In my opinion. Yes, sir.

22 Q. How do you define recent?

23 A. Well ,.

24 Q. It just happened or it happened last week or it
25 happened within the last day or what?

1 A. It's usually within the last twenty-four hours
2 when we see a retinal hemorrhage.

3 Q. Okay. So it could be as much as twenty-four
4 hours?

5 A. Very recent.

6 Q. And I believe that you said that you didn't
7 believe that it was consistent with a simple slip and
8 fall?

9 A. Yes, sir.

10 Q. Trip and fall. I believe it was.

11 A. Yes, sir.

12 Q. Okay. Now, is it consistent with multiple falls?

13 A. No, sir.

14 Q. I mean if the child -- To give you a
15 hypothetical; if the child had fallen and hit his head
16 the day that he died, the day previous, and the day
17 previous to that. Could that cause these injuries?

18 A. No, sir.

19 Q. And why is that?

20 A. It just doesn't happen.

21 Q. Now, how much does it take to cause a retinal
22 hemorrhage?

23 A. Violent shaking.

24 Q. And don't people have detached retinas quite
25 often?

1 A. Detached retinas and retinal hemorrhage are not
2 the same thing.

3 Q. Tell me what the difference is?

4 A. Detached retinas is where the retinas are
5 actually pulled away from the eye itself. Retinal
6 hemorrhages are bleeding within the retina themselves.

7 Q. And that's caused by a sudden injury?

8 A. That's caused by violent shaking.

9 Q. By violent shaking?

10 A. Yes, sir. That's my study.

11 Q. Okay. Did you find any other evidence of a
12 shaking?

13 A. There usually isn't any evidence of any shaking,
14 sir.

15 Q. You didn't find any other bruises or anything
16 like that?

17 A. No, sir.

18 Q. Now, I forgot what I was going to ask you .

19 MR. BEACH: I don't think I have any
20 other questions, Your Honor.

21 Q. Thank you, doctor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. KNIGHT:

25 Q. Doctor, you've indicated you observed the CT

1 scan?

2 A. Yes, sir.

3 Q. Would that show whether or not there was any
4 swelling within the skull? The brain?

5 A. Yes, sir.

6 Q. What else does it show if anything?

7 A. It can show all kinds of things but in this case,
8 it showed there was bleeding in the brain as well as
9 swelling.

10 Q. Thank you.

11 MR. BEACH: That's all I have.

12 THE COURT: Recross limited to

13 redirect?

14 MR. BEACH: Nothing on recross, Your
15 Honor.;

16 THE COURT: Well, as to this witness,
17 Solicitor?

18 MR. KNIGHT: May he be excused, Your
19 Honor{

20 THE COURT: Any objection?

21 MR. BEACH: No objection, Your Honor.

22 THE COURT: Doctor, you may step down
23 and you are excused from the courtroom. If you'd
24 leave my exhibit with me and take your . Thank you,
25 sir. Do we have another witness?

1 MR. KNIGHT: We have Dr. Schuh. I have
2 talked to her as late as one o'clock. Mr. Griffin is
3 going outside to wait on her but she's not hear yet
4 and again we apologize, Your Honor. It takes about an
5 hour from Charleston.

6 THE COURT: Ladies and gentlemen, so
7 you'll be aware, a number of expert witnesses -
8 doctors whose testimony is elicited or are going to be
9 elicited by the State of South Carolina in this case.
10 We are trying to juggle their time schedules to get
11 them here so that we can continue on a consistent
12 basis. So far I haven't been able to do that
13 consistently but I'm still trying so please bear with
14 us and be patient. The next witness is scheduled to
15 arrive, as I understand it, no later than three
16 o'clock and I know we don't have a clock in here
17 which is probably a good idea. I told the clerk
18 yesterday when I realized it wasn't here that it's
19 probably good we didn't have one in the courtroom.
20 My watch says it's twenty-five minutes until three at
21 this time but please bear with us. I want to move
22 along as soon as the witness arrives. If you'll bear
23 with us. Counsel approach.

24 (Conversation off the record)

25 THE COURT: Mr. Foreman and ladies

1 and gentlemen of the jury, I'm going to ask you if
2 you would retire to your jury room. That way my
3 smokers can get a smoke while we're waiting on the
4 next witness. Bear in mind so that you can use the
5 restroom, as soon as the witness arrives I'll be
6 calling you back so if I've got any smokers, smoke a
7 cigarette and come right back as soon as the witness
8 arrives. Please do not discuss this case as I've
9 instructed you throughout the trial. You may retire
10 to the jury room at this time.

11 (Jury retired to the jury room)

12 (Conversation off the record)

13 THE COURT: Dr. Schuh, I want to
14 congratulate you on being on time. They told me you
15 were going to be here at three o'clock and my watch
16 says three minutes til and the Court is most
17 appreciative. Do you need a moment before you start?
18 If you'll take a seat, let me bring the jury in first.
19 Bring in the jur please.

20 (Jury returned to the courtroom)

21 THE COURT: Thank you for your patience
22 Mr. Foreman and ladies and gentlemen of the jury. Is
23 the State ready to proceed?

24 MR. KNIGHT: Yes, sir.

25 THE COURT: Is the Defendant ready to

1 proceed?

2 MR. BEACH: Yes, sir.

3 THE COURT: Call your next witness.

4 MR. KNIGHT: The State calls Doctor
5 Sarah Schuh.

6 THE COURT: If you'll come around and
7 be sworn by the cler please. Please state your full
8 name and spell your last name.

9 Dr. Sarah Schuh, being duly sworn,
10 testified as follows:

11 A. Sarah Elizabeth Schuh. S C H U H.

12 DIRECT EXAMINATION

13 BY MR. KNIGHT:

14 Q. Dr. Schuh, you are employed with?

15 A. Medical University of South Carolina Department
16 of Pediatrics and I am officially retired but I still
17 work there part time.

18 Q. Have you ever testified in a court of law before
19 while you were in Pediatrics?

20 A. Yes, sir.

21 Q. Have you ever been certified as an expert in the
22 field of Pediatrics and abuse?

23 A. Yes, sir. Certified by the Court. There is no
24 current certification in abuse and neglect.

25 Q. Yes, but in the courtroom you've been certified

1 as an expert in this area?

2 A. Yes, I have.

3 Q. Okay.

4 MR. KNIGHT: Your Honor, I would offer
5 her as an expert in pediatric child abuse.

6 THE COURT: Pediatric child abuse?

7 MR. BEACH: I believe there needs to be
8 a little more foundation than this.

9 THE COURT: Would you like to cross-
10 examination as to qualifications?

11 MR. BEACH: I think it's up to the
12 State to present the qualifications.

13 THE COURT: Solicitor, if you will
14 elicit her background.

15 Q. Dr. Schuh, where did you go to medical school?

16 A. I went to medical school at Columbia University
17 College of Physicians and Surgeons in New York.

18 Q. And when were you board certified in Pediatrics?

19 A. I was board certified in Pediatrics in 1967 but
20 my medical degree was in 1961.

21 Q. And from 1967 up until the time of your
22 retirement, did you practice in the field of
23 Pediatrics?

24 A. Yes, sir.

25 Q. At the Medical University or elsewhere?

1 A. Yes, sir. I had been at the Medical University
2 since 1969 when we came to South Carolina.

3 Q. And your specialty has been Pediatric child
4 abuse. Is that not correct?

5 A. It has been - it was general Pediatrics until
6 about 1960, excuse me, 1979 when I began to be
7 interested in the field of child abuse and child
8 neglect and I did special studies in that area
9 beginning in 1979 and 1980 and I was employed in that
10 area until my retirement from that area although I
11 do still do some part-time work in that area.

12 Q. And you previously testified that you were
13 certified as an expert in this area?

14 A. Yes, sir.

15 Q. Do you recall on how many occasions being
16 certified in court as an expert in this area?

17 A. A lot. I don't know how many times. More than a
18 hundred times.

19 Q. Okay.

20 MR. KNIGHT: Your Honor, at this point
21 I would offer her as an expert in Pediatrics and
22 child abuse.

23 THE COURT: Mr. Beach?

24 MR. BEACH: No objection, Your Honor.

25 THE COURT: Ladies and gentlemen of the

1 jury, recalling my earlier instructions to you
2 concerning expert testimony. Please bear that in
3 mind. This witness is qualified without objection
4 in the field of Pediatrics child abuse. You may
5 proceed, Counsel. Your witness.

6 Q. Thank you, Your Honor. Doctor, I understand that
7 you have some sunglasses in your hand.

8 A. Yes, I do.

9 Q. Are those prescription glasses?

10 A. Yes, they are.

11 Q. And did you leave your glasses - regular glasses
12 like I have on in the car?

13 A. I did.

14 Q. You may use those, please ma'am, to read your
15 notes if necessary.

16 A. Thank you.

17 Q. Dr. Schuh, did you have occasion on May the
18 eleventh of 2004, to examine one Victim?

19 A. Yes, I did.

20 Q. Do you recall from reviewing your notes what you
21 found?

22 A. Victim was a fifteen month old child and the time
23 that I saw him he was comatose in the pediatric
24 intensive care unit at the Medical University of South
25 Carolina and had multiple medical equipment to

1 monitor his heart rate and his respiratory rate and
2 also a tube going into the ventricles of the brain,
3 which are the spaces within the brain where there is
4 is fluid, in order to monitor the pressure in his
5 brain and he had temperature sensors in his rectum
6 and a foley catheter, which is a semi-permanent
7 catheter which was in his genitals - in his penis.

8 Q. Did you make an assessment of Victim at that time?

9 A. Yes, I did.

10 Q. And what was that assessment?

11 A. Victim had - well the assessment always starts with
12 the history.

13 Q. Okay.

14 A. And the history was not taken from the parents
15 or the mother because the mother was not available and
16 there were no family members available to me at that
17 time but the history as recorded in the record and
18 supported by documentation that I later had a chance
19 to review was that the child had been running, had
20 tripped over a cord, fell, tried to support or catch
21 himself with his hand but hit his head and seemed to
22 be okay and was placed on a couch presumably to watch
23 TV and the person watching him didn't check on him for
24 something in the neighborhood of an hour or an hour
25 and a half and subsequently came back and found the

O.

1 child unresponsive and tried to revive the child with
2 water and by shaking and then called - the caretaker
3 called his sister and subsequently called the child's
4 mother and they called EMS and EMS transported him to
5 an MUSC helicopter, which is called meducare, and he
6 was then air lifted to the children's hospital in
7 Charleston. The physical findings included large
8 bruise on the forehead, smaller bruises under his
9 chin, some scratches or excoriations on his neck and
10 there were quite a few spots that looked like they
11 were where people had tried to draw blood called
12 punta or points of lesions and some very minor lesions
13 on his feet and legs which lots of toddlers have. He
14 was completely unconscious and was not at all
15 responsive to me. He also had retinal hemorrhages,
16 which is bleeding into the back of the eyes and I
17 think that's essentially . His heart seemed fine.
18 His lungs were not entirely normal. There were some
19 abnormal sounds in the lungs and otherwise I think
20 that's what the findings were.

21 Q. Doctor, did you have occasion to review any other
22 medical records at the Medical University on Deon
23 Aiken?

24 A. I have reviewed the records of the people who had
25 admitted him to the hospital and to the Pediatric

1 Intensive Care unit and also I reviewed records of his
2 x-rays and his MRIs of the brain and his laboratory
3 findings, both for his blood test and bacteriological
4 tests.

5 Q. In reviewing those x-rays and MRIs, were you able
6 to determine in reviewing those what type of injury he
7 sustained?

8 A. He sustained an injury which caused significant
9 bleeding within the - above the brain and around the
10 brain in several different areas called subarachnoid
11 blood and he also had injuries in which the normal
12 brain has what's called white matter and gray matter
13 and usually on an MRI, you can clearly see the
14 difference between those but on these MRIs they were
15 very blurry and that is seen where you have edema or
16 swelling in the brain.

17 Q. Did you have occasion to review a CT scan that
18 was taken some four or five days after he was born?

19 A. Yes, I did.

20 Q. Do you recall

21 A. I think that was an ultrasound.

22 Q. Ultrasound.

23 A. And I believe he also had a CT scan and that
24 showed no evidence of bleeding or any abnormality of
25 the brain.

1 Q. Okay. Doctor, from your findings in reviewing
2 the records and examining the child, are the injuries
3 consistent with a simple fall over a cord onto a
4 carpet?

5 A. Not in a healthy child.

6 Q. And from the medical records prior to May tenth
7 of 2004, from your view was he a healthy child?

8 A. To the best that I could determine from what was
9 available to me, he was a healthy child prior to that
10 date.

11 Q. So, within a degree of medical certainty, this
12 is the injury?

13 A. Yes, sir.

14 Q. And to a degree of medical certainty, your
15 opinion is that this did not come from a simple fall
16 over a cord on carpet?

17 A. I don't believe it came from a simple fall on a
18 carpet.

19 Q. You said you saw the child in the IC. I show you
20 stickers twenty through twenty-one. Is this the child
21 that you examined on May the eleventh of 2004?

22 A. Yes, sir. I believe this is the child I saw at
23 that time.

24 Q. Looking at State's Exhibit twenty and twenty-one,
25 did you notice or can you tell from that or your notes

1 whether there was any external injury below the eye,
2 on the chin, on the nose?

3 A. Yes, sir. There were small abrasions just below
4 the right eye, I believe, and there were some on the
5 chin, but those on the chin had a pattern consistent
6 with finger marks and were bruises and there were some
7 small scratches on the neck which I could not determine
8 what caused those.

9 The marks on the chin -- he could have been held
10 by somebody or were most likely caused by somebody hold-
11 ing the chin but it's possible that those occurred as
12 EMS was intubating the child. There was no way to know who was
13 holding the chin at that time the bruises were caused,
14 although they could be fairly recent.

15 Q. Thank you, maam. If you'd be so kind as to answer
16 any questions Mr. Beach may have.

17 A. Yes, sir.

18 CROSS EXAMINATION

19 BY MR. BEACH:

20 Q. Dr. Schuh, just a couple of questions. You said
21 that the mark on the child's chin was consistent with
22 being intubated?

23 A. It could have been from the intubation. When
24 you to intubate means to put a tube into the airway
25 of the child so that you can help breathe for him

1 artificially and when you do that, it would be
2 commonly - customary to hold the child's chin still so
3 that you can pass the tube through his mouth and into
4 his airway and certainly, in my opinion, I could not
5 differentiate how those bruises became other than they
6 did appear to be finger marks.

7 Q. And the child was intubated?

8 A. Yes, he was.

9 Q. The child was alive when you saw him. Was he
10 not?

11 A. Yes, he was.

12 Q. All right. And how long did you have to examine
13 him?

14 A. On the first day, I had probably an hour to an
15 hour and a half and I did go back and check on him
16 subsequently but he died the following day so I didn't
17 have a lot of extra time.

18 Q. Did you take part in the autopsy or any other
19 procedure?

20 A. No, sir. I did not.

21 Q. And so the only time that you saw the child were
22 these two different occasions that you

23 A. Right.

24 Q. All right. How many times have you testified?

25 A. A lot. But I couldn't give you a number. I've

1 been testifying for more than twenty-five years I
2 think.

3 Q. And you testified primarily for the state of
4 South Carolina?

5 A. Most commonly I am called to testify by the state
6 of South Carolina but in my opinion, I testified for
7 the child in order to try and determine the truth and
8 I have testified in other states and for other defense
9 attorneys and for plaintiff's attorneys who are not
10 associated with the state.

11 Q. But you are employed by the state of South
12 Carolina, are you not?

13 A. I was employed by the state of South Carolina.
14 I am currently officially retired although I do work
15 part-time there on a contract basis.

16 Q. I don't think I have any other questions. Thank
17 you, doctor.

18 A. You're welcome.

19 THE COURT: Redirect?

20 MR. KNIGHT: No, sir.

21 THE COURT: As to this witness? Is
22 that a phone in here? There's one somewhere.

23 MR. KNIGHT: I think it's in the
24 doctor's pocketbook, Your Honor.

25 A. No, sir. Mine's on vibrate.

1 MR. KNIGHT: She can be excused anyway.

2 THE COURT: Any objection to this
3 witness being excused, Mr. Beach?

4 MR. BEACH: No, Your Honor.

5 THE COURT: All right. You may step
6 down and you are excused from the courtroom, Dr.
7 Schuh. Thank you very much for being on time.
8 Mr. Knight, your next witness is here.

9 MR. KNIGHT: My next witness is here?

10 THE COURT: Bring him on into the
11 courtroom.

12 MR. KNIGHT: Your Honor, I'm ready for
13 my next witness. I know that's hard to believe.

14 THE COURT: Call your next witness, Mr.
15 Knight.

16 MR. KNIGHT: Call Dr. Alex Vandergrift.

17 THE COURT: Please come forward and be
18 sworn.

19 Alex Vandergrift, being duly sworn,
20 testified as follows:

21 A. William Alexander Vandergrift.

22 V A N D E R G R I F T.

23 THE COURT: Your Witness, Counsel.

24 DIRECT EXAMINATION

25 BY MR. KNIGHT:

- 1 Q. Dr. Vandergrift, where are you employed?
- 2 A. Medical University of South Carolina.
- 3 Q. In what capacity, sir?
- 4 A. I'm a resident in the Department of Neuroscience,
- 5 Division of Neurosurgery.
- 6 Q. And how many years have you been a resident in
- 7 neurosurgery?
- 8 A. Six. One internship a year. Five full years of
- 9 Neurosurgery residency and starting my last year so
- 10 seven - I'm working on my seventh year of residency.
- 11 Q. It takes seven or eight years to complete your
- 12 residency in Neurosurgery?
- 13 A. At MUSC it's seven years total.
- 14 Q. Are you licensed to practice medicine in South
- 15 Carolina?
- 16 A. I have a permanent license in South Carolina.
- 17 Q. Okay. Dr. Vandergrift, did you have an occasion
- 18 on May the tenth of 2004 to examine one Victim?
- 19 A. Yes, sir.
- 20 Q. Do you have your notes with you that you need to
- 21 refer to?
- 22 A. I think I can refer off the top of my head.
- 23 Q. Okay, sir.
- 24 A. Or if have any (inaudible).
- 25 Q. Did you examine this child on May the tenth

1 of 2004?

2 A. That's the date of my consult. Yes, sir.

3 Q. And what were your findings, Dr. Vandergrift?

4 A. If I remember correctly, it was an evaluation in
5 the emergency department that consisted of a child
6 that had been initially resuscitated by the emergency
7 medical staff and brought to the ER for evaluation.

8 My findings if I remember correctly was that in
9 particular my findings which were mainly to the
10 neurological findings for this patient for someone
11 in significant extremis in terms of significant brain
12 dysfunction. We do great things in terms of what is
13 called "a Glasgow Coma scale". With three
14 being the worst and fifteen being the best functions,
15 in awake-alert person needs to gain is grade fifteen.
16 Someone that's in deep coma and unresponsive to any
17 intervention is a three. This child was - seems like
18 a Glasgow score of three.

19 Q. What were your other findings, sir?

20 A. I found evidence of significant brain
21 dysfunction. We test what are called, "brain stem
22 reflexes". That's where you look into their eyes and
23 see if their pupils react. We look into their eyes to
24 see if they blink. We look to see if they have
25 rudimentary things like the ability to breathe or

1 to cough or to move their arms and legs to significant
2 stimulus and I would need to refer to my notes
3 specifically but it was significant dysfunction in
4 those areas.

5 Q. Did you bring your briefcase, doc?

6 A. No, sir.

7 Q. You want to look at a copy of the notes?

8 A. Do you have the - can I look at a copy of the
9 notes?

10 Q. Okay.

11 A. This is a hand-written consult sheet that I wrote
12 in the emergency room. It's my hand-written notes.

13 Q. Okay, sir.

14 A. It's a standard form that we used for any
15 evaluation. There's a section here that it's listed
16 exam notes line. Findings basically on the physical
17 exam.

18 Q. Okay, sir.

19 A. Pertinent to the (inaudible).

20 Q. Correct.

21 A. I wrote that the patient was intubated, meaning
22 that he needed a breathing tube to sustain appropriate
23 oxygen ratio. They had had some recent sedation,
24 meaning that it takes a little bit of medicine to put
25 that breathing tube in. I tested in particular the

1 response of patient to, what we call paralytic
2 medicines. That's medicines that they give so that
3 the tube can go down easily and it had shown that the
4 medicine had essentially worn off by this point of my
5 examination. I wrote that the glass house kroner
6 score - we break that up into three different
7 sections. It was essentially a sum total of four,
8 meaning significant dysfunction. The patient's eyes
9 were closed even to stimulus. The pupils, when we
10 look in the eyes to see how much the pupils react,
11 were five millimeters which is about mid-position but
12 they did not react when I shown light into the eyes
13 which a normal person's eyes would and pupils would.
14 When we tested to see if the eyes would blink they
15 would blink and we tested to see if there was a cough
16 and the child would cough and I wrote down that there
17 was what we call, "extensor posturing denoxious
18 syndrome" and that means when, for instance, you give
19 somebody a little pinch on their chest to see if they
20 move their arms and legs. The way the person is going
21 to reach for your hand to move your hand out of the
22 way. Somebody who's had significant brain injury for
23 whatever the reason has different levels of
24 dysfunction of the brain. The extensor posturing is
25 sort of one up from nothing.

1 Q. I got you.

2 A. So it means that there has been significant
3 injury to what we call the brain stem. So that's a "
4 To summarize this exam would be someone with
5 significant pathologic injury to the brain.

6 Q. Severe injury?

7 A. Yes, sir.

8 Q. Okay. What did you do as a result of those
9 findings?

10 A. My job when I see a patient like this in the
11 emergency room is to make sure first and foremost that
12 there is not an injury that would require a surgical
13 intervention. A life-saving surgical intervention.
14 It's increment usually in the emergency room staff to
15 maintain blood pressure and so forth. The main thing
16 I'm thinking of to answer your question is to make
17 sure that this child doesn't need an operation and
18 emergency action. So I examined the patient to see
19 what we're starting with and I look at the imaging
20 status and in particular the CAT scan and the
21 computer tomography scan of the patient's brain.

22 Q. You reviewed the CAT scan yourself?

23 A. Yes, sir.

24 Q. And the findings on your review of the CAT scan
25 were?

1 A. I have those marked here on my consult note as
2 well and whatever his CT head, CAT scan of the head

3 Q. Right.

4 A. Shows diffuse, meaning all over, biconvexity,
5 meaning both sides of the brain.

6 Q. Okay, sir.

7 A. Inter hemispheric - that means sort of down the
8 midportion of the divider membrane of the brain, so
9 essentially all over the axis of the brain as well as
10 tentorial, that's another dividing membrane of the
11 brain. Dramatic subarachnoid hemorrhage, that means
12 blood outside of the brain itself where it shouldn't
13 be but inside the coverings of the brain that
14 everybody normally has. There was no fracture of the
15 skull that I could tell on the CAT scan. I wrote
16 moderate edema, meaning swelling of the brain, and I
17 wrote dusky, bilateral hemisphere superior to the
18 posterior fossa and that describes a situation where
19 the sort of two big hemispheres of the brain, the two
20 big portions of the brain that do your thinking for
21 you. It suggests that there is decreased blood flow
22 to that part of the brain. The posterior fossa is
23 down at the back. That's your cerebellum and that
24 often is spared in that particular situation so it
25 again to summarize these findings would be significant

r.
1 injury. Blood around the brain where it shouldn't be.
2 Swelling of the brain tissue itself and the suggestion
3 that there is not appropriate blood flow to the brain
4 tissue.

5 Q. And what did you do as a result of that finding?

6 A. I - that is not a procedure initial question.
7 That's not something that we would act upon
8 surgically.

9 Q. Right.

10 A. But there is a procedure that we can do to help
11 relieve some of the pressure that I suspected was in
12 the brain. We placed what is called a
13 ventriculostomy. That's a tube that goes down through
14 the skull, through the brain tissue in the cavities
15 inside the brain to help draw some of the spinal fluid
16 that's inside the brain. It's normally there to let
17 the brain swell on its own without being in the
18 confines of the skull itself. So it's to bring the
19 pressure down inside of the head.

20 Q. Doctor, I show you what's been marked as State's
21 Exhibit number nine and it is in evidence.

22 A. Yes, sir.

23 Q. Is that what you just referred to as putting the
24 tube in to relieve the pressure?

25 A. Correct. This white tube is the ventriculostomy

1 tube.

2 THE COURT: Counsel approach.

3 Q. Doctor, can you identify State's Exhibit number
4 nine?

5 A. What is this?

6 Q. Can you identify? Is this your work that you did
7 on this child on May the tenth?

8 A. It looks like a ventriculostomy (inaudible).

9 MR. KNIGHT: Your Honor, at this time I
10 would offer State's Exhibit nine into evidence?

11 THE COURT: Any objections?

12 MR. BEACH: No, Your Honor.

13 THE COURT: Ladies and gentlemen of the
14 jury, State's Exhibit number nine will be admitted
15 into evidence without objection. State's nine in
16 evidence. You may now publish, Mr. Knight.

17 MR. KNIGHT: Your Honor, that's all the
18 questions I had for this witness.

19 THE COURT: Very well. Cross
20 examination.

21 CROSS EXAMINATION

22 BY MR. BEACH:

23 Q. Doctor, the tube that you placed into the brain.
24 That's just to relieve pressure. Is that correct?

25 A. It's to relieve pressure and monitor the

1 pressure. Yes, sir.

2 Q. And to monitor the pressure also?

3 A. Um-hmm.

4 Q Okay. So he was still alive at this point. Is

5 that correct?

6 A. Yes, sir.

7 Q. And how long was it before he passed away?

8 A. I'd have to refer to the chart. I think his
9 length of stay was from the tenth to the thirteenth.

10 Let see his admission and discharge. The declaration
11 of death is a little tricky in terms of this
12 particular situation. There is some testing that you
13 have to do to make that declaration.

14 Q. I understand. Now, did you notice a subdural
15 hematoma on his head when you saw him the first time?

16 A. I cannot recall exactly.

17 Q. Would that indicate that he had received an
18 injury to wherever that hematoma was?

19 A. Um- presumably. Again I don't. It's not noted
20 on my notes. It's a while ago and I don't remember
21 exactly if I saw that hematoma before that.

22 Q. So if he had fallen and there was a hematoma on
23 his forehead, would that indicate that that's where
24 his injury occurred?

25 A. Presumably.

1 MR. BEACH: I have no other questions,
2 Your Honor. Thank you, sir.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MR. KNIGHT:

6 Q. Doctor, to refresh your memory. I ask you if you
7 can identify your notes.

8 A. That's my consultation notes. It's noted here
9 that he had frontal forehead bruising.

10 Q. Which is what?

11 A. A hematoma.

12 Q. Thank you, doctor. That's all I have.

13 THE COURT: Recross limited to
14 redirect.

15 MR. BEACH: Nothing on recross, Your
16 Honor.

17 THE COURT: Very well. As to this
18 witness, Counsel.

19 MR. KNIGHT: May he be excused, Your
20 Honor, and return to the Medical University of South
21 Carolina?

22 THE COURT: Dr. Vandergrift, you may
23 step down and you are excused from the courtroom.
24 Just leave my exhibit with me if you would.

25 MR. KNIGHT: Your Honor, I will have

1 to check and see about my next witness. Are ya'll
2 able to take a ten minute break?

3 THE COURT: Ladies and gentlemen of the
4 jury, we going to take my mid-afternoon break at this
5 point. Please do not discuss the case with each other
6 or with anyone else. I'll be right back with you as
7 soon as I possibly can. Stretch your legs. Thank
8 you. You may retire to your jury room.

9 (Jury retired to the jury room)

10 THE COURT: Anything on the record
11 before we adjourn. Mr. Beach, anything on the record
12 from the Defendant?

13 MR. BEACH: Nothing, Your Honor.

14 THE COURT: All right. We'll take ten
15 minutes. We'll be in recess.

16 (The Court took a short recess)

17 THE COURT: Is the State ready to
18 proceed?

19 MR. KNIGHT: Yes, sir.

20 THE COURT: Is the Defendant ready to
21 proceed?

22 MR. BEACH: Yes, Your Honor.

23 THE COURT: Would you bring in the jury
24 please.

25 (Jury returned to the Courtroom)

1 THE COURT: Mr. Foreman and ladies and
2 gentlemen of the jury, we will now continue with the
3 testimony in the trial of this case. Solicitor, you
4 may call your next witness.

5 MR. KNIGHT: Erin Presnell.

6 Susan Erin Presnell, being duly sworn,
7 testified as follows:

8 A. Susan Erin Presnell. P R E S N E L L.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION

11 BY MR. KNIGHT:

12 Q. What is your profession?

13 A. Im a Forensic Pathologist at the Medical
14 University of South Carolina in Charleston.

15 Q. Are you licensed to practice medicine in the
16 State of South Carolina?

17 A. Yes.

18 Q. Are you a member of any professional
19 organizations?

20 A. As a Forensic Pathologist, I belong to the
21 Forensic Pathology's Organizations including MAME,
22 which is Maximum (inaudible) and AAFS, which is
23 American Academy of Forensic Scientists.

24 Q. What's your specialty?

25 A. My specialty is Forensic Pathology.

1 Q. What is Forensic Pathology?

2 A. Well, most people are familiar now with what
3 a Forensic Pathologist does with all the CSI shows on
4 TV and all. It's actually a specialty of Pathology.
5 Pathology is a broad field which is the study of
6 disease. Such that if you go to a doctor and they do
7 a biopsy or take some tissue off of you, they would
8 send it to the Pathologist and the Pathologist would
9 look at it and diagnose if it's cancer or if it's not.
10 Is it infection or not? So that's the general field
11 of Pathology. Forensic is a sub-specialty of that.
12 After you do pathology training, then you spend
13 additional time doing just forensic training and in
14 that profession, we're looking at not just one little
15 piece of tissue or one organ but we're looking at the
16 whole body of deceased people and we're not just, like
17 I said, evaluating one piece but we're looking at it
18 all. And we're not just looking at (inaudible-cough)
19 but we're looking for trauma as well as finding out
20 the cause and manner of death.

21 Q. And you're a certified Forensic Pathologist?

22 A. I'm board certified in Forensic Pathology.

23 Q. Is that the capacity you are employed with at the
24 Medical University?

25 A. Yes.

1 Q. How many autopsies have you performed?

2 A. I've (inaudible-coughing) over fifteen hundred
3 or so.

4 Q. Have you been qualified in a court of law as a
5 Forensic Pathology expert?

6 A. (inaudible)

7 Q Do you recall on how many occasions?
I would estimate about fifty.

8 A. Okay.

9 Q MR. KNIGHT: Your Honor, I would offer

10

11 Dr. Presnell as a certified expert in the field of
12 Forensic Pathology.

13 THE COURT: Any objection as to
14 qualifications?

15 MR. BEACH: None, Your Honor.

16 THE COURT: Ladies and gentlemen of the
17 jury, the witness is qualified as an expert in
18 Forensic Pathology without objection. Recalling my
19 earlier instruction to you concerning expert
20 witnesses. You may proceed, Counsel.

21 Q. Thank you, Your Honor. Do you recall performing
22 an autopsy on Victim in May of 2004?

23 A. Yes. By request of the Colleton County coroner
24 I did an autopsy on Victim May the fourteenth,
25 2004, at nine AM.

1 Q. At the Medical University of South Carolina?

2 A. Right. At MUSC.

3 Q. What was your autopsy diagnosis?

4 A. Well, there was a lot of diagnoses but the final
5 line or cause of death was inflicted head trauma. But
6 what I'd like to do if I could is go through all the
7 different findings that we saw at autopsy.

8 Q. Did you find a small scalp contusion with focal
9 patterned injury?

10 A. Yes, I did. If you'd like I'll just go ahead and
11 kind of go through and start from the beginning.

12 Q. Please.

13 A. All right. Well, again the case was referred to
14 us by the Colleton County Coroner with the story that
15 the fifteen month old child had been running on a
16 carpeted floor and had subsequently fallen and struck
17 his head. After that time, he wanted to take a nap.
18 I guess he was sleepy or whatnot and then subsequently
19 to that he couldn't be aroused. He was taken to the
20 hospital where he eventually was declared brain dead
21 and actually we were able to harvest some of his
22 organs for transplantation. After that time, he came
23 to us for autopsy and I'll just read them from
24 external to internal findings. He has a couple of non
25 specific abrasions which is common in a fifteen

1 month old. A couple on his leg and one kind of by his
2 nose and one on the left side of his nose and one on
3 the right. More significantly he had some rounded
4 contusions or abrasions under the right jaw line,
5 which is a little bit suggestive of a finger tip but
6 you couldn't say that definitively. More importantly
7 he had a large two and a half inch contusion or bruise
8 across the front of the forehead. In the middle half
9 of the forehead. Part of our autopsy is we don't just
10 look externally but we look internally, including the
11 brain. And when we get to the brain we make an
12 incision behind the ear and reflect the scalp forward
13 so that you can see underneath the scalp. Underneath
14 the scalp we also saw an area of scalp hemorrhage that
15 would have been on the right side of the head. Over
16 here. Again a contusion so two areas of contusions or
17 bruising caused by blunt trauma. When we took the
18 skull cap off that's where you visualize the brain and
19 I'll tell you what we found and then I'll kind of
20 describe how it's set up. The brain and structure so
21 it will make a little more sense. But we found sub-
22 dural hemorrhage, subarachnoid hemorrhage, the retinal
23 hemorrhage, and then the brain was diffusely soft from
24 swelling and from being brain dead all night before.
25 Now, let me back up. The way that the brain is set

7\

1 up is you have the skull cavity and the brain is in
2 that. There are (inaudible) kind of adhered to the brain
3 in what they call the arachnoid membrane and it's got
4 vessels going through it and all. It's pretty
5 (inaudible-coughing) between the brain and the
6 arachnoid membrane on it. Next layer is the dura
7 matter and that's a thick membrane and it would be
8 difficult to tear. It's a much thicker membrane. And
9 that kind of, you know, helps hold the brain down in
10 the skull cavity. So we have brain with arachnoid
11 membrane on top, the dura over that, and then the
12 skullcap on top of that. What we're seeing if you
13 take the skullcap off, then you can see the dura and
14 underneath that dura between the dura and the brain is
15 hemorrhage so that's subdural or beneath the dura
16 hemorrhage. And then beneath that transparent
17 membrane, the arachnoid membrane over the brain is
18 also hemorrhage. So we've got subarachnoid or beneath
19 the arachnoid hemorrhage. And the other thing would
20 be retinal hemorrhage surrounding and in back of the
21 eye. Now, these things themselves are actually
22 markers of a type of injury. Between the dura and the
23 brain there's a bunch of vessels that go through the
24 dura and to the brain. When these are (inaudible-
25 cough) they break and they bleed and where they

1 bleed is in the subarachnoid space and the subdural
2 space. The hemorrhage itself isn't particularly the
3 lethal injury, it's the sheering effect that happens
4 to the brain and in the brain you have neurons or your
5 brain cells and they communicate with the rest of the
6 body by sending out neuron processes and when you
7 sheer those then you are obstructing the brain. It's
8 again considered a rotational injury. Anyhow, so that
9 was the most significant finding. And that was what
10 we based our conclusion that this was abusive head
11 trauma. Part of that is also based on the scenario
12 proposed. You don't typically see these types of
13 injuries in a fall from running and falling on the
14 carpeted floor. The decedent himself, Victim, was
15 about thirty inches tall so he's less than three feet
16 tall. It's what we would consider a running injury
17 and a fall that the head hit the floor - that's called
18 a translational force injury where you have direct
19 impact and the brain may move a little but it's not
20 as sheering rotational force. Infants and young
21 children and toddler are at an increased risk of
22 being susceptible to rotational injury. First of all,
23 it's really big compared to the rest of their body.
24 Their neck musculature is not as developed to help
25 support their head and the brain- the base of the

1 skull where the brain sits on is a lot shallower
2 than the adult base of the skull. So it allows the
3 movement a lot easier. And the brain itself is not as
4 developed. It's not as developed and it doesn't have--
5 have as much of the accordion structure that the adult
6 and the older kid brains have. And that's called
7 myelination, which is again the supporting structure
8 of the brain. So again toddlers and infants, in
9 particular, are susceptible to these types of
10 rotational injuries. And we believe that is the cause
11 of death in Victim.

12 Q. Doctor, did you find focal right parietal
13 subgaleal hemorrhage?

14 A. Yes, I did. Again that's the hemorrhage I was
15 talking about when we reflected the scalp forward and
16 we saw focused hemorrhage on the right side of the
17 head.

18 Q. Is that a new injury or an old injury?

19 A. These are all recent injuries.

20 Q. Doctor, I show you State's Exhibit fifteen and
21 ask if you can identify this please, ma'am?

22 A. This is a photograph of the decedent at the time
23 of autopsy.

24 THE COURT: Without objection?

25 MR. BEACH: No objection to that.

1 THE COURT: State's Exhibit fifteen,
2 ladies and gentlemen of the jury, will be admitted
3 into evidence without objection. State's fifteen into
4 evidence. You may publish.

5 Q. Would you describe to the jury from this photo-
6 graph what that actually shows? Can we have the
7 little microphone again, Judge?

8 THE COURT: Use that microphone,
9 Doctor, because you have your back to the court
10 reporter and she needs to be able to hear you.
11 Counsel, you may come around so you can see it.
12 Please let me know if you can't see the picture or
13 hear the witness, ladies and gentlemen of the jury.

14 A. I'll do this side and then I'll go over to this
15 side so you guys can see it. This is a photograph of
16 the decedent with a view of the head and right here on
17 the forehead we see an area of bruising there. That's
18 a little bit of pallor in the middle of it. But this
19 is the two and a half inch bruise that I was speaking
20 of being on the forehead. You also see the scalp is
21 shaved. That's from medical intervention. The
22 medical personnel put a shunt in through the scalp
23 into the head to try and relieve some of the pressure
24 that was building up in the head. So that's what we
25 see there. Again, (inaudible- coughing) forehead

1 bruise that 's in the center of the head with that
2 area of pallor. Again the head is shaved because of
3 medical intervention with the insertion of a
4 ventricular type relief from the pressure inside it.
5 I really can't see any other changes on this side.

6 Q. Doctor, I ask you - if you'd turn around. I
7 ask you if you can identify what 's been marked as
8 State's Exhibit number twelve?

9 A. This is where the scalp is reflected forward.

10 THE COURT: Without objection, State's
11 Exhibit number twelve?

12 MR. BEACH: No objection, Your Honor.

13 THE COURT: State's Exhibit number
14 twelve, ladies and gentlemen of the jury, being
15 admitted in evidence without objection. State's
16 twelve in evidence. You may publish.

17 A. All right. Just for orientation of this photo-
18 graph. Imagine that this - the decedent is laying on
19 the autopsy table and we had made the incision from
20 the back of one ear to the back of the other and
21 reflected the scalp forward so the scalp is reflected
22 forward. Here is the scalp so the face would be under
23 here. What we were originally intending was that
24 there was a subgaleal hemorrhage here. This area of
25 hemorrhage on the right side of the head. There's

1 also hemorrhage here but it's associated with the
2 shunt that's going into the head and can easily be
3 from that medical manipulation. Again, for
4 orientation, the person - the decedent is laying on
5 his side. You can see his head. The scalp is
6 reflected forward and the face would be in this area.
7 Here is the area of hemorrhage on the side of the
8 head. Here is the shunt going through the scalp and
9 into the skull cavity and there's some hemorrhage
10 associated with that shunt.

11 Q. I show you State's Exhibit number seven. Can you
12 identify that please, ma'am?

13 A. This again is at autopsy after we removed the
14 skull cap.

15 MR. KNIGHT: Seven without objection.

16 MR. BEACH: No objection.

17 THE COURT: Ladies and gentlemen of the
18 jury, State's Exhibit number seven will be admitted
19 into evidence without objection. State's seven. You
20 may publish in evidence.

21 A. All right. Now, we are back to . We were
22 standing on the other side of the decedent and now
23 we've come over to this side so imagine he's laying
24 on the autopsy table like this. We've still got the
25 scalp reflected forward and we've now taken off the

1 skull cap. See here's part of the skull and this part
2 right here we've taken off and what we're seeing is
3 the dura. That thick membrane that overlays the brain
4 and you can kind of see a little bit of hemorrhage
5 underneath that but you really can't see it yet
6 because the hemorrhage is underneath the dura. All
7 right. See the decedent is laying this way on the
8 autopsy table. The scalp is reflected forward. The
9 face is in this area. The skull cap has come off and
10 we're seeing the thick membrane, the dura, over the
11 brain.

12 Q. Doctor, I ask if you can identify what's been
13 marked as State's Exhibit number six?

14 A. Yes. This is after we had taken the dura off
15 the brain at the time of autopsy.

16 MR. BEACH: No objection. Number six.

17 THE COURT: Ladies and gentlemen,
18 State's Exhibit number six will be admitted into
19 evidence without objection. State's six into
20 evidence. You may publish.

21 A. Now, we're seeing at the end of the table looking
22 at the top of the head of the decedent. You can see
23 the arms and legs out to the side. We've taken the
24 dura off now and we have some of this dark maroon
25 stuff. That's hemorrhage that's still kind of stuck

1 to the brain. It was under the dura. That's the
2 subdural hemorrhage that we were speaking of. Again
3 the skull cap has come off and we're looking at the
4 top of his head with his feet down towards the center
5 and we see the dark maroon stuff right here. The
6 subdural hemorrhage - the hemorrhage that was under
7 the dura on top of the brain.

8 Q. I ask you if you can identify State's Exhibit
9 number eight?

10 A. This also appears to be a photograph of the brain
11 and I'm a little off on orientation here but it does
12 show the subdural hemorrhage.

13 Q. I'd like to ask you if you can identify State's
14 Exhibit number eight? I think that's the end.

15 THE COURT: Number eight?

16 MR. KNIGHT: Number eight.

17 THE COURT: Objection?

18 MR. BEACH: No objection.

19 THE COURT: State's Exhibit number
20 eight. Let her identify it first.

21 MR. KNIGHT: Okay, sir.

22 A. This again is the brain up close and again you're
23 seeing some of the subdural hemorrhage in that area.
24 The other thing that you can note as I pointed out in
25 the other picture that it has a subarachnoid

1 hemorrhage. If you will hold that. The subarachnoid
2 hemorrhage that Remember we've taken the dura off
3 now so we're seeing this. Now the next membrane is
4 the arachnoid membrane. It's that thin, translucent
5 layer that is pretty much adherent to the brain. So
6 underneath this layer you can see how pink it is.
7 That's the subarachnoid hemorrhage. It's real
8 diffuse. It's a real thin layer of hemorrhage under-
9 neath that arachnoid membrane. The subarachnoid
10 hemorrhage. Again another photograph of the brain.
11 Showing some of the subdural hemorrhage. Likewise
12 on the other photograph, you can appreciate the
13 darkness underneath the areas that don't actually have
14 the subdural hemorrhage. That's because there's the
15 thin layer of blood underneath the arachnoid membrane,
16 that translucent membrane that's right on top of the
17 brain.

18 THE COURT: State's exhibit number
19 eight is admitted into evidence without objection.
20 Counsel, let the witness identify the document without
21 publishing to the jury until it's admitted.

22 MR. KNIGHT: Okay, sir.

23 Q. Doctor, I show you State's Exhibit number
24 seventeen. Can you identify this?

25 A. This is a photograph of the eyes at the time of

1 autopsy.

2 THE COURT: Any objection, Mr. Beach?

3 MR. BEACH: No, Your Honor.

4 THE COURT: State's Exhibit number
5 seventeen **will** be admitted into evidence without
6 objection. You may publish.

7 A. At the time of autopsy in cases like these, we
8 actually take out the eyes and we open them up to look
9 for retinal hemorrhages. That is what we've done
10 here. Right there - that little circle. What you're
11 looking at is one eye globe - the whole eyeball - that
12 we've cut in half. This circle right here is the
13 pupil. Like where you would look out and this is
14 the back of the eye with the retina right here and all
15 those bright red areas are extensive retinal
16 hemorrhages. This is one eye that has been taken out
17 and cut in half. This circle here is the pupil where
18 you would look out of and so this is the back of the
19 eye with the retina and all the little red areas are
20 extensive retinal hemorrhage.

21 Q. Hold on for one moment. I've got a stack and I'm
22 trying to avoid duplication.

23 All right. Doctor, I show you State's Exhibit number
24 nine, which is already into evidence if I recall
25 correctly.

1 THE COURT: Yes, it is.

2 Q. Doctor, tell the jury what this depicts.

3 A. We're backing up a little bit from our process of
4 autopsy. I again am working at the top of the head
5 looking down. And the scalp is reflected forward.
6 There's the shunt going into the bulk of the pressure
7 and what it's showing is that there is a lot of
8 swelling in the brain and that right there would be
9 the soft spot that you can feel on little babies.
10 The sutures right here are where the skull starts to
11 grow together and because of the brain swelling it's
12 starting to separate and it's demonstrating future
13 separation from brain swelling. Again we're looking
14 at the top of his head and so we keep moving towards
15 the face. That area right there is the soft spot or
16 what we would call the fontanel. And the sutures
17 right here, where the skull would start to grow
18 together and fuse as the person gets older, are
19 starting to split apart secondary to the brain
20 swelling.

21 MR. KNIGHT: Court, if you could just
22 indulge me, I don't want a duplication.

23 Q. Doctor, you identified State's Exhibit number
24 thirteen. Just tell me whether or not you can
25 identify it.

1 A. Yes.

2 THE COURT: Any objection , Mr. Beach?

3 MR. BEACH: No objection.

4 THE COURT: State's Exhibit number
5 thirteen is admitted into evidence without objection.

6 Q. State's Exhibit number thirteen, what does that
7 depict?

8 A. Again we're backing up at the time of autopsy to
9 the external exam and we're looking under his chin.
10 I don't know how well you guys can visualize it but
11 right in this area and this area, those are areas of
12 contusion. Little rounded contusions. This is
13 underneath his chin at the time of external exam and
14 that red-purple, brownish gray area are areas of
15 contusion underneath the chin.

16 Q. Doctor, I show you what's marked State's Exhibit
17 number eleven and I ask you if you can identify it.
18 Just tell me if you can identify it.

19 A. Yes.

20 THE COURT: Ask her to describe it for
21 the record of what we're talking about.

22 Q. Describe

23 A. All right. These are the eyes taken out and
24 examined subsequently.

25 THE COURT: Any objection as to State's

1 Exhibit eleven. Is that right?

2 MR. KNIGHT: Yes. Eleven.

3 THE COURT: No objection, Mr. Beach?

4 MR. BEACH: No objection, Your Honor.

5 THE COURT: State's Exhibit number

6 eleven will be admitted into evidence without

7 objection.

8 A. This is a similar photograph with the one that we

9 showed you earlier with the eye cut in half. We were

10 trying to get a bunch of different photographs to

11 really illustrate the hemorrhage as much and this one

12 doesn't do anything. You can't see in here. Well,

13 you can barely see them but the other picture is much

14 more illustrative. Again this is just a different

15 type of picture of the eyes cut in half and not much

16 illustrating much of anything.

17 Q. Doctor, you described your findings from the

18 autopsy. Are those findings a severe injury to cause

19 death consistent with tripping over a wire and falling

20 on a carpet?

21 A. No.

22 Q. Doctor, to a reasonable degree of medical

23 certainty, have you formed an opinion as to the cause

24 of death of Victim?

25 A. Yes, we find that abusive inflicted head trauma.

1 Q. Thank you so much. You can answer any questions
2 that Mr. Beach may have.

3 CROSS EXAMINATION

4 BY MR. BEACH:

5 Q. Doctor, just a few questions. You did identify
6 that there was a hematoma on the child. Did you not?

7 A. Right. There were several subdural hematoma or
8 hemorrhages and then on the scalp are two subgaleal
9 on the skull. Yes.

10 Q. All right. The one that was on the forehead.
11 You do recall that one. Do you not?

12 A. Yes. The contusion or bruise across the forehead
13 or it could be a hematoma.

14 Q. And this is where the child was hit. Is that
15 correct?

16 A. This is an impact site. Yes.

17 Q. Now, you said, I believe, and I wrote it down
18 that it was not typical that this type of injury
19 would have happened during a trip and fall. Is that
20 correct?

21 A. Correct.

22 Q. But do you completely rule out a trip and fall?

23 A. You know you consider each case individually.
24 Certainly there are falls from certain distances that
25 can do internal damage but again remember what I was

1 trying to explain about the (inaudible-cough) . This
2 isn't just a fall with a blunt trauma and that's it.
3 There is sheering injury that implies that there is
4 more than just a trip and fall that occurred.

5 Q. If the child had been involved in falls
6 immediately prior to this within two days of this
7 injury. Could that not have a cumulative effect that
8 would give you the same effect as you have here?

9 A. No. It still wouldn't be a sheer injury. I
10 would think it more a something like a motor vehicle
11 crash or something a lot more severe. I know there
12 are some studies in the literature that have looked at
13 kids on swings or see-saws that again have motion
14 before they fall but aren't necessarily falling from
15 a really high height but a lower height but again,
16 other circumstances that go along with the description
17 **of how the injury- actually- happened .**

18 Q. Can more than one injury result in what you
19 **found?**

20 A. Can more than one injury. More than one way. It
21 **can happen in more than one way.**

22 Q. Okay. So if the child was injured and then
23 injured again and then injured a third time, could the
24 cumulative effect have come up with your same
25 findings?

1 A. Again, we're talking about being injured in the
2 same way with a direct fall or direct trauma or,
3 excuse me, direct blunt force that we wouldn't expect
4 to see the sheering type markers that we were seeing.
5 The diffuse subarachnoid hemorrhage, the subdural
6 (inaudible) hemorrhages.

7 Q. If - let me back up a little bit. How long does
8 it take for this type of result to manifest itself
9 with regard to an injury?

10 A. Usually with this severe injury, we would expect
11 immediately to minutes. Certainly you wouldn't expect
12 a long interval of hours.

13 Q. And if the child had been injured previously,
14 could this affect that time period?

15 A. I wouldn't expect it to.

16 Q. So if a child were injured from a fall previously
17 and then had a subsequent fall and the previous fall
18 had caused some sheering, could this have resulted in
19 the same findings that you made?

20 A. Well, looking back at - if we're talking about a
21 **direct fall. Running and tripping from a height of**
22 less than three feet while standing on the ground, we
23 wouldn't get sheer injury. Whenever we got this
24 degree of sheer injury, that's when we expect
25 **something within the immediate, you know, within an**

1 hour presentation. You know, you're asking me about
2 cumulative effects but I think we're talking about two
3 different mechanisms of injury.

4 Q. If the mechanism of injury in the previous fall
5 was not the same as the trip and fall, could that have
6 the same effect?

7 A. Until you get a more concrete example,
8 theoretically it's Again I bring up the (inaudible)
9 because that's one of the controversial articles in
10 our forensic literature. Is that you can't have, you
11 know, single head trauma with short falls. Now, of
12 course, you're not standing on the ground but the
13 additional information or scenario with that is again
14 there is movement so they're not in a steady state.
15 There is rotational factors involved to create a
16 quote, sheering injury and you don't get sheering
17 injury from those short, short falls from running at
18 a height of thirty inches where both feet are on the
19 ground and falling striking your head. I'm not sure
20 what scenario might be proposed as to how that could
21 have happened but I would have to hear, you know, the
22 particular type of repetitive injury to see if that
23 was plausible or not.

24 Q. But it is possible for a repetitive injury to
25 then become manifested by a subsequent injury?

1 A. What - the injury that was being had happened
2 right before the time of his (inaudible) regardless of
3 what had happened to him before, if he had recovered
4 from that, you know, whether there was some slight
5 residual trauma or palsy that you could see. You
6 know, I don't know, but the pathology that we see
7 The recent pathology - the recent injury that we see
8 at the time of autopsy would have happened from that
9 incident that prior to him becoming lethargic and
10 unresponsive.

11 Q. But it is possible for him to have a previous
12 injury and not have the person become lethargic and
13 unresponsive?

14 A. Yes. He could have a previous injury and not
15 become unresponsive and lethargic but that would not
16 be a fatal injury.

17 Q. But the next injury that you had that's close in
18 time or maybe a day or something later. Could that
19 than trigger what didn't happen in the previous
20 injury?

21 A. I'm confused. No, I don't see the connection
22 between the two.

23 Q. Okay. All right. But you can have an injury
24 that doesn't cause the lethargy and the - what we
25 found here?

1 A. Yes.

2 Q. I have no further questions, Your Honor. Thank
3 you, doctor.

4 A. You're welcome.

5 THE COURT: Redirect?

6 MR. KNIGHT: No, sir.

7 THE COURT: Very well. As to this
8 witness.

9 MR. KNIGHT: May she be excused, Your
10 Honor?

11 THE COURT: Any objection?

12 MR. BEACH: No objection, Your Honor.

13 THE COURT: You may step down from the
14 witness stand. If you'll leave my exhibits with me
15 please, doctor. I don't know if they handed you any.
16 You are excused from the courtroom. Thank you very
17 much. Call the next witness.

18 MR. KNIGHT: That's the State's case,
19 Your Honor. (The State rests)

20 THE COURT: Are there any matters of
21 law that I need to take up at this time?

22 MR. BEACH: We would have a motion,
23 Your Honor.

24 THE COURT: That's what I'm asking.

25 MR. BEACH: But not in front of the

1 jury.

2 THE COURT: Mr. Foreman and ladies and
3 gentlemen of the jury, I need to take up a matter of
4 law. If you could go quickly to your jury room, I'll
5 be right back with you.

6 (Jury retires to the jury room)

7 THE COURT: Yes, sir. Mr. Beach?

8 MR. BEACH: Thank you, Your Honor.
9 Your Honor, at this time we at the end of the State's
10 case, we would make a motion for a directed verdict of
11 acquittal. I don't believe the State has shown, Your
12 Honor, beyond a reasonable doubt, f'irst of all, this
13 young man did anything at all to the child or that the
14 child was actually harmed or hurt by actual child
15 abuse. There is evidence that the child hit his head,
16 there is evidence that the child suffered a severe
17 injury but there is no connection between the severe
18 injury and this young man. He had this child for some
19 time. The mother had the child for some time. There
20 were other people there and there were people who took
21 care of the child after he was taken in by the EMTs.
22 I don't believe there is any evidence to show that
23 this young man beyond a reasonable doubt had anything
24 to do with the death of the child and for that reason
25 we would move for a directed verdict of acquittal.

1 THE COURT: Mr. Knight?

2 MR. KNIGHT: Your Honor, this being the
3 case of existence or non-existence of evidence. In
4 this case, we have evidence that the Defendant
5 indicated that the child was running and he tripped
6 over a cord and fell on his head in the - Heather
7 Aiken's apartment. Now, that's totally inconsistent
8 from all the experts that testified here today as how
9 this injury could have occurred. It's circumstantial
10 evidence granted, but it's consistent and it points to
11 the person who was in control of the child. Who had
12 custody and control of the child at the time of this
13 incident and we've got testimony that he's the only
14 one there when Ms. Aiken left for work and she was
15 called to work and to determine that the child was
16 unresponsive. We've got his own statement as to what
17 he did. Statements during the course of the
18 babysitting issue with the child so I think there is
19 sufficient circumstantial evidence to submit this
20 case to the jury because of the standing of the
21 existence of non-existence of evidence. Thank you.

22 THE COURT: Mr. Beach, I - as you know
23 I take the evidence at this stage and (inaudible) most
24 favorable to the non-moving party in the directed
25 verdict stage. Do you agree?

1 MR. BEACH: Yes, sir.

2 THE COURT: In light of that, Mr.
3 Beach, I think there is evidence in which the jury
4 could support a verdict and therefore I have to deny
5 your motion for directed verdict at this stage. Is
6 there anything further from the Defendant?

7 MR. BEACH: Nothing, Your Honor.

8 THE COURT: Are you ready to proceed
9 with your case as we discussed yesterday?

10 MR. BEACH: We are ready, Your Honor.

11 THE COURT: Very well. We've had so
12 many breaks this afternoon but this could be the one
13 that your client or your staff or yourself you need a
14 bathroom break, take it because I intend to work
15 straight through until we adjourn so if anybody wants
16 to take a break I'll give you five minutes right now
17 to do so so that we can be ready to start when we come
18 back.

19 MR. BEACH: Thank you, Your Honor.

20 THE COURT: Is the State ready to
21 proceed?

22 MR. KNIGHT: Yes, sir.

23 THE COURT: Is the Defendant ready to
24 proceed?

25 MR. BEACH: Yes, sir.

1 THE COURT: Bring in the jury please.

2 (Jury returns to the courtroom)

3 THE COURT: Mr. Foreman and ladies and
4 gentlemen of the jury, you've heard the evidence from
5 the State of South Carolina and we'll now hear from
6 the Defendant. We'll work a little later tonight,
7 ladies and gentlemen, than I normally do and the
8 reason for that is with the hope that I can get you
9 home earlier tomorrow by doing that and I assume that
10 suits everybody's schedules. Has anybody got any firm
11 commitment if we work a little bit later tonight that
12 can't be missed? Or if we need to make a call if you
13 just let me know through the bailiff I'll make
14 arrangements for you so that I can get you home a
15 little bit earlier. Thank you for your cooperation
16 and assistance. Mr. Beach, you may call your first
17 witness.

18 MR. BEACH: Call Delia Luat.

19 THE COURT: Spell your last name for
20 the
Court.

21 Delia Luat, being duly sworn,
22 testified as follows:

23 A. My name is Delia Luat. L U A T.

24 THE COURT: Your witness, Counsel.

25 MR. BEACH: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. BEACH:

3 Q. Ms. Luat, are you related to the Defendant?

4 A. Yes.

5 Q. And in what way?

6 A. He's my brother.

7 Q. Okay. How old is he?

8 A. He's twenty-four.

9 Q. Are you older or younger than him?

10 A. I'm older.

11 Q. All right. I'm not going to ask you your age.

12 All right. Now, do you live in Walterboro?

13 A. Yes.

14 Q. Where do you live?

15 A. In Bay Meadow Apartments.

16 Q. When this incident occurred back in May of 2004,
17 were you also living at Bay Meadow?

18 A. Yes.

19 Q. And who was living with you at the time?

20 A. It was my mother-in-law, my husband, my two
21 children, and Mr. Daniel.

22 Q. How old are your two children?

23 A. Well, now they are eight and a half and five and
24 I have a two month old.

25 Q. Now, when ya'll were growing up, were you born in

1 South Carolina?

2 A. No.

3 Q. Where were ya'll born?

4 A. In California.

5 Q. Was he born in California also?

6 A. Yes.

7 Q. And how long did ya'll live in California?

8 A. I lived in California probably twenty-three years
9 it seems like.

10 Q. And what about the Defendant?

11 A. Mr. Daniel lived probably like when he was
12 twenty. Twenty years.

13 Q. So he grew up in California. Did he get into any
14 trouble when he was in California?

15 A. No.

16 Q. You don't remember him getting into trouble?

17 A. No.

18 Q. Where did you move to after that?

19 A. After California?

20 Q. Yes.

21 A. I had moved to Arizona for a couple of months and
22 then I had moved to South Carolina.

23 Q. Did you get married in South Carolina?

24 A. Yes.

25 Q. Now, what about your brother? Where did he go?

1 A. He had moved to Arizona with me and then he
2 stayed in Arizona and graduated high school and then
3 he came to South Carolina.

4 Q. And when he came to South Carolina did he live
5 with you at that time?

6 A. Yes.

7 Q. How long was he in South Carolina prior to this
8 incident occurring?

9 A. He came to South Carolina in October of 2003?

10 Q. Was he married?

11 A. No.

12 Q. Was he seeing anyone?

13 A. No.

14 Q. And when he moved here did he start seeing
15 someone?

16 A. He had friend.

17 Q. And who was that friend?

18 A. Heather. Heather Aiken.

19 Q. This is Deon's mother?

20 A. Yes.

21 Q. Now you, I believe, were friends with Heather.
22 Is that correct?

23 A. Yes.

24 Q. Are ya'll still friends?

25 A. No.

- 1 Q. Now, did you know Heather's children?
- 2 A. Yes.
- 3 Q. And did they play with your children?
- 4 A. Yes.
- 5 Q. Did ya'll live in the same apartment complex?
- 6 A. No.
- 7 Q. Did ya'll see each other fairly often?
- 8 A. Yes.
- 9 Q. Now, was your brother seeing Heather?
- 10 A. Yes.
- 11 Q. Was he staying over there sometimes?
- 12 A. Yes.
- 13 Q. Was he staying over there very often?
- 14 A. Pretty much.
- 15 Q. Do you know whether or not he was keeping her
- 16 children?
- 17 A. No, the time he had her and another time he kept
- 18 the baby.
- 19 Q. Did he ever keep your children?
- 20 A. Yes.
- 21 Q. Did you ever have any trouble with him keeping
- 22 the children?
- 23 A. No.
- 24 Q. How did he act towards children?
- 25 A. He was good with the kids.

1 Q. And what about with adults? What kind of person
2 is he?

3 A. A fun jokey person.

4 Q. Have you ever seen him hurt a child?

5 A. No .

6 Q. Have you ever seen him threaten a child?

7 A. No.

8 Q. Have you ever seen him threaten an adult?

9 A. No.

10 Q. Now, the day that this happened, had he stayed
11 with you that night?

12 A. No .

13 Q. Tell us about that. Where was he? Do you know?

14 A. He was at Heather's house.

15 Q. How do you know that?

16 A. Because that Sunday, which was May ninth and that
17 was my birthday .

18 Q. Your Birthday?

19 A. Yes.

20 Q. Okay. Did ya'll have a party?

21 A. No. We just celebrated my birthday. It was just
22 me, my kids, her, her kids, my husband, my mother-in-
23 law, and Mr. Daniel.

24 Q. Did he go home with her?

25 A. Yes.

- 1 Q. Did he stay there all night?
- 2 A. Yes.
- 3 Q. All right. Now, what happened that day? Did you
- 4 take the kids to school the next day?
- 5 A. Yes. She actually drops her daughter off - will
- 6 drop her daughter off with me every morning and I will
- 7 take the kids to school. She will drop them off
- 8 before she goes to work.
- 9 Q. Where was she working?
- 10 A. At Hampton Inn.
- 11 Q. And were you working also?
- 12 A. Yes.
- 13 Q. Where were you working?
- 14 A. At Winn Dixie in Summerville.
- 15 Q. Okay. Now, on that particular day, is that what
- 16 happened?
- 17 A. Yes.
- 18 Q. And when did you next hear from your brother?
- 19 A. I had heard from my brother that morning. Well,
- 20 I went and picked the kids up and when I got back home
- 21 my mother-in-law had told me that my brother had
- 22 called me.
- 23 Q. Did you call him back?
- 24 A. Not right away but I did call him back.
- 25 Q. Okay. What happened when you did call him back?

1 A. When I called him back, he asked me what I was
2 doing. I told nothing. I was laying down in the bed
3 at that time after I came from picking up the kids and
4 I said why and then he said, no I was just asking you
5 what you were doing and that's when he had told me.

6 He said and I can't remember the exact words but that
7 he wouldn't wake up or he couldn't get the baby up and
8 then I was like, well what do you mean. That he won't
9 get up. So I said okay and then he asked me if I
10 would come over there and I said yes.

11 Q. He did ask for your help. Did you go over to the
12 apartment?

13 A. Yes, I did

14 Q. Go ahead.

15 A. After I had talked to my mother-in-law and I had
16 told her that, well Melvin is telling me that the baby
17 couldn't get up and that's when I had got some clothes
18 on. I made sure the kids were squared away and I went
19 over to her apartment.

20 Q. What did you find when you got there?

21 A. When I got there, I walked in the door and on my
22 left side I saw the baby, Deon, laying on the couch
23 with a onesie on.

24 Q And

And he was just laying there.

25 A.

1 Q. Okay. What did you do next?

2 A. I just looked and I asked what happened? And he
3 said well the baby fell and bumped his head and he was
4 crying, he gave him a bottle and he went to sleep and
5 now he won't wake up.

6 Q. What did ya'll do next?

7 A. So after that, I said well, did you talk to
8 Heather and then at that point he called Heather.

9 Q. Did Heather come around then?

10 A. Yes. Heather came home right away.

11 Q. And what happened after that?

12 A. And then Heather looked at him and then she tried
13 to see if she could get him to respond and he couldn't
14 and she called 911.

15 Q. And is that . Well, you weren't in here so you
16 don't know if that was the tape we heard. What did
17 ya'll do after 911 came?

18 A. After 911 came, me and Heather Heather was
19 sitting in the ambulance and then I had asked her, I
20 said, well, you know, do you want me to not go to work
21 and she said yes and I said I'll be there with you and
22 me and her had went to the hospital. Before we went
23 to the hospital we stopped back by my house and let
24 my mother-in-law know what's going on and then we
25 proceeded to the hospital.

f 1 Q. Now, since that time since your brother's arrest
2 and his release on bond, has he taken care of your
3 children?

4 A. Yes.

5 Q. Do you have any fear of him taking care of your
6 children?

7 A. No.

8 Q. Do you know whether or not he had seen Heather
9 since then?

10 A. Yes.

11 Q. On what occasions?

12 A. He has Actually I didn't know that they were
13 seeing each other until I had got a call from one of
14 the baby's father's aunt and I was at work and ...

15 MR. KNIGHT: I will object to that.

16 THE COURT: Sustained. Don't testify
17 to what someone else said. Only what you know of your
18 own knowledge and your own personal senses. Rephrase
19 your question, Counsel. Objection is sustained.

20 Q. Did you them together?

21 A. Yes.

22 Q. On how many occasions?

23 A. On a few occasions at my house.

24 Q. At your house?

25 A. Yes.

- 1 Q. Okay. And Heather was over there?
- 2 A. Yes.
- 3 Q. Did Heather have her children - other child with
- 4 her?
- 5 A. Yes.
- 6 Q. Was the other child around Melvin?
- 7 A. Yes.
- 8 Q. At any time did she object to the child being
- 9 around Melvin?
- 10 A. No.
- 11 Q. How did Melvin act towards the child?
- 12 A. Just fine.
- 13 Q. How did Melvin act towards your children?
- 14 A. Just fine.
- 15 Q. When was the last time Melvin has seen your
- 16 children?
- 17 A. This morning.
- 18 Q. Did you leave them or ya'll came here this
- 19 morning obviously.
- 20 A. Right.
- 21 Q. But prior to that, did you leave the children
- 22 with Melvin?
- 23 A. Yes.
- 24 Q. I have no other questions, Your Honor. Please
- 25 answer any questions the Solicitor may have.

1 THE COURT: Cross examination?

2 CROSS EXAMINATION

3 BY MR. KNIGHT:

4 Q. Ms. Luat, on May the tenth of 2004, you'd taken
5 your children or child to school together with Minor.

6 Is that correct?

7 A. Right.

8 Q. And when you returned and you got a call from
9 Melvin. Is that correct?

10 A. I didn't get a call from Melvin until after I
11 picked up the kids.

12 Q. Okay. When you returned home.

13 A. From picking them up. Right.

14 Q. And you got a call from Melvin?

15 A. Yes.

16 Q. And what was that conversation about?

17 A. All it was about, he asked me what I was doing.

18 Q. What you were doing.

19 A. And then went from what I was doing and I asked
20 him why, what are you doing and he was telling me
21 about the baby. He couldn't get the baby to wake up.

22 Q. Okay. And did he ask you to come over to El
23 Druid Hills?

24 A. Yes, he did.

25 Q. When you got there, who was there?

- 1 A. Just Melvin and the baby.
- 2 Q. Just Melvin and the baby. Okay. And the baby
- 3 was on the couch?
- 4 A. Yes.
- 5 Q. Okay. What did the baby have on?
- 6 A. Just the onesie.
- 7 Q. All right. You'll have to explain. I'm a little
- 8 older.
- 9 A. Oh the onesie. A onesie is a tee shirt that has
- 10 snaps under the bottom and they snap.
- 11 Q. Snap from the legs. I got you. Okay. Was it
- 12 dry or was it wet? The onesie?
- 13 A. Dry.
- 14 Q. It was dry. Okay. And the baby was crying?
- 15 A. When I got there?
- 16 Q. Yes.
- 17 A. No. The baby was just laying there.
- 18 Q. Okay. And the baby went to sleep? Or he was
- 19 asleep when you got there?
- 20 A. I don't know if he was asleep but he was just
- 21 laying there.
- 22 Q. Did you attempt to revive him yourself?
- 23 A. No, I didn't touch him.
- 24 Q. Okay. Do you recall approximately what time it
- 25 was when you got there?

- 1 A. No, I don't.
- 2 Q. You don't recall. Now, after this incident ,
- 3 No, at the time of the incident your brother Melvin
- 4 was living with you. Is that correct?
- 5 A. Yeah.
- 6 Q. After the incident, did he continue to live with
- 7 you?
- 8 A. Yes.
- 9 Q. He did?
- 10 A. Yes.
- 11 Q. There was no moving Melvin out of the house at
- 12 all?
- 13 A. No.
- 14 Q. Okay. Now, you say you didn't touch the baby?
- 15 A. Not that I recall. I don't recall touching him.
- 16 Q. You don't?
- 17 A.
- 18 Q. Do you recall giving a statement to Detective Jim
- 19 Clites who was seated here?
- 20 A. Yes.
- 21 Q. I'm going to ask you if you can refresh your
- 22 memory and identify that please, ma'am.
- 23 A. Okay. It says I touched his leg.
- 24 Q. Okay. So that's not the same testimony that you
- 25 gave a while ago.

1 A. That was - well I don't recall touching him but
2 I read it on there but I mean it's three years ago.

3 Q. Okay. Is that your signature there at the
4 bottom?

5 A. Yes, it is.

6 Q. And it's dated May tenth, 2004?

7 A.

8 Q. When Melvin called you after you picked up the
9 children from school and you said the child was
10 sleeping and unresponsive. Is that correct?

11 A. He just said the baby won't wake up.

12 Q. Did you tell him to call 911?

13 A. No.

14 Q. Okay. Thank you ma'am. Nothing further, Your
15 Honor. Thank you.

16 THE COURT: Redirect?

17 MR. BEACH: Nothing on redirect, Your
18 Honor.

19 THE COURT: As to this witness, Mr.
20 Beach?

21 MR. BEACH: Your Honor, she was
22 sequestered. We're going to ask that she be allowed
23 to leave if she wishes to.

24 THE COURT: Any objection to this
25 witness being excused, Mr. Knight?

1 MR. KNIGHT: None by the State, Your
2 Honor.

3 THE COURT: You may step down, ma'am,
4 and you are excused from the courtroom. Mr. Beach
5 will need to speak with you for one moment before you
6 leave. Call your next witness.

7 MR. BEACH: Katie Hunt.

8 Katie Hunt, being duly sworn,
9 testified as follows:

10 THE COURT: State your name and spell
11 your last name for the Court.

12 A. My name is Katie Hunt. H U N T.

13 THE COURT: Your witness, Counsel.

14 DIRECT EXAMINATION

15 BY MR. BEACH:

16 Q. Thank you, Your Honor. Katie, do you know
17 Melvin Daniels?

18 A. Yes, sir.

19 Q. Do you have a relationship with him?

20 A. Yes, sir.

21 Q. Do ya'll have a child together?

22 A. Yes, sir.

23 Q. Who takes care of that child?

24 A. We both do.

25 Q. And do you leave the child with him?

- 1 A. I sure do.
- 2 Q. How old is the child?
- 3 A. She's two months.
- 4 Q. Do you have any fear of leaving the child with
- 5 Melvin?
- 6 A. No, sir.
- 7 Q. How does he act towards the child?
- 8 A. He's great with her.
- 9 Q. And has he ever threatened the child?
- 10 A. No, sir.
- 11 Q. Has he ever hit the child?
- 12 A. No.
- 13 Q. Has he ever done anything to the child that you
- 14 thought was inappropriate?
- 15 A. No.
- 16 Q. Have you ever seen him with other children?
- 17 A. Yes, sir.
- 18 Q. Whose other children have you seen him with?
- 19 A. My four year old and his nieces and other kids in
- 20 the neighborhood.
- 21 Q. How does he act towards those children?
- 22 A. He's great. He plays with them.
- 23 Q. Has he ever harmed any of them?
- 24 A. No.
- 25 Q. Has he ever threatened any of them?

1 A. No.

2 Q. Has he ever threatened you?

3 A. No.

4 Q. Now, do you know anything about this incident in
5 May of 2004?

6 A. I've just heard what everybody else talked about.

7 Q. Okay. So you don't have any first hand
8 information?

9 A. No.

10 Q. All right. Has he ever been in trouble with the
11 law?

12 MR. KNIGHT: Your Honor? You're going
13 too far.

14 THE COURT: Counsel approach.

15 (Conversation off the record)

16 THE COURT: The objection is sustained,
17 ladies and gentlemen of the jury, please disregard the
18 last question. That is not a matter for you to
19 consider at this time not in evidence. You may
20 proceed.

21 MR. BEACH: I have no other questions
22 for this witness, Your Honor.

23 THE COURT: Very well.

24 MR. BEACH: Answer any questions the
25 Solicitor may have.

1 THE COURT: Cross examination?

2 CROSS EXAMINATION

3 BY MR. KNIGHT:

4 Q. Ms. Hunt, do you live with Melvin Daniel?

5 A. He stays occasionally when I go to work and come
6 home late so he stays the night with me every once in
7 a while.

8 Q. All right. How long has this relationship been
9 going on?

10 A. About three years.

11 Q. About three years. And the child you eluded to -
12 the ten month old child, is that Melvin's child?

13 A. Yes, sir.

14 Q. And he's the person that you go out with, that
15 you socialize with, you spend the night with him.

16 A. Um-hmm.

17 Q. And nobody else?

18 A. No, sir.

19 Q. To the best of your knowledge, he doesn't go out
20 with anybody else either, does he?

21 A. No.

22 Q. I assume you love him. Is that correct?

23 A. Yes, sir.

24 Q. Thank you. No further questions.

25 THE COURT: Redirect?

1 Q. Okay. Now, where were you born?
2 A. Bellflower, California.
3 Q. And how long did you live in California?
4 A. Twenty years.
5 Q. And where did you go after California?
6 A. I came out to Walterboro, South Carolina.
7 Q. Did you go to Arizona first?
8 A. I finished high school in Arizona. I moved there
9 when I was sixteen to take care of my grandmother and
10 once I graduated my grandmother was fine I moved back
11 to California and then my father got sick and so I
12 moved out this way to stay with my father and I
13 came out here to see my nieces and I stayed with my
14 sister some but ...
15 Q. Who is your sister?
16 A. Delia Luat.
17 Q. She's the lady who just testified a little while
18 ago?
19 A. Yes.
20 Q. Okay. Now, while you were living here did you
21 come to know Heather Aiken?
22 A. Not the first time I was here but when I came
23 back the second time.
24 Q. And what kind of relationship did ya'll have?
25 A. It was just a friendly relationship. It wasn't

1 MR. BEACH: Nothing on redirect, Your
2 Honor.

3 THE COURT: Very well. As to this
4 witness, Mr. Beach.

5 MR. BEACH: We have no objections to
6 her being excused.

7 THE COURT: Mr. Knight?

8 MR. KNIGHT: No objection.

9 THE COURT: You may step down and you
10 are excused from the courtroom. Please advise the
11 witness (inaudible-cough). Call your next witness.

12 MR. BEACH: Your Honor, at this time
13 we would call the Defendant.

14 Melvin Daniel, being duly sworn,
15 testified as follows:

16 THE COURT: State your full name and
17 spell your last name for the Court.

18 A. Melvin Daniel the second. D A N I E L.

19 THE COURT: Your witness.

20 DIRECT EXAMINATION

21 BY MR. BEACH:

22 Q. Melvin, how old are you?

23 A. I'm twenty-four.

24 Q. And you are the Defendant in this action?

25 A. Yes.

r'

1 nothing serious.

2 Q. Did you stay with her any?

3 A. I - every now and then. It wasn't something on a
4 daily basis.

5 Q. Did she have children?

6 A. Yes.

7 Q. Did you ever keep those children?

8 A. Yes.

9 Q. On how many occasions?

10 A. Twice.

11 Q. Twice?

12 A. Yes.

13 Q. Now, how many children did she have?

14 A. Two.

15 Q. And you kept them on two occasions. One was
16 obviously on May tenth.

17 A. Correct.

18 Q. When was the other time?

19 A. Probably a week or two before that.

20 Q. Now, were you living with her?

21 A. No.

22 Q. Were you staying with her?

23 A. How would you put that? Staying as in

24 Q. Did you spend the night with her the night before
25 this incident happened?

1 A. Yes.

2 Q. Had you spent the night with her previously?

3 A. Yes.

4 Q. Did ya'll have a relationship?

5 A. Yes.

6 Q. Now, tell us, have you ever been convicted of a
7 crime?

8 A. No, I haven't.

9 Q. Have you ever been accused of a crime?

.
No, I haven't.

10 A. Have you ever been investigated by the Department
11 Q.

.
12 of Social Services or any similar organizations?

13 MR. KNIGHT: Your Honor.

14 THE COURT: Just a moment.

15 MR. KNIGHT: I'll object to all that.

16 THE COURT: Counsel approach.

17 (Conversation off the record)

18 THE COURT: Objection is sustained.

19 Q. Mr. Daniel, I call your attention to May the
20 tenth of 2004. Do you recall that day?

21 A. Yes.

22 Q. Tell us what happened.

.
23 A. That morning I recall her waking up about five

24 o'clock - five -thirty.

25 Q. By her, do you mean

1 A. Heather.

2 Q. And what happened after that?

3 A. As she was getting out of the bed, the baby

4 rolled over and started crying for her so as he

5 started crying she took him with her and she closed

6 the door and I remained - went back to sleep. But in

7 the background as I was sleeping ... Some people sleep

8 hard and some people don't but you can hear a baby

9 crying, but not being my child I didn't get up to see

10 what was wrong with it so I stayed there. Somewhere

11 around six-forty-five or six-fifty she walks back in

12 and I turn over and look at the clock and I had told

13 her you're going to be late and she said yes and we

14 both agreed on me to watch the baby because she was

15 running late and she already had to drop off her

16 daughter at my sister's house.

17 Q. How old is the daughter or how old was the

18 daughter at that time?

19 A. I would say between four and five years old.

20 Q. And where did the daughter go?

21 A. To my sister's house. Delia.

22 Q. Okay. And what happened after that?

23 A. Then after that, she brought the baby in to me

24 and when she laid him down he started crying so she

25 brought his bottle in and I gave him his bottle

1 and got him back to sleep.

2 Q. What happened after that?

3 A. I can't give nobody the exact time but I would
4 say anytime after eight-fifteen I got up and I made
5 breakfast and when I come back he was sitting up in
6 the bed so I got him up and brought him in the little
7 room where I was and fixed him breakfast and he ate
8 his breakfast in his high chair. I was on the
9 computer. I started buying and selling cars. It's
10 a thing that I do so I was on the computer most of the
11 time that I was there that morning.

12 Q. Was that in the same room that the baby was in?

13 A. Yes.

14 Q. And what happened next?

15 A. And right after he finished eating I cleaned him
16 up and I sat him down and I let him play and I went
17 back to the computer. Um, a couple of times I would
18 go back and forth and check on him and to make sure he
19 was doing fine. He was playing in his sister's room
20 and he was running back and forth and from the hallway
21 into his sister's room playing with the toys. I did
22 that a couple of times.

23 Q. Was he an active child?

24 A. Yes. Very active.

25 Q. What happened next?

1 A. After that when I came back to check on him the
2 last time, he was still playing and so I decided that
3 I was going to play with him so I went back into the
4 living room and turned off the computer and then I
5 went back to playing with him. We went playing around
6 and we was running towards - in the hallway towards
7 the room and there is a cable cord that runs from
8 Heather's room all the way in to Sierra's room.
9 Q. What sort of cable is it?
10 A. It's a cable. Cable cable.
11 Q. Oh, for cable TV.
12 A. Yes.
13 Q. All right. What happened?
14 A. And the baby tripped over it and he was falling
15 and as any infant will do they try to catch
16 themselves. And as he was going forward he ... May I
17 demonstrate?
18 Q. Just tell us what happened.
19 A. Well, he went forward and he smacked his forehead
20 like that.
21 Q. What sort of floor was it?
22 A. Well, the carpet is probably about that thin and
23 if you actually put your hand on the floor you can
24 feel the concrete.
25 Q. Was it a concrete floor?

1 A. It's carpet but you might as well say it's
2 concrete because it's thin carpet.

3 Q. Did he cry?

4 A. Yes.

5 Q. Did he bruise?

6 A. The bruise - his forehead started bruised up red.
7 So I picked him up and went into the kitchen with him
8 and I got a bag of ice and put it on his forehead.
9 He cried for a little bit and then he stopped. So I
10 cuddled him the best way I knew to or anybody would
11 from my experience with children which isn't much.
12 And then he went back to playing. An hour or so go
13 by and I knew my sister picked up the girls from
14 school about ten forty-five so I put him on the couch
15 and I gave him a cup -bottle of milk. It's a little
16 cup like a sippy cup and he was watching cartoons..
17 From where the bathroom is to the living room where
18 the couch is you can see even if you was in the
19 shower. I didn't close the shower curtain to where
20 the door and meets the living room so that part was
21 open so I could see Deon so I took probably like a
22 two to three minute bath and within that time he had
23 fell asleep so when I first got out I didn't mess
24 with him. He was breathing fine. He wasn't acting
25 to where he wasn't abnormal. I looked at the clock

1 but I did know it was after ten forty-five so I gave
2 my sister a call. I didn't get no answer so I called
3 again and that's when it went to her voice mail so I
4 left her a message and she didn't call me back and I
5 was going to go get Deon dressed because all he had at
6 the time were Pampers and a onesie, which as my sister
7 described was a little tee shirt with the little
8 buttons, and when I went to wake him up to get him
9 dressed he was moving his little arms and legs and he
10 was breathing fine so I didn't think nothing of it so
11 I tried it again and he kept doing the same thing and
12 by that time I called again and I got an answer from
13 my sister and I asked her what are you doing and she
14 told me what she was doing and she asked me well why
15 am I asking her what she was doing and I said well me
16 and the baby was playing earlier and he fell and
17 bumped his head but it wasn't nothing serious to where
18 I thought that anything was wrong with him. And I
19 told her - I explained it to her what went wrong and
20 he got back up and he was playing after a while I
21 explained to her what was going on and she said I'm
22 on my way and she hung up the phone.

23 Q. And she came over?

24 A. Ycs.

25 Q. And what happened when she came over?

- 1 A. When she came over she tried calling his name
2 and she got the same reaction I did. He was moving
3 his arms and legs.
- 4 Q. Did she touch him?
- 5 A. I can't recall.
- 6 Q. What happened after that?
- 7 A. We called Heather.
- 8 Q. Heather was at work?
- 9 A. Yes.
- 10 Q. Where was she working?
- 11 A. Hampton Inn.
- 12 Q. And what happened then?
- 13 A. I called Heather and she said I'm on my way right
14 now and she hung up the phone. When she got there she
15 got the same reaction and she started crying. She was
16 crying and she called 911 so she was very upset and
17 that's when I took the phone and explained to the
18 Paramedics what was going on and to the dispatch what
19 was going on.
- 20 Q. How long did it take the EMTs to come?
- 21 A. I can't give you the time. I don't know. It was
22 quick though.
- 23 Q. What happened when they got there?
- 24 A. There was a large fellow that came in. He looked
25 and just grabbed the baby around and I followed him

1 out to the ambulance. Heather was sitting out front
2 and my sister was talking to her and the Paramedics
3 was in the back with the baby. And then after that an
4 officer pulled up and they were saying that they were
5 taking the baby across away to a field because they
6 were going to fly the baby out by helicopter to the
7 MUSC.

8 Q. Did you go down to MUSC?

9 A. Yes, I did. My - Heather got in the car with my
10 sister and I drove Heather's car down to the u Sc

11 Q. MUSC?

12 A. Yes. Right. And I asked her all the questions
13 that the doctor had asked me while I was there. I
14 wrote a voluntary statement to the detective and later
15 on that evening Heather had an anxiety attack. She is
16 a diabetic. I stayed there with her the whole time.
17 I drove her home and I was going to come back Tuesday.
18 She asked me, at first her and her sister said yes for
19 me to come back and then by the time we got to the
20 house she told me well no, Victim's on his way.
21 (inaudible) so I stayed. I didn't go back up to the
22 hospital. And that Wednesday, which is May twelfth,
23 they came and arrested me.

24 Q. They arrested you?

25 A. Yes.

1 Q. How long was it before you made bail?

2 A. Well, I couldn't make bail because

3 MR. KNIGHT: Your Honor, I object to
4 this. (inaudible-cough)

5 THE COURT: Do you wish to be heard,
6 Mr. Beach?

7 MR. BEACH: I'll withdraw it, Your
8 Honor.

9 THE COURT: Very well. Proceed.

10 Q. After you were out, did you continue seeing
11 heather?

12 A. Not exactly when I got out. It was about two
13 weeks after I got out.

14 Q. Did you have contact with Heather's children?
15 Her other child?

16 A. Yes.

17 Q. Did you do anything to harm this child?

18 A. No.

19 Q. Did you strike the child?

20 A. No .

21 Q. Did you hit the child with anything or ...

22 A. No .

23 Q. Do you like children?

24 A. Yes.

25 Q. You like being around children?

- 1 A. Yes.
- 2 Q. And Go ahead.
- 3 A. I have a two month old and I love her to death.
- 4 Q. Two month old?
- 5 A. Yes.
- 6 Q. And that's with Katie?
- 7 A. Yes.
- 8 Q. Do you have any other children?
- 9 A. No, sir.
- 10 Q. Do you keep that two month old child?
- 11 A. Yes and I also keep her four year old daughter.
- 12 You might as well say she's my step-daughter because
- 13 I've been around since she was a toddler.
- 14 Q. Do you and Katie live together?
- 15 A. No, sir.
- 16 Q. Where do you live?
- 17 A. With my sister.
- 18 Q. Where does Katie live?
- 19 A. She lives in Ridgeville.
- 20 Q. Now Well be just a moment, Your Honor.
- 21 When the baby had bumped his head you said something
- 22 about putting some ice on the baby. What happened?
- 23 How was that done?
- 24 A. I put it in a bag - a zip lock bag. Like a
- 25 little pouch bag with ice cubes in it. And I put

1 ice right here on his forehead and I was holding the
2 baby to comfort him at the same time.

3 Q. Did you put the baby in the tub or anything?

4 A. Yes.

5 Q. Or did you just put the ice on the head? What
6 did you do?

7 A. Well, I didn't put him in a tub. What I done was
8 I turned the water on and I am sitting on the edge of
9 the tub and I had the baby like this and I was taking
10 water. I was taking water and putting it over his
11 head and I was getting the same reaction that I got
12 when he was laying on the bed - I mean, laying on the
13 couch. He was moving his arms and legs but the
14 reaction I wanted was him to open his eyes. I never
15 got that reaction.

16 Q All right, sir. I ask you if you can identify
17 that photograph?

18 A. That's the end of the hallway. This is Minor's
19 room and this is Heather's room but this corridor

20 Q. Just tell us if you can identify it and what it
21 is.

22 A. Yes, sir. It's the cord in the hallway of the
23 home. The apartment.

24 MR. BEACH: Your Honor, we would offer
25 this as .

1 THE COURT: Mr. Knight?

2 MR. KNIGHT: Without objection.

3 THE COURT: Defendant's two. Ladies
4 and gentlemen of the jury, Defendant's Exhibit number
5 two will be admitted without objection. Defendant's
6 two in evidence. You may now publish to the jury.

7 Q. Thank you, Your Honor. Would you stand out here
8 for just a moment and .

9 THE COURT: Do you need a portable
10 mike?

11 MR. BEACH: I don't think he needs a
12 portable mike, Your Honor.

13 THE COURT: Speak up for me, please
14 sir, so the court reporter can hear you.

15 Q. And show the jury what that picture depicts?

16 A. Okay. This picture right here is Minor's room
17 and this is the cable cord that runs from her TV all
18 the way into her mother's room if everything could
19 see. And this is the end of the hallway.

20 Q. Where did the baby trip?

21 A. This cord was actually further out and the baby
22 fell within right here in the doorway from the outside
23 to inside the doorway and actually it was more
24 forward right there also.

25 Q. Okay. You can have a seat again. The day

1 before . Was there any problem with the baby?

2 A. Yes, that morning he fell off the bed.

3 Q How did he fall?

 Head first.

4 A. And how tall was the bed?

5 Q. About that high.

6 A.

7 Q. Indicating about what thirty inches?

8 A. I'd say not much taller than him because the baby
9 couldn't even stand up and see from standing up. You
10 know, you could just see the top of his head when he
11 stood up from the bed.

12 Q. How did you do this?

13 A. He was crawling out of the bed as far as I know.
14 I wasn't in the room.

15 MR. KNIGHT: Your Honor, I'm going to
16 object to all that testimony. It has to be stricken.
17 He said he didn't see it.

18 MR. BEACH: He didn't say he didn't see
19 it, Your Honor.

20 THE COURT: Just a moment, Counselor.
21 I'll allow the testimony if you give me a foundation
22 for it, Counselor. Ask the question and I'll rule on
23 the objection.

24 Q. Thank you, Your Honor. How do you know he fell
25 off the bed?

1 A. I heard him. I wasn't too far from the room. I
2 was coming out of the bathroom.

3 Q. Did you hear something?

4 A. Yes, it was a loud thump and the baby started
5 crying.

6 Q. All right. Did you go in there?

7 A. No, I didn't. Heather ran into there.

8 Q. Who went in?

9 A. Heather.

10 Q. Okay.

11 A. And she came out of the bedroom with the baby.

12 MR. BEACH: That would be our proffer,

13 Your Honor.

14 THE COURT: Yes, sir.

15 MR. KNIGHT: I still object, Your

16 Honor.

17 THE COURT: Counsel approach.

18 (Conversation off the record)

19 THE COURT: Ladies and gentlemen of the
20 jury, please disregard any testimony concerning what
21 part of the body of the child struck the floor. The
22 objection as to that is sustained. Proceed.

23 Q. Thank you, Your Honor. The day prior to that was
24 there any problem with the baby?

25 A. Yes. The baby was playing outside with the kids

1 and fell ...

2 Q. Well, let me ask you this. Were you out there

3 with him?

4 A. Yes, I was.

5 Q. Did you see this happen?

6 A. Yes.

7 Q. What happened?

8 A. He was chasing behind kids and he tripped over

9 his own shoes and fell and hit his head.

10 Q. He hit his head?

11 A. Yes, sir.

12 Q. Any other times that you've seen him fall and

13 hurt himself?

14 A. Yes, sir. I was staying with them a month before

15 this happened. Me, Heather, her sister Ashley, and

16 myself were at the house and the baby was sitting on

17 the couch and fell off of the couch and hit his head.

18 Q. Is this something that you saw?

19 A. Yes, I did. Off of the coffee table.

20 Q. Any other instances?

21 A. No, sir.

22 Q. I have no other questions, Your Honor. Answer

23 any questions the Solicitor may have.

24 MR. KNIGHT: May I come forward?

25 THE COURT: Cross examination?

1 CROSS EXAMINATION

2 BY MR. KNIGHT:

3 Q. So, on the morning of May the tenth, 2004,
4 between five-forty-five and six-forty-five or whenever
5 you called your sister, you were the babysitter and
6 sole caretaker for Victim?

7 A. Not between five-forty-five and six-forty-five.

8 Q. Well, six forty-five from the time she went to
9 work until you called your sister who came over to
10 El Druid Hills, you were the sole caretaker of victim
11 [REDACTED]?

12 A. Yes, sir.

13 Q. Okay. Now, when you said you called your sister
14 twice when the child didn't respond?

15 A. Yes, sir.

16 Q. I don't see anywhere here in your testimony

17 A. I called my sister before that though.

18 Q. Okay.

19 A. One time before that and then the other time was
20 afterward.

21 Q. Well, I can't understand where I don't see is
22 when the child wouldn't respond, why didn't you call
23 Heather? You called your sister twice but not
24 Heather, the natural mother of victim. Explain that
25 please This is your testimony

1 A. Okay. Well, this is really the first time any-
2 thing like this happened with me and I know that my
3 sister's been around the baby and she wasn't at work
4 but it never came to me to go ahead and call and I
5 didn't really want to upset her if it wasn't something
6 serious. I didn't know if it was something serious or
7 not at the time.

8 Q. Okay. But you couldn't get the child to respond,
9 could you?

10 A. He was moving his arms and legs but I couldn't
11 get him to wake up, sir.

12 Q. Couldn't get him to wake up.

13 A. That's correct.

14 Q. So you figured that's not important enough to
15 call his mother. The natural mother.

16 A. No, I did not think .

17 Q. But you didn't call.

18 A. No, I did not.

19 Q. Now, you said that when ya'll first got up and
20 Heather was doing certain things around the house and
21 Victimand the baby was crying .

22 A. I didn't get up with her.

23 Q. I understand that.

24 A. She got up by herself.

25 Q. But she was doing things with the child?

- 1 A. Correct.
- 2 Q. And the child was crying?
- 3 A. Correct.
- 4 Q. Okay. And then Heather put the child in the bed
- 5 with you?
- 6 A. Correct.
- 7 Q. And the baby was crying?
- 8 A. Correct.
- 9 Q. Then the baby tripped over the cord - the cable
- 10 cord, and he cried?
- 11 A. Not right after that.
- 12 Q. How long did it take before
- 13 A. I can't give you an exact time.
- 14 Q. Okay. But he did cry before to you?
- 15 A. Correct.
- 16 Q. Now, and then you went and got a sandwich bag, I
- 17 assume, and put ice in it and put it on the baby's
- 18 head?
- 19 A. Correct.
- 20 Q. Okay. And this was in the couch - on the couch
- 21 in the bathroom, bedroom?
- 22 A. When I got the ice and the sandwich bag I was in
- 23 the kitchen and then I made my way over to the couch
- 24 but I still had him in my arms.
- 25 Q. Okay. Now, the sandwich bag was closed so the

1 ice wouldn't fall out.

2 A. Yes.

3 Q. Okay. A zip lock thing.

4 A. Yes.

5 Q. Okay. Now, in the statement you gave to

6 Detective Clites you also indicated, I put him in a

7 cold bath. Do you recall that?

8 A. Yes, I did write that.

9 Q. Okay. Now, when you put him in that cold bath,

10 how was he dressed?

11 A. The baby was not actually put into the bathtub.

12 I had worded it wrong. But as I stated earlier, I

13 was holding the baby and I was having to cradle him

14 in my arms and holding him on the edge of the tub and

15 the water is running and I was trying to wake him up

16 with the water but I did write that I put the baby in

17 the cold tub.

18 Q. Cold bath.

19 A. Correct.

20 Q. But now how was dressed?

21 A. He was in his onesie.

22 Q. He was in his onesie.

23 A. Yes.

24 Q. Okay. Was that the same onesie that he had on

25 when your sister came over to the house?

1 A. Yes.

2 Q. Was it the same onesie that he had on when

3 Jason Palmer of the EMS came?

4 A. Yes.

5 Q. Okay. When did the running occur approximately?

6 A. I would say sometime after nine o'clock.

7 Q. Okay. After nine o'clock. And as I recall in

8 your testimony, you called your sister after ten

9 forty-five.

10 A. Correct.

11 Q. Okay. And the running occurred about nine

12 o'clock and you put ice on the forehead and put the

13 child in the cold tub and you were trying to assist

14 the child. Is that correct?

15 A. No, it wasn't exactly like that.

16 Q. Okay.

17 A. Because you - all of that didn't happen at one

18 time. There's a time spurt from when the baby went to

19 sleep. Now, it happened sometime after nine o'clock

20 but the baby didn't go to sleep until sometime

21 probably after ten or ten-thirty.

22 Q. So the baby didn't go to sleep until after ten

23 thirty.

24 A. Correct.

25 Q. Okay.

1 A. But within that time the baby was up playing
2 around again.

3 Q. The baby went to sleep at ten-thirty and then you
4 called your sister

5 A. I don't know exactly what time but I would say
6 sometime around (inaudible) but I know that between
7 ten forty-five and ten-fifty I did give my sister a
8 call because I know the girls do get out at ten forty-
9 five.

10 Q. Okay. Defendant 's Exhibit number two that's in
11 evidence. Now you say this cord was this way at the
12 time of this incident not here.

13 A. It was further up and between the doors. This
14 part of the cable cord was further up this way.

15 Q. Up here.

16 A. And then the wrap around this side. Correct.

17 Q. Okay.

18 A. Not this far. But within the doorway.

19 Q. Okay. Step down and show the jury what you're
20 talking about. Where the cable cord was at the time
21 when Victim tripped over it.

22 A. As I said earlier, the cable cord - this is the
23 cable cord from her mother's room to Minor's room.
24 This cord was actually further up here not back here
25 when he tripped.

- 1 Q. Okay. So it was out from behind the door then.
2 In front of the door.
3 A. In the doorway.
4 Q. Okay. Thank you. Have a seat please. Now, this
5 bed you talked about that Victimfell off of. How high
6 is that bed?
7 A. Not as high as you're saying but .
8 Q. No no no. I wasn't saying.
9 A. About right here.
10 Q. How many feet is that?
11 A. I'd say about two and a half maybe almost three.
12 Q. The bed height was two and a half to three feet.
13 A. I'm not exactly sure. I didn't measure the bed.
14 Q. Okay.
15 A. That's just a guess.
16 Q. So it could be less or it could be more. Is that
17 what you're saying?
18 A. It could be more. It wouldn't be less though.
19 Q. Okay. But it is a guess.
20 A. Yes, it is.
21 Q. How tall was Deon?
22 A. I don't know.
23 Q. A foot tall maybe. Two feet. I mean, you
24 guessed on the height of the bed.
25 A. About a foot or a foot and a half maybe.

- 1 Q. A foot and a foot and a half tall.
- 2 A. About that tall.
- 3 Q. Okay. Is that a foot and a half to your opinion?
- 4 A. Something. About Might be taller than that.
- 5 I'm not too sure.
- 6 Q. Okay.
- 7 A. I'm not I just don't know.
- 8 Q. How much does Victimweigh? Do you have an opinion
- 9 on his weight?
- 10 A.
- 11 Q. Was he a skinny child? Was he a heavy-set child?
- 12 Medium child?
- 13 A. About medium.
- 14 Q. Are you in a position to give an opinion as to
- 15 his weight?
- 16 A. No, sir.
- 17 Q. During all of this you took a shower?
- 18 A. Correct.
- 19 Q. And that shower lasted how long?
- 20 A. Maybe two to three minutes at that. I just
- 21 washed off.
- 22 Q. You use a wash cloth and soap and had to get out
- 23 with a towel.
- 24 A. Pardon?
- 25 Q. You used soap and a wash cloth to wash and then

1 you got out and used a towel to dry yourself off.

2 A. Yes.

3 Q. Okay. I'll be just one more moment. Thank you,

4 Mr. Daniel. I have no further questions.

5 THE COURT: Redirect?

6 MR. BEACH: No redirect, Your Honor.

7 THE COURT: You may step down from the
8 witness stand.

9 MR. BEACH: The defense rests.

10 (The defense rested)

11 THE COURT: Is there any reply
12 testimony?

13 MR. KNIGHT: Yes, sir. I think so.

14 Yes.

15 THE COURT: I'll give you a moment
16 then. Call your witness.

17 MR. KNIGHT: Heather Aiken.

18 THE COURT: Ms. Aiken, you've already
19 been sworn. If you'll just come to the witness stand.
20 You are still under oath.

21 REPLY TESTIMONY- DIRECT EXAMINATION

22 BY MR. KNIGHT:

23 Q. Ms. Aiken, I had my back turned when you took the
24 stand. I remind you that you've been previously
25 sworn. I don't know if the Judge ..

1 A. Yes.

2 Q. Okay. You heard Mr. Daniel testify that victim
3 fell off the bed the day before and the day before
4 which would be the eighth and the ninth of 2004. Is
5 that correct?

6 A. Right.

7 Q. Did he fall off?

8 A. No.

9 Q. On neither day?

10 A. No.

11 Q. Okay. Do you recall whether or not he was
12 playing at a playground with other children and fell
13 when Mr. Daniel was there?

14 A. At my apartment?

15 Q. Right.

16 A. No. I never let my kids go outside.

17 Q. Okay. Thank you, ma'am. Nothing further, Your
18 Honor. Oh, one more question. What's the height of
19 the bed that Victimsleeps in?

20 A. Well, he usually slept in his playpen. If he
21 slept in the bed with me, he was actually tall
22 enough to see over the bed. So .

23 Q. Thank you, ma'am. That's all I have, Your
24 Honor.

25 THE COURT: Cross examination.

1 REPLY TESTIMONY- CROSS EXAMINATION

2 BY MR. BEACH:

3 Q. You don't recall any falls at all?

4 A. Yes.

5 Q. Tell us about those.

6 A. I recall him playing with his sister running down
7 the hall. He'll trip and fall running after her or
8 there was one time when he fell off the couch sitting
9 right next to me and after he fell off the couch he
10 got right back up and got back on the couch with me.

11 Q. He was a pretty rambunctious boy, wasn't he?

12 A. He was an active child.

13 Q. Okay. And he fell fairly often?

14 A. Just as any other child will do.

15 Q. And - but you don't remember these specific
16 falls?

17 A. No.

18 Q. And you remember every time he fell?

19 A. No, I don't remember every time he fell.

20 Q. No more questions, Your Honor. Thank you, ma'am.

21 THE COURT: Redirect?

22 MR. KNIGHT: That's all I have. May
23 she come down, Your Honor?

24 THE COURT: You may. Anything further
25 on reply from the -- do you have anything further from the

1 State?

2 MR. KNIGHT: No, sir.

3 THE COURT: Very well. Mr. Foreman and
4 ladies and gentlemen of the jury, I'm going to stop at
5 this point for today. We'll conclude the trial
6 tomorrow but I want to try and get you home a little
7 earlier and that's why I worked past today. You
8 probably noticed in the courtroom and I've watched you
9 throughout the trial. You noticed that there were
10 news people here. Photographers. I want to emphasize
11 to you that your picture will not be in any newspaper.
12 We allow the press in the courtroom. The courtroom is
13 an open place but there are certain rules that
14 photographers must follow in connection with that so
15 those of you that have seen a camera pointed in your
16 direction, I can assure you that there will be no
17 picture of any of you in any type of newspaper as a
18 result of coverage in the trial. Now, over the
19 overnight recess, ladies and gentlemen, I ask that you
20 not discuss this case just as I did last night. I
21 don't know with anyone. Not even a member of your own
22 family. I don't know whether there will be anything
23 in the newspaper, radio, or television. I ask you not
24 to watch such, read such, or listen to such as I
25 have instructed you

1 throughout. Please decide this case solely upon
2 evidence introduced in this courtroom when both sides
3 are present with the right of cross examination and
4 not on some extraneous matter that is not in evidence.
5 Only on evidence that is introduced during the trial
6 of this case. Now, I'm going to ask that you be back
7 in your jury room at nine forty-five. I'm going to
8 give you a little extra time in the morning. In the
9 morning, I need to meet briefly with the attorneys
10 in the morning so that we can get started. You have
11 not heard the closing arguments of the attorneys nor
12 have you received my charge on the law which we will
13 do in the morning. Please be in your jury room prior
14 to nine forty-five in the morning so we can get
15 started as close as possible to the time and I can
16 try to get you home in a timely fashion. I thank you
17 for your patience. I will see you in the morning.
18 You may retire at this time. Thank you very much.
19 Everyone else remain seated while the jury's leaving.

20 (Jury retired for the night)

21 THE COURT: Anything on the record
22 from the State before we adjourn for the evening.

23 MR. KNIGHT: No, sir.

24 THE COURT: From the Defendant?

25 MR. BEACH: Your Honor, whenever it is

1 convenient, we would like to renew our motion for a
2 directed verdict.

3 THE COURT: As of the close of all of the evi-
4 dence in the case?

5 MR. BEACH: Yes, sir.

6 THE COURT: And on the same grounds that you asserted
7 at the close of the State's case?

8 MR. BEACH: And as added to by the testimony of
9 defense witnesses.

10 THE COURT: Mr. Beach, I think that it is clearly
11 an issue for the jury, and I don't need to hear argu-
12 ment on that. The motion at the close of all the evi-
13 dence is respectfully denied.

14 MR. BEACH: Yes, sir.

15 THE COURT: I'll expect you both in my Chambers
16 at about nine twenty in the morning, and I will go
17 over my entire charge with you at that time, unless
18 you would like to do it tonight.

19 I'm willing to stay tonight if you need that assis-
20 tance in order to prepare your closing arguments. What
21 do you prefer?

22 MR. BEACH: Tomorrow is fine.

23 MR. KNIGHT: Tomorrow is fine with me, Your
24 Honor.

25 THE COURT: Nine twenty A.M. in my Chambers

1 in the morning. Thank you very much. Are there any
2 requests to charge for the State?

3 MR. KNIGHT: No, sir. I think
4 previously we discussed what your proposed charges
5 were going to be and I think the ones that you
6 indicated to me I'm satisfied with.

7 THE COURT: Any requests to charge from
8 the Defendant?

9 MR. BEACH: No, Your Honor. We feel
10 the same way as the State does with what you've gone
11 over with us so far.

12 THE COURT: I'll go over my entire
13 charge with you so you'll know exactly what I'm going
14 prior to your closing argument. I'll expect you in
15 chambers at nine-twenty in the morning and I'd like to
16 start by nine forty-five. This Court stands
17 adjourned until nine forty-five AM tomorrow morning.
18 Oh, just one moment. The matter of the Defendant's
19 custody. Just a moment. I understood that you were
20 bringing a bondsman. Is that correct?

21 (inaudible answer from unknown person)

22 THE COURT: You called a bondsman and
23 he said he was coming from Summerville and he has not
24 arrived. Solicitor?

25 MR. KNIGHT: Your Honor, under the

1 statute and my boss .

2 THE COURT: Mr. Beach knows I have no
3 control over the matter. The bond ends once the jury
4 is sworn as you know.

5 MR. BEACH: I agree, Your Honor. My
6 only part would be that this is a three year old case
7 and he's come to every roll call and every-he's done
8 on this end, the things he was supposed to do.

9 THE COURT: If I had somebody that
10 would come to Court and the Solicitor has already told
11 you in chambers that if he came to Court and assured
12 us that he would continue on bond beyond the trial
13 that he would agree to it but in his absence and since
14 you can't tell me his last name and you haven't been
15 able to procure his appearance in two days .

16 MR. BEACH: Wrong, Your Honor.

17 THE COURT: Wrong. I have no assurance
18 that he will do so. The Defendant's in custody, Mr.
19 Pagent, until nine forty-five in the morning.

20 MR. KNIGHT: Thank you, Your Honor.

21 (The Court retires for the evening)

22 (The Court resumes the next morning)

23 THE COURT: Is the State ready to
24 proceed?

25 MR. KNIGHT: State's ready, Your Honor.

1 THE COURT: Is the Defendant ready to
2 proceed?

3 MR. BEACH: The Defendant 's ready, Your
4 Honor.

5 THE COURT: Let the record reflect that
6 I had a pre-charge conference with the attorneys
7 involved in this matter this morning. I went over my
8 entire charge with each of the attorneys so they'd be
9 educated before they gave their closing arguments as
10 to exactly what the Court 's charge would be. I've
11 also been over the verdict form - been over the
12 verdict form with the attorneys. They are satisfied
13 with the content of the verdict form. The attorneys
14 in light of our rule agreed that Mr. Beach will open
15 and have first argument and Mr. Knight will have the
16 reply of final argument since he has the burden of
17 proof. The lawyers tell me that they believe they can
18 conclude their closing remarks within twenty minutes.
19 I told them I would not hold them to that exact
20 time if they needed some additional time because of
21 the seriousness of the case. To those of you that
22 are here as spectators I want to remind you that we
23 do not allow any outbursts. We do not allow any
24 talking in the courtroom or any emotion of any kind.
25 If you feel you can't control your emotions because

1 Im not going to allow anyone in or out during the
2 closing arguments of the attorneys or my charge on
3 the law. Counsel, it will be my intention to give the
4 jury their mid-morning break after you both complete
5 your arguments before I charge them. Okay? Now, I
6 have to because of trying to plan lunch - it's almost
7 ten o'clock now. I would rather - since we didn't get
8 it if you'd go ahead and get the lunch order coming
9 right now and have it here. I'd anticipate that it's
10 going to take approximately an hour an a half to
11 complete my charge and their arguments so if we have
12 lunch here at twelve o'clock we can continue to work
13 and they can have their lunch when they begin their
14 deliberations and we won't have to stop and wait on
15 that after they've started their deliberations.
16 Would you take care of that for me? Mr. Knight,
17 while she's doing that, I'd like for you to go down-
18 stairs and tell Mr. Alexander that we'll probably
19 be open for business again at twelve o'clock so that
20 he can have law enforcement bring over people at
21 twelve. We'll work until one and that way he can
22 have people here from twelve to one and once the
23 jury gets the case I can turn to non-jury matters
24 and he can already have the people here ready to go
25 at twelve o'clock. I should have let Jay know

1 that I will finish this because I promised him that
2 at two o'clock this afternoon if he'll have his
3 people brought over I'll finish all the probation
4 matters. If he can have his people here at two
5 o'clock, please have them brought on over so that we
6 can finish those probation matters that we tried to
7 finish before we started the trial of this case.

8 (Conversation off the record)

9 THE COURT: I'm going to ask the people
10 that are sitting - each one of ya'll that are sitting
11 on this end, I'm going to ask that ya'll would move to
12 the middle of the courtroom so that I don't have any
13 problem with jurors coming in and out of the court-
14 room where they try to talk to you and put you in an
15 uncomfortable position. We're going to have a
16 partition soon but we don't have it yet. You don't
17 have to move pews, you can slide down. I just want
18 you farther away from that side where the jury can
19 get in there.

20 (Conversation off the record)

21 THE COURT: All right. Mr. Knight, are
22 you ready to proceed?

23 MR. KNIGHT: Yes, sir.

24 THE COURT: Mr. Beach, are you ready to
25 proceed?

1 MR. BEACH: Yes, Your Honor.

2 THE COURT: Bring us the jury please.

3 (Jury enters the courtroom)

4 THE COURT: Good morning, Mr. Foreman.

5 Good morning, ladies and gentlemen of my jury. I hope

6 everyone had a pleasant evening last night. I ask

7 first of all before we begin. Has anyone tried to

8 talk to any one of you since I left you yesterday

9 about this case and about your service? If so,

10 raise your hand for me. Let the record reflect no

11 hands were raised. Has anyone been exposed to

12 anything on television, radio, or in the newspaper

13 about this case. If so, raise your hands for me.

14 Let the record reflect no hands were raised. Thank

15 you very much for complying with my instructions.

16 I appreciate your service on the jury and listening

17 to my instructions in order that we can insure that

18 both sides receive a fair trial. Now, ladies and

19 gentlemen, you have not heard the closing arguments

20 of the attorneys or received my charge on the law.

21 I want you to listen carefully to the attorneys.

22 First, we'll hear from the Defendant followed by

23 the closing argument from the State of South Carolina.

24 I ask that you give the attorneys your careful

25 consideration. Mr. Beach?

1 MR. BEACH: May it please the Court?

2 THE COURT: Yes, sir.

3 CLOSING ARGUMENT

4 BY MR. BEACH:

5 Ladies and gentlemen, I want to thank you for your
6 attention and for bearing with us in this case. This
7 is the final time I get to talk to you and the final
8 time Mr. Knight gets to talk to you. And this is what
9 is called final arguments. This is where we tell you
10 basically whatever we want to tell you about our
11 impression of the case. But I did want to tell you
12 that this is where ya'll are coming into your own.
13 This is when you are starting to make the decision
14 as to what happens in this case. There's been a lot
15 of opinions given to you. A lot of expert opinions
16 and lay opinions and all that but the final opinion
17 in this case is yours. That opinion is called the
18 verdict. That's when you come up and say either this
19 man is guilty of what he is charged with or he is not
20 guilty of what he is charged with. That's your
21 opinion and you are, as the Judge will tell you,
22 you're the judge of the facts. You've heard every-
23 thing here. What I'm going to tell you is no more
24 than rehashing of what these folks have told you on
25 the stand. What the doctors have told you. What

1 the lay witnesses have told you. What the Defendant
2 has told you. Ya'll heard it and you all have
3 different impressions of it. What I want to do is
4 just raise a few points and just tell you a few things
5 that I thought were interesting or I thought were
6 helpful to our side or I thought were particularly
7 helpful to you in making the decision. This isn't an
8 easy case and it's not a simple case. I even made
9 notes on it and I usually don't do that. I usually
10 just get up and say what I want to and sit down but I
11 did make some notes on some of the things that some
12 of the doctors said and some of the other folks said.
13 So that I wouldn't be inaccurate. But remember, your
14 recollection is the recollection that is important.
15 That you're the ones who have to go back there and
16 make the final decision. And that's a great burden
17 but it's also a great opportunity. This is the first
18 case tried in this newly renovated ancient courthouse
19 and it's a chance for us to reaffirm what we believe
20 in in justice and the way we do things and the way a
21 jury does things. Now, my client who is seated over
22 here is charged with the crime of Homicide by Child
23 Abuse. The judge is going to go into that. He's
24 going to tell you exactly what the elements of that
25 crime are and what the State has to prove. My

1 point is the State of South Carolina has to prove all
2 of that by the standard called beyond a reasonable
3 doubt. That means that if you have a doubt about
4 something and the judge is going to tell you what
5 reasonable doubt means, if you have a doubt about
6 something then that needs to be resolved in favor of
7 the Defendant. The State has a heavy burden and they
8 have a heavy burden because they have to convince you
9 to convict a person. Well, that's why they have a
10 heavy burden. Now, the evidence was fairly
11 complicated. This wasn't a simple case. This wasn't
12 the usual case where somebody says you did something
13 and I didn't do something. This is a case involving
14 a whole lot of testimony. A whole lot of expert
15 testimony. Now, the judge is going to talk to you
16 about expert testimony. Expert testimony is the same
17 as anybody else's testimony. You know, you can
18 believe it. You can not believe it. You can weigh
19 one against the other. You can believe one and not
20 the other or you can believe none of them or you can
21 believe all of them. That's up to you. This is not,
22 you know, when an expert gets up here, that's not
23 somebody presuming to tell you what your decision is
24 because the decision is yours. All they can do is
25 tell you what their impressions are and how they

1 feel as a result of their impression. That's expert
2 testimony. You don't have to listen to any of them.
3 You have to consider it but you make the final
4 decision as to whether it affects your decision or how
5 it affects your decision. Now, I'm not going to talk
6 to you about a whole lot of stuff because you've
7 heard everything and I've found over years of doing
8 this that the jury takes in this information and ya'll
9 know what these people said so I'm not going to get up
10 there and tell you so and so said this and so and so
11 said that. I'm just going to make a few points. Now,
12 we've had testimony from the lay witnesses to tell you
13 what happened at that - on that day when they came
14 around and found the baby and took the baby to MUSC.
15 And the testimony of the Defendant is to his version
16 of what happened that day. Then we have the expert
17 testimony from the other side. Now, it kind of struck
18 me strange that there was a big too-do about whether
19 the baby was wet or whether the baby was dry. And I
20 think we need to address that for just a second. The
21 testimony from the Defendant was that he placed ice
22 in a bag on the baby's head and that he also took the
23 baby to the tub and put some water on the baby's head.
24 I think he originally said in his written statement
25 that he had placed the baby in the tub. Well, I

1 think that's really insignificant but I did want to
2 address it. I think that's just a mistake in what
3 people remembered at the time and what they remembered
4 upon reflection as to what happened when they weren't
5 under extreme duress. So I don't think that that
6 shows in any way that this man was lying about what
7 went on or that he in any way was trying to fabricate
8 something new because his statement appears to have
9 been the same all the way through from his written
10 statement up until his testimony. Now, the testimony
11 of the doctors and I took the opportunity to write
12 them down because I didn't want to forget them and I
13 didn't want to confuse them and when I wrote them
14 down I found that there were some things that I
15 really didn't remember and hopefully won't be confused
16 but ya'll heard the testimony so you know what went
17 on. Now, the State was very deliberate in bringing
18 all these folks here. These people who are all
19 employees of the Medical University of South Carolina.
20 They are all employees of the state of South Carolina.
21 The same as the prosecution and everybody else. And
22 they brought them here to testify as to what happened
23 and to bolster the State's position that this was
24 child abuse. Now, let's talk about these doctors.
25 The first doctor was Doctor Cochran. MUSC. State

1 employee. Now, he was interesting because I don't
2 think he remembered the baby. I think he
3 impersonalized this baby so much that he didn't even
4 remember the child. Because he didn't remember the
5 big mark on the forehead - the big hematoma. He
6 didn't remember that. And that was the hallmark of
7 this entire thing. That was the first piece of
8 evidence I believe that you saw was the picture of
9 the baby with the bump on his head. He didn't even
10 remember that. Now, did he remember what the
11 situation was. I don't think so. Because he got up
12 here and he started talking about shaken baby. All
13 the evidence was that it was a traumatic brain injury.
14 I don't think he knew one thing about what this
15 child's condition was except that he had gone in and
16 his record indicated that he had seen the child so
17 I'm not certain that his evidence really goes to this
18 particular child or has a whole of wager. I don't
19 think he remembered the child. Now, we go on to
20 Doctor Shuh and Doctor Shuh testified that she had
21 testified so many times for the State that she
22 couldn't even put a number on it and is Doctor Shuh
23 was a hired gun coming in here to testify to what
24 the State's position is? She said she doesn't - she
25 said she testified for the Plaintiff's lawyer out

1 of state every now and then. But even she testified
2 that given the greatest life at stake she testified -
3 I've got to find . She testified that this was not
4 consistent with a trip and fall. Not consistent.
5 Well, that's, you know, here it was or it wasn't.
6 That's not exactly saying a whole lot and I bet that
7 leaves a whole lot of reasonable doubt is that it
8 could be a trip and fall. Now, going on to the next
9 doctor was Doctor Vandergrift. Now, he was the one
10 I found particularly interesting because he's the
11 Neurologist. He's the one who tried to save the
12 child. And remember what he said. I asked him about
13 an injury to the head and how long it would take until
14 it manifested itself into the crisis and he said
15 twenty-four hours. A twenty-four hour period. Now,
16 I think that's important because twenty-four hours
17 takes the baby out of the hands of the Defendant. The
18 Defendant - Melvin had the child when the mama went to
19 work about seven-thirty or six forty-five - something
20 that morning until he called his sister and his sister
21 came around there around eleven or eleven-fifteen or
22 something like that. He didn't have the child before
23 then. Now, he was around the child part of that time.
24 The mama was there and a whole lot of other people
25 were there. If that twenty-four hours is to be

1 believed, and I believe the State brought this fellow
2 in here for you to believe then they are outside of
3 that twenty-four hours and any other person could
4 have done something to the child which would have
5 manifested itself twenty-four hours later. Remember
6 the child was with a bunch of other kids. There was a
7 bunch of other people at a party. This was a wives
8 party that evening. And prior to that we don't know
9 where the child was. He was there at the sleepover
10 and he was asleep and had to be awakened by his mama
11 who was late for work. The child was fussy before
12 that. You know, what happened in that period? Is
13 it reasonable to say that he had the child during the
14 whole period in which the child could have damage.
15 Now, to be very fair with you, there is another doctor
16 who said that the injury would have been immediate.
17 That the crisis would have come on immediately. But
18 my point is that the doctors don't agree with this.
19 The doctors don't agree whether it was a twenty-four
20 hour period or whether it was less than that or
21 considerably less than that or immediate. That leaves
22 me to believe that there is reasonable doubt in what
23 happened with this child and there is reasonable
24 doubt in the whole situation. The final - well let's
25 see if there is anything else wrong from Doctor

1 Vandergrift. Remember I asked him specifically
2 about the hematoma and he remembered. He remembered
3 this child and he remembered that hematoma and you
4 remember that the hematoma is that big bump on the
5 forehead. And I asked him. I said, doctor is it
6 consistent that the hematoma marked the place where
7 the child fell and caused this injury. I wrote that
8 down because it was a very important question and he
9 said yes. He didn't get up there and equivocate about
10 oh, the injury didn't cause this or anything like
11 that. He said yes. He said, yes that's where the
12 injury happened and that's the result of that type of
13 injury. So the State's witnesses don't even agree
14 on that. Now, they come in here with a consistent
15 story but then it started to unravel. The final
16 doctor was Doctor Presnell and she testified ...
17 She's the one who did the autopsy. She's the first
18 one to testify about a spiraling type of injury.
19 Nobody else testified as to that but she testified
20 as to a spiral type of injury where the body turns
21 or the brain turns . I hate to tell you I didn't
22 keep up with a whole lot. I didn't understand some
23 of it but she did testify that there was some sort
24 of spiraling where the body was twisted or the head
25 was twisted or the brain twisted within the cavity.

1 So she did testify to that. Now, could that have
2 happened in what this man said or what we put forward
3 to you. Perhaps it could. That's reasonable doubt
4 also because if you will remember and you will have
5 all of these back in the room with you. This picture
6 that we put into evidence showing exactly where the
7 child or the general vicinity where the child fell
8 and the cord that was running across and there was
9 some argument as to whether the cord was further in
10 or further out. And remember there was a door facing
11 there. A door facing on each side. And I didn't
12 think of it at the time but if you changed the
13 scenario just a little bit. If that child falls and
14 hits the door facing, then there's the twisting.
15 There's the twisting of the head. There's the
16 twisting of the brain. There's the spiral. Is that
17 reasonable now. I think in this case it is. Now,
18 that concludes what I had on the doctors, although
19 Doctor Presnell did say you could have cumulative
20 injuries that would end up in this type of damage
21 in this type of injury to the child. But the point
22 that I wanted to make with the doctors is that even
23 they don't agree on everything. Even they don't agree
24 on everything that could have happened or everything
25 that would have happened is the question. And I

1 guess the bottom line of all this is what I'm saying
2 is that these folks don't agree. These folks don't
3 agree that this was abuse and as a result how can you
4 find that it was actual child abuse. Remember they
5 have to show homicide by child abuse or neglect. The
6 judge is going to tell you exactly what that is - the
7 definition of it. But they have to show first of all
8 that he did it and that it was abuse or neglect and I
9 don't think they've shown either one here. I think
10 they've shown that he had that child for about four or
11 five hours or however long it was and during that
12 period of time the child got ill. I think that's all
13 they're showing. There's too much doubt there to say
14 exactly what happened. Now to me and I think to
15 everybody it would take a real monster to kill a child
16 and that's the problem I've had with this case is
17 you've got this child involved and we can't get
18 around the fact that this lady out here lost her son.
19 An obviously adorable little fourteen month old child.
20 But that's, you know, it would take a monster to do
21 that and I ask you when you go back in the jury room
22 and ask yourself this. Did you see a monster here
23 today? I don't think I did. I saw a man who has kept
24 children. He kept his sister's children before and
25 after this happened. She didn't have any fear or

1 trepidation about him keeping the children. We have a
2 man who kept Heather's children on at least occasions.
3 She testified that she had no trepidation or no fear
4 that he would do anything to the children. We have no
5 evidence of him ever doing anything towards the child.
6 We have no convictions of any crime. We have a man
7 who now has a new family who is now seeing Katie Hunt
8 and Katie has a four year old child. The child has
9 been staying with this man during and after this thing
10 happened. She doesn't have any fear about that. They
11 have their own baby. A two year old. I forgot how
12 old the child is. Please don't hold me to that.
13 A child and he keeps the child and takes care of the
14 child. There's just no evidence that we're dealing
15 here with a monster and ya'll saw him on the stand.
16 I mean you looked into his eyes. You heard him. You
17 heard what he said. You saw his demeanor. I don't
18 think that's the person who would kill a child. If
19 it is, then it was obviously something that happened
20 for one brief moment out of a lifetime of non-
21 violence. I think I'm going to end there because I
22 basically hit the points that I wanted to. Also,
23 with regard to the doctors, we talked about age. Two
24 of the doctors didn't even remember the age of the
25 child. They had the age of the child wrong which is

1 very important in any type of autopsy or work or
2 anything like that. But that's just to the side.
3 That's just one of those little points. Ya'll have
4 to consider all of those. The whole thing that I
5 have, ladies and gentlemen, for you is that I don't
6 think the State has born their burden of proof of
7 showing that this was any more than a tragic accident.
8 Something that everybody involved with is going to
9 have to live with for the rest of their lives. The
10 child died on his watch so he's got to live with
11 that for the rest of his life and I'm sure the mother
12 is still very upset about it. But that does bring me
13 to another point - is that the only people who think
14 this guy ought to be punished or be convicted is
15 the State of South Carolina. His sister doesn't have
16 any fear of him. His new girlfriend, the mother of
17 his baby, doesn't have any fear of him. And you'll
18 see in this pile of exhibits that photograph from
19 the mama after this occurred stating that she still
20 had affection for him. Now, I think that says a lot
21 in this case. Because if you were the mother of a
22 child, would you be expressing your affection for the
23 man who supposedly killed that child. That's
24 something that's bothered me throughout this whole
25 thing when I first saw that picture and when I heard

1 her testimony and all this. Everybody basically
2 thinks he didn't do it or if something was done it
3 was a total accident with no intent or anything like
4 that. Based on all that, ladies and gentlemen, I ask
5 you to go back to your jury room and come back with a
6 verdict of not guilty and with that I'm going to sit
7 down and let ya'll let Mr. Knight talk to you and then
8 let ya'll do your duty. Thank you.

9 THE COURT: Mr. Knight.

10 CLOSING ARGUMENT

11 BY MR. KNIGHT:

12 Ladies and gentlemen, this is a most difficult case.
13 Homicide by Child Abuse. And the evidence that was
14 presented to you. Because in this case we've got what
15 is called circumstantial evidence and that's nothing
16 more than a proof of the chain of facts in
17 circumstances indicating the existence of a fact.
18 Okay. Now, another thing that's important in this
19 case is called credibility of the witnesses. The
20 believability of witnesses. You can believe a
21 part of a witness' statement, none of a witness'
22 statement, all of his statement, one witness state-
23 ment versus another. You have to judge his or her
24 demeanor on the stand. His motive for testifying
25 one way or the other. Or their bias for testifying

1 one way or the other. Those are the decisions that
2 you have to make in evaluating that witness. Because
3 only you can make that decision and you make it by
4 using common sense that you use every day in your
5 life. The State of South Carolina can not direct
6 where a patient - which hospital he goes to. You
7 know, we don't have any control over that. MUSC
8 was the location that he was medovaced to. Victim
9 was medovaced to. He could have been medovaced to
10 Roper or wherever so, you know, we are not buying
11 state employees. Okay. These are not state employees
12 because we sent that child there. That child was sent
13 to MUSC to attempt to save his life. These experts.
14 Their opinions are on the line. Their opinion is on
15 the line when they come into court and testify. Based
16 upon their training, their experience, their
17 observations, their evaluation of this particular
18 child. Now, Mr. Beach will tell you that they didn't
19 agree. Ooh. I must have been in another courtroom
20 because Doctor Cochran, number one, he read the
21 medical records of this child from the day he was
22 born up until May tenth. Was a healthy child up until
23 that time. Number two, unequivocally, he said that a
24 child that size, the fall over a cord is inconsistent
25 with the extent of injuries the child had. No

1 question. He's the Director of the Pediatric
2 Intensive Care Unit. No question in his mind. Doctor
3 Shuh evaluated Victim extensively. She went back into
4 his old medical records from the time that child was
5 first at MUSC when he was born. An old CT scan. An
6 old injury. She evaluated his condition at the
7 hospital on I think the eleventh earlier and later she
8 followed up. What was her testimony? The injuries
9 sustained and the severity of the injuries sustained
10 is not consistent with a fall over a cord. Her
11 opinion. I think she's testified numerous times.
12 But, you know, Mr. Beach made an interesting question
13 to her. You always testify for the State of South
14 Carolina? And do you know what she told him? I
15 testify for the child. Next, we have Doctor
16 Vandergrift, Neurosurgeon. Doctor Vandergrift's
17 testimony was very very important because his analysis
18 of Victim actually showed the extent of the damage. The
19 severity of the damage that this child sustained.
20 Now, his testimony showed the severity of the injuries
21 versus the testimony of Doctor Shuh and Doctor Cochran
22 who said it was inconsistent with a fall. Doctor
23 Vandergrift's testimony - severe. Remember he had a
24 scale. One to fifteen I think he said. One is bad,
25 fifteen is good as to the condition of the child.

1 He ranked Victimat 3 which is in bad, bad shape and he
2 had this procedure he had to go through to relieve the
3 swelling in the brain. Okay. So, you know, I don't
4 see any inconsistency there. Finally we have Doctor
5 Presnell. She did the autopsy. Very thorough. Very
6 thorough. And she showed you through the photographs
7 that she took during the course of the autopsy the
8 extent of the injuries. The gravity of the injuries.
9 The severity of these injuries. And what was her
10 opinion. Inconsistent with a fall. Totally
11 inconsistent. I think she even said something to the
12 effect that - you have to bear with me. She called
13 it an inflicted, abusive head trauma. So that's the
14 testimony of the experts. The first responder. He
15 was a key witness, Jason Palmer. What did he notice?
16 Large hematoma. Bells went off. Variance in
17 respiration. Variance in blood pressure. Eyes
18 I think he called them doll eyes. No movement. His
19 as a first responder with EMS was consistent his
20 testimony all the way through to the final autopsy
21 of this child. A severe inflicted head trauma. Now,
22 who else was around during the course of this? Well,
23 Heather Aiken testified there were no falls on the
24 eighth. No falls on the ninth. No falls on this
25 gathering that Sunday, I think she said it was

1 mother's day but I could be wrong. So, we're creating
2 something that's not in the record. But from the time
3 she left to the time she got back what did she know
4 until she got that telephone call. I had a healthy
5 baby. Healthy fourteen month old baby. Nobody else
6 was there. Melvin Daniel said he was the only one.
7 His sister testified that when she got there he was
8 the only one. In care of, custody, and control of
9 this child. No one else was around. So, where does
10 all the evidence point to? You know, it's like a map
11 or going out here you want to go to 95, then you go
12 down and you catch 95 and you want to go to Columbia
13 you got so far and you see a sign that says go this
14 way on 26 and you go all the way into Columbia and
15 get to the exit and you take the exit. All the
16 evidence from Jason Palmer up through Doctor Presnell
17 points to one thing. An inflicted abusive injury
18 caused by that man to this baby. Note the (inaudible)
19 involved. Only one person. And Doctor Presnell, I
20 think, gave us another indication from their diagnose
21 and things. Bleeding behind the eyes. A fresh
22 injury. Subdural hematoma. Fresh. Cerebral edema.
23 Fresh. There's no cumulative effect of some if these.
24 I think Doctor Presnell was very clear. This is
25 fresh. Fresh injuries within hours. The cause.

1 The ultimate cause of death of this baby, Victim.
2 And I know that there are a lot of questions to ask.
3 I asked her about this and she was very, very
4 consistent. There is only one way this happened.
5 An inflicted injury. No slip and fall. No fall over
6 a cord. You're right. This is a difficult case.
7 But another thing you should consider is you are
8 only dealing with one person, Melvin Daniel. And
9 another thing that I thought was unique is that a
10 pediatric radiologist ran some films on this child.
11 A full skeletal survey with no evidence of acute
12 or bony injury. That's what it is right there.
13 Followed up with severe, severe problems for Deon
14 Aiken on May the tenth of 2004 here in Colleton
15 County. We're not asking for you to be emotional
16 but I want you to do and the obligation you took
17 when you took that oath is to listen to the evidence
18 presented at stand. Search for the truth. Search
19 for what these doctors have told you. Sure they're
20 experts and they give their opinion based upon what
21 they see. Upon what they find. And the consistency
22 of what they found. It was an inflicted injury -
23 the cause of death of Victim. Doctor Cochran
24 testified that he had to pronounce this baby dead and
25 (inaudible) because he was in surgery somewhere else.

1 This is his field. This is his specialty. Examining
2 children. Doctor Shuhs is the same thing. Examining
3 and caring for children. Babies if you will. So as I
4 close, I just want to remind you that this is not
5 easy. And we can talk about it. I know the thing
6 with the two minute shower and the three minute shower
7 on the computer and leaving the baby alone and the
8 baby crying and all that. There was only one person
9 with this baby because during all of this Because
10 when Heather Aiken left home, nothing on the face.
11 Nothing here. When she got that call and got home,
12 what did she find? What did she find? As to your
13 current verdict, guilty against Melvin Daniel.
14 Thank you.

15 THE COURT: Mr. Foreman and ladies and
16 gentlemen of the jury, before I begin my charge I'm
17 going to give you a quick break and let you stretch
18 your legs and let you use the rest room. Please do
19 not discuss the case even amongst yourselves. I'll
20 be right back with you. I want you to have your
21 chance to have your break before I begin my charge.
22 Please retire to your jury room at this time.

23 (Jury retires to the jury room)

24 THE COURT: Everyone please be seated.

25 THE COURT: Is the State ready to

1 proceed?

2 MR. KNIGHT: Yes, sir.

3 THE COURT: Is the Defendant ready to
4 proceed?

5 MR. BEACH: Yes, Your Honor.

6 THE COURT: Ma'am, has everyone on the
7 jury have a chance Since we have a unisex bath-
8 room, has everyone had a chance to use the restroom?

9 CLERK: Yes, sir.

10 THE COURT: Bring us the jury please.

11 (Jury returns to the courtroom)

12 THE COURT: All right, ladies and
13 gentlemen of the jury, it is now my duty to charge
14 you on the law of this case. The State of South
15 Carolina has charged the Defendant, Melvin Daniel the
16 second, with the count of Homicide by Child Abuse in
17 the indictment. I remind you that the fact that the
18 Defendant was arrested, charged, and indicted in this
19 case is not evidence in this case. Nor does it create
20 any presumption or inference of guilt. Indictments or
21 the indictment is simply a formal written instrument
22 by which the case is brought into this court. The
23 Defendant has pled not guilty to this indictment and
24 that plea puts the burden on the State to prove the
25 Defendant guilty beyond a reasonable doubt. The

1 person charged with committing a crime in South
2 Carolina, any criminal offense, is never required to
3 prove himself or herself innocent. I charge you,
4 ladies and gentlemen of the jury, that it is an
5 important rule of the law. That the Defendant in a
6 criminal trial no matter what the seriousness of the
7 crime, may be will always be presumed to be innocent
8 of the crime for which the indictment was issued
9 unless guilt has been proven by evidence satisfying
10 you of that guilt beyond a reasonable doubt. This
11 presumption of innocence is not <Mr when you begin
12 your deliberations but it accompanies the Defendant
13 throughout the trial until you, as the jury, reach a
14 verdict of guilt based on evidence satisfying you of
15 that guilt beyond a reasonable doubt. The presumption
16 of innocence is not a mere legal theory. It is not
17 just a legal phrase. It is a substantial right to
18 which every Defendant is entitled unless you, the
19 jury, are satisfied from the evidence of the
20 Defendant's guilt beyond a reasonable doubt. What is
21 a reasonable doubt in the law? A reasonable doubt is
22 the kind of doubt that would cause a reasonable
23 person to hesitate to act. The State has the burden
24 of proving the Defendant guilty beyond a reasonable
25 doubt. Some of you may have served in the past as

1 jurors in a civil case where you were told that it was
2 only necessary to prove a fact more likely than not,
3 such as, what we call the greater weight or the
4 preponderance of the evidence. In a criminal case
5 such as this type of case, the State's proof must be
6 more than that. It must be beyond a reasonable doubt.
7 I remind you, ladies and gentlemen, that during this
8 trial you and I have had certain duties to perform.
9 It is my responsibility as the presiding judge to
10 preside over this trial and also have the duty to rule
11 on the admissibility of the evidence offered during
12 the trial. You, ladies and gentlemen of the jury,
13 are to consider as a jury only the competent evidence
14 before you. If there was any testimony ordered
15 stricken from the record in this case during this
16 trial by myself as the presiding judge, you must
17 disregard that testimony. You are to consider only
18 the testimony which has been presented from the
19 witness stand and exhibits which have been introduced
20 into evidence and made a part of the record of this
21 case and any stipulation of counsel that may have been
22 entered into during the trial of this case. Only
23 such matters that are in evidence and have not been
24 stricken from the record are for you to consider as
25 jurors in this case. I have an additional duty,

1 ladies and gentlemen, as presiding judge to charge the
2 law applicable to this case. As the presiding judge,
3 I'm the sole judge of the law in this case and it is
4 your duty as jurors to accept the law as I give it to
5 you and apply the law as I now state it to you. If
6 any of you as jurors already have any preconceived
7 ideas about what you think the law is or even what you
8 feel the law ought to be and it does not agree with
9 what I now tell you the law is, you must abandon any
10 of these preconceived ideas or feelings because each
11 of you took an oath at the beginning of this trial to
12 accept the law and apply the law exactly as I've
13 stated to you during this trial and now in my charge
14 to you on the law at the conclusion of this trial.
15 In every case tried in this courtroom before a jury,
16 the jury becomes the sole and the exclusive judge of
17 the facts in the case. A trial judge such as myself
18 cannot intimate, state, comment on, or make any state-
19 ment whatsoever to a trial jury about the facts in
20 the case. Since you, ladies and gentlemen of the
21 jury, are the sole judges of the facts in the case.
22 Since you, ladies and gentlemen of the jury, are the
23 sole judges of the facts in this case, you are not to
24 infer from what I have said during the progress of
25 this trial in ruling upon the admissibility of

1 evidence or otherwise or anything that I say now
2 during the course of this instruction on the law for
3 you that I have any opinion whatsoever about the facts
4 in this case. The law does not allow me as a
5 presiding judge to have an opinion about the facts in
6 the case. This is a matter, ladies and gentlemen of
7 the jury, solely for you the jury. As jurors, ladies
8 and gentlemen, it is your duty to determine the
9 effect, the value, the weight, and the truth of the
10 evidence that's been presented during the trial of
11 this case. Now, there are two types of evidence
12 which are generally presented in during a trial. As
13 with many things in the law, ladies and gentlemen,
14 we have names for these types of evidence. We call
15 these two types of evidence, direct evidence and
16 circumstantial evidence. Direct evidence is testimony
17 of a person who claims to have actual knowledge of a
18 fact, such as an eye witness to an event. Direct
19 evidence is evidence which immediately establishes the
20 main fact to be proved. Circumstantial evidence as
21 contrasted with direct evidence is proof of a chain of
22 facts and circumstances indicating the existence of a
23 fact. Circumstantial evidence is evidence which
24 immediately establishes collateral facts from which
25 the main fact may or may not be inferred.

1 Circumstantial evidence is based on inference and not
2 on personal knowledge or personal observation. The
3 law makes absolutely no distinction between the weight
4 or the value to be given to either direct evidence or
5 circumstantial evidence. Nor is a greater degree of
6 certainty required of circumstantial evidence than of
7 direct evidence. You, as the jury, should weigh all
8 the evidence in this case. After weighing all the
9 evidence, both direct and circumstantial, in this case
10 if you are not convinced of the guilt of the Defendant
11 beyond a reasonable doubt, you must find the Defendant
12 not guilty. On the other hand, after weighing all the
13 evidence in the case, both direct and circumstantial,
14 if you are convinced of the guilt of the Defendant
15 beyond a reasonable doubt, you must find the Defendant
16 guilty. Necessarily, ladies and gentlemen of the
17 jury, you must determine the credibility of the
18 witnesses who have testified during the trial of this
19 case. Credibility simply means as I told you at the
20 outset believability. It therefore becomes your duty
21 as a jury to analyze and to evaluate the evidence
22 and determine which evidence convinces you of its
23 truth. In determining the believability or
24 credibility of the witnesses who have testified during
25 the trial of this case, you may believe one

1 witness over several witnesses or several witnesses
2 over one witness. You may believe a part of the
3 testimony of a witness and reject the remaining part
4 of the testimony of that same witness. You may
5 believe the testimony of a witness in its entirety or
6 you may reject the testimony of a witness in its
7 entirety. You may consider in looking at the
8 credibility or the believability of the witnesses
9 who have testified whether any witness has exhibited
10 to you any interest, any bias, any prejudice, or
11 other motive in the case, whether the witness has an
12 interest in the outcome of the case. You may consider
13 the appearance, the manner of the witness while the
14 witness was on the witness stand. Anything that is
15 in evidence, ladies and gentlemen of the jury, you as
16 the jury have the right to consider in weighing or
17 considering the credibility or the believability of
18 the witnesses who have testified during the trial of
19 the case. I charge you, ladies and gentlemen, as I
20 told you during the trial that we have rules of
21 evidence. The rules of evidence ordinarily do not
22 permit a witness to testify to an opinion or a
23 conclusion. An exception to this opinion rule rests
24 or exists for witnesses that we call expert witnesses.
25 A witness who by education, training, experience has

1 become an expert in some art, science, profession, or
2 calling may state an opinion or conclusion as to
3 relevant and material matters in which the witness
4 claims to be an expert and may also state the reasons
5 for his or her opinion. You should consider any
6 expert opinion received in evidence in this case and
7 like any other evidence give it the weight you think
8 it deserves. If you as a jury decide that the opinion
9 of an expert witness is not based on sufficient
10 education and experience or if you should conclude
11 that the reasons given in support of the opinion are
12 not sound or that the opinion is outweighed by other
13 evidence in the case, you may disregard the expert
14 opinion entirely. An expert witness' testimony is to
15 be given no greater weight than that of other
16 witnesses simply because the witness is an expert.
17 Further, you are not required to accept an expert's
18 opinion even though it is not contradicted. I charge
19 you, ladies and gentlemen, that a statement or
20 statements alleged to have been made by the Defendant
21 have been admitted into evidence during the trial of
22 this case. While the Court has determined that the
23 statement is admissible as a matter of law, I instruct
24 you that you make the ultimate decision, ladies and
25 gentlemen of the jury, of whether or not the

1 Defendant made any statement or statements. If the
2 Defendant did make the statement and that is your
3 decision, you must determine whether the statement was
4 made by the Defendant voluntarily and of his own free
5 will. This means that the statement was not caused
6 by pressure, force, fear, threats, coercion, or
7 intimidation, or by hope or a promise of leniency or
8 reward of any kind. In determining whether the
9 statement was voluntary, you should consider both the
10 characteristics of the Defendant and the details of
11 the questioning. Some of the factors you may consider
12 if in evidence in determining the voluntariness of a
13 statement are 1, the age of a Defendant, the
14 Defendant's education or lack thereof, the Defendant's
15 mental ability or capacity, the Defendant's IQ or
16 intelligence, the Defendant's background and
17 environment, the place and length, if any, of the
18 questioning, the nature of the questioning, the advice
19 or lack thereof to the Defendant of his constitutional
20 rights including but not limited to, the right to
21 remain silent, that any statement could be used
22 against him in a court of law, the right to have a
23 lawyer present and that if he cannot afford a lawyer
24 a lawyer would be appointed to represent him without
25 any cost, and that he could stop making a statement

1 at any time. You must carefully, ladies and gentlemen
2 of the jury, consider all of the surrounding
3 circumstances in evidence before you give any weight
4 to any alleged statement. The State has the burden of
5 proving beyond the reasonable doubt that the alleged
6 statement was voluntary. If you determine it was, you
7 may give the statement any further consideration that
8 you, as a jury, deem proper. You must decide what
9 weight, if any, should be given to the statement. If
10 you determine the alleged statement was not the free
11 and voluntary statement of the Defendant, you should
12 not consider the statement at all. I charge you,
13 ladies and gentlemen, that in this trial you have
14 heard the term stipulation. A stipulation is an
15 agreement, admission, or a concession made in a
16 judicial proceeding by the parties thereto or their
17 attorneys. Stipulations, of course, are binding on
18 those who make them. A stipulation is an agreement,
19 an understanding, and therefore the Court and the
20 jury must accept stipulations as binding upon the
21 parties. If counsel for the parties has stipulated
22 to a fact during the trial of this case or a fact
23 has been admitted by counsel, you will regard that
24 fact, ladies and gentlemen, as being conclusively
25 proved as to the party or parties making the

1 stipulation or admission. In order to establish
2 criminal liability, ladies and gentlemen, in general
3 criminal intent is required. For example, the mental
4 state required to be proven by the State for any type
5 of crime, it might be for example, purpose or intent
6 or knowledge or recklessness or even in some examples
7 criminal negligence. These are examples of criminal
8 intent. Criminal intent must be proven by the State
9 beyond a reasonable doubt. Criminal intent is always
10 a matter that must be determined by the jury from the
11 circumstances surrounding the situation based on
12 evidence introduced during the trial in the case.
13 There is no way, ladies and gentlemen of the jury,
14 to prove intent or criminal intent to a mathematical
15 certainty. There is no way, ladies and gentlemen of
16 the jury, medical science can dissect a person's
17 brain and determine what the person had in mind. So
18 the law says that criminal intent may be inferred
19 from the circumstances shown to have existed based
20 on evidence introduced during the trial of the case.
21 It is not necessary This is of course how you as
22 the jury would make the determination of whether or
23 not any element in any particular crime requiring
24 intent was present. And that is from the evidence
25 introduced during the trial of the case and the

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1 circumstances shown to have existed. It is not neces-
2 sary to establish criminal intent by direct and posi-
3 tive evidence, but intent may be established by infer-
4 ence in the same way as any other fact.

5 You take into consideration the acts of the par-
6 ties and all the facts and circumstances of the case
7 based on evidence introduced during the trial of this
8 case.

9 Criminal intent is a mental state, a conscious wrong
10 doing. It is up to you, the jury, to determine what
11 the Defendant intended to do based on the circumstances
12 shown to have existed from the evidence introduced dur-
13 ing the trial of the case. Criminal intent may arise
14 with action or failure to act, with negligence, careless-
15 ness, recklessness or indifference to duty, or to con-
16 sequences considered by law to be the equivalent of
17 criminal intent.

18 I charge you in this case the Defendant is charged
19 with the criminal offense of Homicide by child abuse,
20 .and the State, for this offense, must prove beyond a
21 reasonable doubt that the Defendant caused the death of
22 a child under the age of eleven, while committing child
23 abuse or neglect. I tell you that child abuse or
24 neglect is an act or a failure to act which causes
2 harm to the child's physical health or welfare.

1 Harm to the child's physical health or welfare means
2 that the Defendant either 1. inflicted or allowed to
3 be inflicted on the child physical injury or 2. Failed
4 to supply the child with adequate food, clothing,
5 shelter, or health care. And this failure caused a
6 physical injury or condition which caused death or 3.
7 abandoned the child causing the child's death. The
8 State must also prove beyond a reasonable doubt that
9 the death occurred under circumstances showing an
10 extreme indifference to human life. Extreme
11 indifference to human life is a mental state akin to
12 intent characterized by a deliberate act culminating
13 in death. Now, ladies and gentlemen of the jury, I
14 have now charged you on the law in order to help guide
15 you to a fair and a just result in this case. You,
16 ladies and gentlemen of the jury, are the judges of
17 the facts in this case based on evidence introduced
18 during the trial of the case. And so, based on your
19 determination of the facts in this case and the law
20 as I have explained to you, you will soon be going to
21 your jury room to begin your deliberations. Each of
22 you, ladies and gentlemen, have been selected as
23 fair and impartial jurors. You were sworn to fairly
24 and impartially try and determine the facts of this
25 case. And when you comply with that oath, ladies

1 and gentlemen, no one can criticize your verdict.
2 You will decide this case, ladies and gentlemen of the
3 jury, based solely and I mean solely on the evidence
4 and that is what you've heard from the witness stand,
5 from the sworn witnesses who have testified, and any
6 exhibits that have been introduced into evidence along
7 with any stipulation of counsel in the case. You must
8 decide the issues in this proceeding, ladies and
9 gentlemen, without any bias, without any prejudice
10 toward either of the parties in this case. You cannot
11 allow yourself, ladies and gentlemen, to be governed
12 by prejudice for or against any person. You can't
13 allow yourself to be governed by public opinion or by
14 any other arbitrary factor. Both the Defendant and
15 the State of South Carolina, ladies and gentlemen,
16 have the right to expect that each of you on this jury
17 will carefully and impartially consider all the
18 evidence in this case. That you will follow the law
19 as I have instructed you in reaching your verdict in
20 this case. Now, Mr. Foreman, I told you that I would
21 explain the forms of verdict. I have prepared the
22 form of verdict for you in this case. I've put the
23 title at the top. The first thing I want to tell you,
24 Mr. Foreman and ladies and gentlemen of the jury, pay
25 absolutely no attention to the order in which I

1 wrote the forms of verdict. The order has no
2 significance whatsoever. We obviously had to write
3 one before the other. At the top of your verdict
4 form, Mr. Foreman, I have put the state of South
5 Carolina, county of Colleton, and the Court of General
6 Sessions, which means criminal court. Indictment #
7 2004 400, which is just the number we use for the
8 case. And under that I place the words, the State of
9 South Carolina versus Melvin Daniel the second,
10 Defendant, and I've written the words beside the
11 caption verdict. Under that caption I have placed
12 the following words, Mr. Foreman and ladies and
13 gentlemen of the jury, we the jury by unanimous
14 consent find the Defendant, Melvin Daniel, and the
15 first form of verdict under those words is - guilty
16 of Homicide by Child Abuse or Neglect. If that be
17 your form of verdict, Mr. Foreman, you would check on
18 the line beside that form of verdict. Under the
19 words, we the jury by unanimous consent find the
20 Defendant, Melvin Daniel, the second form of verdict
21 is - not guilty of Homicide by Child Abuse or Neglect.
22 If that be your form of verdict you would check on
23 the line beside that form of verdict, Mr. Foreman.
24 You must find one form of verdict or the other. You
25 cannot find both. When you have reached a verdict,

1 Mr. Foreman, and you have checked on either the first
2 line, guilty of Homicide by Child Abuse or Neglect or
3 not guilty of Homicide by Child Abuse or Neglect. You
4 would then sign your name on the line where it says
5 foreperson underneath and fill in today's date which I
6 understand to be July the eighteenth, 2007, Mr.
7 Foreman. When you have reached a verdict, you will
8 have filled out the verdict form as I have instructed
9 you for the jury, Mr. Foreman; then knock on your jury
10 room door and inform the bailiff that you've reached a
11 verdict and we will then receive you back in the court
12 room in order to publish the verdict. Now, Mr.
13 Foreman and ladies and gentlemen of the jury, your
14 verdict must be unanimous. That is, it must be the
15 verdict of each and every one of you. All twelve of
16 you must agree on the verdict. Now, ladies and
17 gentlemen, I'm going to ask you at this time not to
18 begin your deliberations. I'm going to send you to
19 your jury room. It might be necessary for me to bring
20 you back into the Courtroom for some brief additional
21 instructions. When it is time for you to begin your
22 deliberations I will have my bailiff send in the
23 verdict form that I just explained to you along with
24 all the exhibits which have been introduced into
25 evidence during the trial of the case and have the

1 bailiff tell you that you may then commence your
2 deliberations so please do not begin any deliberations
3 until I instruct you to do so. You may retire to your
4 jury room. My alternate jurors please remain in the
5 courtroom with me. The rest of the jury may retire to
6 the jury room at this time.

7 (Jury retires to the jury room)

8 THE COURT: First of all, on behalf of
9 Colleton County and this Court, I watched both of you
10 throughout this trial and all a judge can do is ask a
11 juror to listen and you both did that carefully
12 throughout the trial of this case. No one got sick.
13 No one for some valid reason could not continue to
14 serve so this concludes your service as alternate
15 jurors in the trial of this case. Now, if you want
16 I realize you made a lunch order and it's not here yet
17 and I don't know that ya'll want to hang around for
18 another half hour because I've got some even better
19 news for you. I've just conferred with my officers
20 of this Court and they tell me that I have enough
21 non-jury matters that I'm not going to need you for
22 the rest of the week. And I do have quite a number of
23 non-jury matters that are going to take up the balance
24 of this week so this concludes your service as jurors
25 for this week. Would either of you - are you both

1 interested I can't let you go You have all your
2 belongings now. Is that right? You didn't leave any-
3 thing back in the jury room. Ma'am?

4 A. No. I have all my belongings.

5 THE COURT: Okay. Just wanted to make
6 sure. Would you like to stay and when lunch arrives
7 get your lunch or would you both like to go ahead and
8 leave at this time?

9 A. I would like to leave.

10 THE COURT: All right. I want to thank
11 you both for your service. You are both now excused
12 from jury service for the balance of the week and with
13 my great thanks. I appreciate so much. You are part
14 of a very historic time in that you were here for the
15 very first trial in this renovated courtroom. And
16 Colleton County and myself thank you very much for
17 your willingness to serve. You are now excused for
18 the balance of the week. Have a nice week. You may
19 leave at this time. Everyone else remain seated while
20 the jury is leaving. Any exceptions or additions to
21 the charge from the State of South Carolina?

22 MR. KNIGHT: None, Your Honor.

23 THE COURT: Any exceptions or additions
24 from the Defendant?

25 MR. BEACH: None, Your Honor.

1 THE COURT: I'd ask that Counsel come
2 forward and certify on the record that they are
3 satisfied that the court reporter has all the exhibits,
4 that you have no objection to the bailiff taking the
5 exhibits and the verdict form into the jury and the
6 bailiff telling the jury they may now commence their
7 deliberations.

8 MR. KNIGHT: Your Honor, the ones that
9 have been admitted by the State, I'm satisfied that
10 she's got them correctly.

11 MR. BEACH: And the two that were
12 admitted by the Defense are also fine, Your Honor.

13 THE COURT: All right. Now, do ya'll
14 have any objection to the bailiff taking the exhibits
15 and the verdict form and the bailiff telling the jury
16 they may now commence the deliberations.

17 MR. KNIGHT: Not from the State.

18 MR. BEACH: Not from the Defense.

19 THE COURT: Very well. Can you come
20 forward please? She's taking them and telling them
21 that they may now commence their deliberations.
22 Before we adjourn, Counsel, I would just like to say
23 that the case has been vigorously tried. I don't know
24 when the jury is going to reach a verdict but I need
25 for you _ if you want to leave, I realize it's close

1 to lunch hour and I need you to give my law clerk a
2 cell phone number so that you can be back in five to
3 ten minutes notice in the event the jury has a
4 question or in the event that we need to take up a
5 matter with you during the deliberations. If you are
6 going to stay in the courtroom that's fine. Lunch is
7 probably not going to arrive here I don't think for
8 another twenty to twenty-five minutes here but I need
9 to know where you are and you obviously need to let
10 my law clerk know in case we need you. I also want to
11 compliment you both on the civility that you've shown
12 each other during the trial of this case. I know you
13 both worked very hard as well as the civility that you
14 have shown not only to each other but to the witnesses
15 and to the Court during the trial of this case. It's
16 a pleasure to have lawyers in my Court which set such
17 a good example for others of how you should act and
18 be an advocate for your client or for the State of
19 South Carolina at the same time. I congratulate you
20 both on that. We'll be at ease while we wait the
21 jury's verdict. Give my law clerk cell phone numbers
22 if you decide to leave.

23 THE COURT: All right. Let the record
24 reflect that it's about twelve-fifteen and about ten
25 minutes ago I received a note from the jury which

1 is now Court's Exhibit two. By agreement of Counsel,
2 Mr. Knight and Mr. Beach being present at this time,
3 we agreed to send a tape machine so the jury could
4 hear the 911 tape back to the jury. Bailiff by
5 consent of Counsel is taking the tape machine back to
6 the jury. The tape is already in the jury room which
7 is already in the jury room which was admitted into
8 evidence and the bailiff is going to give the jury
9 by consent of Counsel instructions as to how to use
10 the machine and we made the jury's note to me
11 concerning this Court's Exhibit two. Thank you.
12 We'll continue to wait on the jury.

13 THE COURT: Counsel approach.

14 (Conversation off the record)

15 THE COURT: Let the record reflect that
16 I received word in my chambers approximately ten
17 minutes ago that the jury had reached a verdict and my
18 bailiff when I came into the Courtroom, I called
19 Counsel to the bench because the bailiff informed me
20 that the jury had reached a verdict and that they had
21 a note they wanted to send me signed by some of the
22 jurors which made me concerned as to whether or not
23 their verdict form had been filled out and they were
24 asking a question. And they wanted to go smoke before
25 verdict was published. Counsel agreed to let them go

1 smoke and I understand from the bailiff that they now
2 had the opportunity to smoke. I asked the bailiff
3 with the consent of the lawyers at the bench to
4 inquire if the verdict form had been completed and
5 whether or not the piece of paper signed by some
6 jurors was consistent with the verdict form so that we
7 would not have an inconsistent written result. The
8 bailiff then brought the piece of paper that's signed
9 by nine of the twelve jurors. I'll publish it at the
10 appropriate time. I've already shared that piece of
11 paper with Counsel at the bench and I wanted the
12 record to be complete that everything was done with
13 the consent of both sides insofar as that is
14 concerned. Have I accurately stated what occurred as
15 far as the State is concerned?

16 MR. KNIGHT: You have, Your Honor.

17 THE COURT: As far as the Defendant is
18 concerned?

19 MR. BEACH: You have, Your Honor.

20 THE COURT: Thank you. Would you bring
21 us the jury please now to publish the verdict?

22 (Jury returned to the Courtroom)

23 CLERK: Mr. Foreman, have you reached
24 a verdict?

25 FOREMAN: Yes, ma'am, we have.

f'

1

THE COURT: You may publish the

2 verdict.

3

CLERK: Indictment 2004 GS15 400, the

4

State of South Carolina versus Melvin Daniel the

5

second, we the jury by unanimous consent find the

6

Defendant, Melvin Daniel, guilty of Homicide by Child

7

Abuse or Neglect. Signed by Foreperson, Donald D.

8

Starcher the second. Mr. Foreman and ladies and

9

gentlemen of the jury, is this your verdict?

10

THE COURT: If you would signify please

11

by raising your right hand if this be your verdict.

12

Let the record reflect that twelve hands were raised.

13

Thank you.

14

MR. BEACH: Your Honor, we would ask

15

for the individual poll?

16

THE COURT: Madame Clerk, would you

17

please poll the jury? Please be seated.

18

CLERK: As I call your name, please

19

raise your hand. Eloise W. Bligen. Is this your

20

verdict?

21

A. Yes.

22

CLERK: Is this still your verdict?

23

A. Yes.

24

CLERK: Kenya D. Alowine. Is this your

25

verdict?

1 A. Yes, **ma'am**.

2 CLERK: Is it still your verdict?

3 A. Yes, **ma'am**.

4 CLERK: Penny F. Gant. Is this your
5 verdict?

6 A. Yes, **ma'am**.

7 CLERK: Is it still your verdict?

8 A. Yes, **ma'am**.

9 CLERK: Alicia G. Ford. Is this your
10 verdict?

11 A. Yes, **ma'am**.

12 CLERK: Is it still your verdict?

13 A. Yes.

14 CLERK: John B. Stroud, Jr. Is this
15 your verdict?

16 A. Yes, **ma'am**.

17 CLERK: Is it still your verdict?

18 A. Yes, **ma'am**.

19 CLERK: James L. Gamble. Is this your
20 verdict?

21 A. Yes, **ma'am**.

22 CLERK: Is it still your verdict?

23 A. Yes, **ma'am**.

24 CLERK: Sherry M. Oshipcine. Is this
25 your verdict?

1 A. Yes, **ma'am**.

2 CLERK: Is it still your verdict?

3 A. Yes, **ma'am**.

4 CLERK: Candy R. Long. Is this your
5 verdict?

6 A. Yes.

7 CLERK: Is it still your verdict?

8 A. Yes.

9 CLERK: Audrey K. Cannon. Is this your
10 verdict?

11 A. Yes, **ma'am**.

12 CLERK: Is it still your verdict?

13 A. Yes, **ma'am**.

14 CLERK: Donald D. Starcher, II. Is
15 this your verdict?

16 A. Yes, **ma'am**.

17 CLERK: Is it still your verdict?

18 A. Yes, **ma'am**.

19 CLERK: Travis D. Aiken. Is this your
20 verdict?

21 A. Yes.

22 CLERK: Is it still your verdict?

23 A. Yes.

24 CLERK: Lakisha Y. Frazier. Is this
25 your verdict?

1 A. Yes.

2 CLERK: Is it still your verdict?

3 A. Yes.

4 CLERK: The jury's been polled.

5 THE COURT: Counsel, the jury's been
6 polled and the verdict stands. Is there anything
7 further before I excuse the jury. From the Defendant?

8 MR. BEACH: We do have a post-trial
9 motion, Your Honor.

10 THE COURT: I understand that but you
11 don't need the jury for that.

12 MR. BEACH: No, we don't.

13 THE COURT: Mr. Foreman and ladies and
14 gentlemen of the jury, on behalf of Colleton County
15 and this Court, I want to thank you for your service.
16 I want you to know that this concludes your service
17 for the week so you won't be coming back this week.
18 I told you I was going to give you a short week,
19 ladies and gentlemen, and I'm going to keep my word.
20 I know I've worked you hard and I appreciate so much
21 All a judge can do is ask that a jury listen and I've
22 watched each and every one of you throughout this
23 trial and each of you did that and that's all the
24 parties can ask for and I appreciate that willingness
25 to serve. Without you, ladies and gentlemen, justice

1 can never be accomplished in a courtroom. Now, I
2 invite you to stay in the courtroom if you so desire.
3 You don't have to stay in your jury box. You can stay
4 in the public area of the courtroom because sentencing
5 in this case will take place in just a couple of
6 moments and I would like for you, if you would like to
7 stay you may. You don't have to stay. As far as
8 discussing your verdict, if you want - if someone
9 tries to talk to you about your verdict and you want
10 to discuss your verdict, you can do so. If you don't
11 want to discuss your verdict, simply tell the person
12 you don't want to talk about it. If they persist in
13 wanting to talk to you, you contact me, ladies and
14 gentlemen, and I'll handle that problem for you as
15 well. That is a matter entirely up to you as to
16 whether you want to talk about your verdict or your
17 deliberations or not. Sometimes lawyers can benefit
18 from talking to jurors as to how to improve trying
19 cases. On the other hand, ladies and gentlemen, that
20 is purely a matter for you as to whether or not you
21 want to talk about your verdict or not. Now, I want
22 to thank you for your service. This concludes your
23 service. If you would like to stay in your jury box
24 you may do so. If you would like to sit in the public
25 area of the courtroom. Also my bailiff has instructed

1 anyone who wants assistance, my bailiffs will be glad
2 to walk you to your vehicle if you would like
3 assistance from law enforcement in returning to your
4 home and I thank you for your service. Those of you
5 that would like to leave the courthouse at this time
6 may leave at this time. Those of you who want to stay
7 in your jury box or stay in the public area in the
8 courthouse may do so at this time. Thank you very
9 much. Remain seated while the jury is either staying
10 or leaving. Very well, Mr. Beach, I'll be happy to
11 hear any post-verdict motions that you have.

12 MR. BEACH: Your Honor, we would move
13 for a new trial based upon the grounds set forth in
14 our previous motions for a directed verdict and we
15 would also assert to the Court I believe that the
16 jury's verdict was based not upon evidence but upon
17 the sensational nature of this trial and we would ask
18 the Court to grant us a new trial based upon that.

19 THE COURT: Mr. Knight, would you like
20 to be heard on that?

21 MR. KNIGHT: No. I think the facts
22 spoke for themselves.

23 THE COURT: Mr. Beach, I have no basis
24 upon which to conclude the jury's verdict was not
25 based upon the evidence in this case. I denied your

1 motion for directed verdict at the close of the
2 State's case and at the close of all the evidence.
3 There is no evidence that the verdict was the result
4 of passion or some emotion not in evidence. Your
5 motion for a new trial is respectfully denied.

6 MR. BEACH: Thank you, Your Honor.

7 THE COURT: I ask that you and your
8 client come around to the microphone to list and
9 please prepare a sentence sheet. Mr. Foreman, would
10 you come forward please sir. My law clerk is going to
11 need you over here for one minute. Mr. Foreman, I
12 just need for you to formalize the verdict by signing
13 here on the indictment. He's going to show you what
14 to sign and where. Mr. Beach, I'll be happy to hear
15 from you now in mitigation.

16 MR. BEACH: Thank you, Your Honor.
17 Your Honor, my client is twenty-four years old. He
18 has a ten month old child and another four year old
19 child. And, of course, he is the active parent for
20 the ten month old child. He has no criminal record.
21 He has no record of anything that I can find. And
22 as we tried to say all along, whatever happened that
23 day is totally inconsistent with the way he's lived
24 his life and the way that he has presented himself.
25 And whatever happened that day, Your Honor,

1 I think was an aberration. I don't think it reflected
2 the type of person that he is. Since this incident
3 has happened he has kept children and done what is
4 necessary as a parent and is a surrogate parent for
5 some other children also. I would ask the Court to be
6 as lenient as possible in this case. I don't believe
7 that it is a case of anything other than something
8 happening all at once at one time which as I say,
9 whatever happened is a complete aberration of the way
10 he has lived his life. He has witnesses, Your Honor.
11 Today he has his mother and his father who have come
12 from California and, of course, you met his sister and
13 his friend earlier and I think he also has some other
14 friends out there who were here to support him in this
15 sad time.

16 THE COURT: Mr. Daniel, is there
17 anything that you'd like to tell me before sentencing?
18 A. Yes.

19 THE COURT: I'd be happy to hear from
20 you. You don't have to lean over that. I can hear
21 you.

22 A. Okay. I'd like to apologize, first of all, I
23 understand that I was with the child and I can't
24 really give a good explanation what with my voluntary
25 statement and what I said right there on the stand

1 of what - how when the baby was in my care. Other
2 than that, I have no reason whatsoever to do any
3 bodily harm to victim. Since I've been out, I've been
4 working. I've had a child. I've been taking care of
5 my stepdaughter since I've gotten out. I've not
6 gotten in any other trouble. My father's side of the
7 family has helped me get out and I've been
8 communicating with them. I understand that, you know,
9 it was a jury that made the decision. The only thing
10 I can say is that one of the jurors is - you might
11 want to say a personal prayer. I know him personal
12 but I don't know if anybody was going to bring that
13 up or not but one of the jurors I did know.

14 THE COURT: I don't recall that that
15 information being made available to the Court until
16 after the jury published its verdict but I inquired
17 of relationships with the jury prior to that, Mr.
18 Daniel. Did you advise your attorney of that so he
19 could advise the Court?

20 A. I brought it up but at the same time .

21 THE COURT: To your attorney? Because
22 you certainly didn't bring it to my attention.

23 A. Yes, sir. I did not bring it to your attention.

24 THE COURT: I have no reason to believe
25 that if the juror thought that they had a close

1 personal relationship with you or were related to you
2 by blood or marriage that they didn't give me truthful
3 answers to my questions concerning their impartiality.
4 I do take into consideration, Mr. Daniel, in the sense
5 in this case that you have no criminal record and that
6 you've been on bond for three years and you have not
7 been charged or convicted of any other offenses and I
8 think that should be taken in consideration. I would
9 also like for you to know that I received a note from
10 the jury which I'm going to make a Court's exhibit
11 that I've already shared with the attorneys in this
12 case. It's signed by nine of the twelve jurors and it
13 states, I do not think that he should get the maximum
14 punishment. Please consider and I hope that I can
15 read these names correctly. I might need help.
16 Madame Clerk, do you have the jury list? Make sure
17 that I've got everybody's name that signed this
18 correctly. Eloise Bligen, I think this is John B.
19 Stroud, if I'm reading it correctly but Jason or James
20 L. Gamble, Alicia Ford, Felicia Frazier, Audrey
21 Kennedy, Tammy Long, Sheri Cane, Travis Aiken. The
22 only signature I'm not completely sure is and I think
23 this is John B. Stroud. Nine of the twelve jurors
24 signed this note to me asking that they wanted me to
25 know their feelings were that they did not think

1 that you should get the maximum punishment which as
2 you know from your attorney, Mr. Daniel, is life
3 imprisonment for this offense. The statute says that
4 you may be in prison for life but not less than the
5 term of twenty years and I'm sure your attorney has
6 made you aware of that. Is that correct?

7 A. That's correct.

8 THE COURT: Very well. Mr. Beach, is
9 there anything further from the Defendant and any
10 objection made to the jury's note a Court's exhibit?

11 MR. BEACH: No objection to making the
12 note a Court exhibit, Your Honor. I think the note
13 shows very plainly that the jury was very .

14 THE COURT: Hold on a second, Mr.
15 Beach. Any objection from the State to the Court's
16 exhibit?

17 MR. KNIGHT: No, sir.

18 THE COURT: Yes, sir. Mr. Beach?

19 MR. BEACH: I think that the note shows
20 that the jury was very tortured by this particular
21 decision that they made and as a result I would ask
22 the Court to be as lenient as possible in this
23 situation. I don't think anything lends itself to
24 show that this was anything other than a very, very
25 isolated incident and it's just - we would just ask

1 the Court to be as lenient as possible in sentencing.

2 THE COURT: Very well, Mr. Beach.

3 Anything further from the Defendant?

4 A. Yes. I don't feel that I was represented to the
5 full extent and I would like to find myself another
6 lawyer.

7 THE COURT: Well, Mr. Daniel, you'll
8 have the opportunity to deal with that in post-
9 conviction relief matters or by a new attorney for
10 purposes of appeal. You'll have that opportunity.
11 This is not the time to address that matter. Do you
12 understand?

13 A. Yes, but

14 THE COURT: And you will have that
15 opportunity if you so desire. Anything further from
16 the Defendant, Mr. Beach?

17 MR. BEACH: Nothing.

18 THE COURT: Mr. Knight, I'll be happy
19 to hear from you.

20 MR. KNIGHT: Your Honor, I have asked
21 the victim in this case whether or not they wanted to
22 address the Court pursuant to the Victim's Bill of
23 Rights. They advised me they do not. They understand
24 obviously again from your spelling out what the
25 minimum sentence to the maximum gives you great

1 discretion and I admit he has no prior criminal
2 history so I refer to your decision to seek justice
3 in this matter.

4 THE COURT: Mr. Daniel, I certainly
5 take into consideration the fact that you have no
6 criminal record. The statute states an extreme
7 indifference to human life. I personally and
8 apparently a number of jurors did not believe that it
9 was your intent to harm the child. As a result of
10 which this child lost his life and this was a very
11 tragic outcome. I wish it were in my power to restore
12 the life of a young person which I do not have. But
13 in light of the jury's note to me which is now been
14 made a Court's Exhibit. In light of your record, the
15 sentence of this Court is the Defendant is committed
16 to the State Department of Corrections for a term of
17 twenty years. I will give you credit for any time
18 that you served pursuant to code section 24 13 40.
19 That is to be calculated and applied by the State
20 Department of Corrections. Good luck to you sir.

21 A. Can I ask you one more question?

22 THE COURT: Pardon?

23 A. Can I ask you one more question?

24 THE COURT: Yes, sir. Ask your
25 attorney and then he can tell you whether or not

1 it's something you wanted.

2 THE COURT: Anything else Mr. Beach?

3 MR. BEACH: Nothing, Your Honor.

4 Unless he has another question.

5 THE COURT: No other questions?

6 MR. BEACH: Nothing, Your Honor.

7 THE COURT: All right.

8 END OF REQUESTED TRANSCRIPT OF RECORD__

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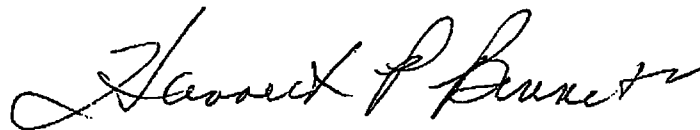
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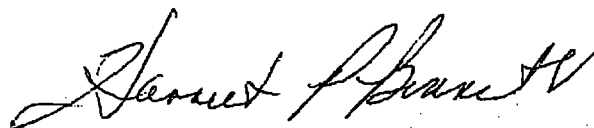
CERTIFICATE

I' HARRIET p. BENNETT,, Official Court Reporter for the Office of South Carolina Court Administration, do hereby certify that the foregoing Transcript was prepared from records of Ronda Cummings.

That the matter was heard in the Court of General sessions for Colleton County on July 16-18, 2007.

FURTHER, that it was prepared to the best of my ability, and that I am not of kin or of counsel to any party to the action, nor do I have any interest in the same.

Dated: October 8, 2007



WITNESSES

Det. James Clites

Capt. Bob Carter

ARREST WARRANT #:

G622629

Arrested on May 12, 2004

ACTION OF GRAND JURY

Sam Bil

Foreman: *Virginia A. Cobb S.P.D.*
Grand Jury

VERDICT

Sam Bil

Foreman: *Sam Bil*
Petit Jury

Date: *18 July 2007*

DOCKET #: 04GS15-0400

THE STATE OF SOUTH CAROLINA
County of Colleton

COURT OF GENERAL SESSIONS

Term: August, 2004

THE STATE

Vs.

Melvin Daniel, II

INDICTMENT FOR

0500

HOMICIDE BY CHILD ABUSE

16-3-85 (A)(1)

STATE OF SOUTH CAROLINA)
County of Colleton)

INDICTMENT #04GS15-0400

At a Court of General Sessions, convened on August 30, 2004,
the Grand Jurors of Colleton County present upon their oath:

COUNT:

HOMICIDE BY CHILD ABUSE
16-3-85 (A)(1)

That Melvin Daniel, II did in Colleton County on or about May 10, 2004, willfully and unlawfully cause the death of [REDACTED] a child under the age of eleven while committing child abuse and/or neglect as defined in Section 20-7-490 and the death occurred under circumstances manifesting an extreme indifference to human life, to wit: Melvin Daniel, II did cause severe head trauma to [REDACTED] consisting of retinal damage, swelling of the brain, also known as "Shaken Baby Syndrome", then delayed contacting medical or law enforcement assistance for approximately two hours.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

Randolph M. Munday

ARREST WARRANT

G-622629

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Walterboro

THE STATE

against

Daniel II Melvin

Address: 200 Dorsey St. Apt F6

Walterboro SC 29488

Phone: SSN:

M Race: B Height: 160

DL State: CA

DOB: Agency ORI#:

Prosecuting Agency: WPD

Prosecuting Officer:

Offense: Homicide By Child Abuse

Offense Code:

Code/Ordinance Sec. 16-3-85

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Melvin Daniel II on 05-12-04

P.L. M. L. Wright P-36.

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Walterboro

AFFIDAVIT

Personally appeared before me the affiant Det. James Clites who being duly sworn deposes and says that defendant Melvin Daniel II did within this county and state on 5-10-2004 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Walterboro) in the following particulars:

DESCRIPTION OF OFFENSE: Homicide By Child Abuse 16-3-85

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Sworn to and subscribed before me on 5/12/04

Signature of Issuing Judge (L.S.)

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Walterboro

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 5-10-04 defendant Melvin Daniel II

did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Walterboro) as set forth below:

DESCRIPTION OF OFFENSE: Homicide By Child Abuse 16-3-85

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code

(L.S.)

Judge's Address

Judge's Telephone

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

300

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

ORIGINAL

WITNESSES

Name: Investigator Jim Cates
 Address: WPD

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

Bennett

5/27/04

Andrew Grimes

Wound over

04-400

Affidavit

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
CITY OF WALTERBORO**

Personally appeared before me, **Detective James Clites** one who, being duly sworn, deposes and says that:

Melvin Daniel II

Address: 200 Dorsey St Apt F6 Walterboro, SC 29488

Race: B Sex: M Ht: 600 Wt: 160 Hr: Blk Eyes: Brn
SSN: D.O.B. DL# ST: CA Phone: 538-2078

Defendant

did within this County and State on the **10th DAY OF May, 2004**, violate the criminal laws of the State of South Carolina in the following particulars:

**Homicide By Child Abuse
16-3-85**

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 10th, 2004, between the hours of 0700-1130 hrs while at 189 Beach Rd Apt E1, Walterboro, County of Colleton and State of South Carolina, the defendant Melvin Daniel II, did commit the offense of Homicide by Child Abuse in violation of section 16-3-85, of the South Carolina Code of Laws of 1976, as amended.

In that the defendant did intentionally or otherwise cause severe head trauma to the victim, (15 months of age) consisting of retinal damage, swelling of the brain, also known as shaken baby syndrome, then delay contacting medical or law enforcement assistance for an approx. period of 2 hours. This action resulted in the death of the victim.

The Affiant, Detective James Clites, is a witness to prove the same. All against the Law, Peace and Dignity of the State.

Det. James Clites
Det. James Clites, AFFIANT

Sworn to and subscribed before me this
12 DAY OF May, 2004

Signature of Judge
Signature of Judge

Address: **242 Hampton St.**
Walterboro, SC 29488
OCA# 0400624

STATE OF SOUTH CAROLINA

COUNTY OF
STATEColleton
VS
MELVIN DANIEL, JR.

AKA:

Race:

DOB:

Sex:

SS#:

Age:

Address:

City:

State:

ZIP:

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 04 -GS- 15- 0400
AW#: 6/22/20
Date of Offense: 05/10/04
S.C. Code §: 16-3-105(A)(3)(i)
CDR Code #: 6/15/16

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Homicide by Child Abuse
In violation of § 16-3-105 of the S.C. Code of Laws, bearing CDR Code # 2356☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ Negotiated Sentence, ☐ Recommendation by the State. (Defendant Initial)
The plea is: ☐ Without Negotiations or Recommendation.
ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ set by SCDPPPS

PTUP

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
Other: paid to Public Defender FundRecipient:
*Fine:
\$14-1-208 (Assessments 107.5%)
\$14-1-211(A)(1) (Conv. Surcharge)
\$14-1-211(A)(2) (DUI Surcharge)
\$55-5-2906 (DUI Assessment)
\$35.13 (Public Def/Prob)
\$73.3, 1B TP (Law Enforce. Funding)
\$33.7, 1B TP (Drug Court Surcharge)
\$50-21-114(BUI Breath Test Fee)
\$55-5-2942(J) (Vehicle Assessment)
3% to County (if paid in installments)
TOTAL

\$100	\$100
\$100	\$100
\$12	\$12
\$500	\$500
\$25	\$25
\$100	\$100
\$50	\$50
\$40/ea	\$40/ea
	3.75
	\$128.75

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Patricia C. Grant

Clerk of Court/Deputy Clerk

Court Reporter:

Ronda L. Cunningham

PRESIDING JUDGE

Judge Code:

Sentence Date:

0018
7/18/07

SCCA/217 (9/2006)

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE STATE OF SOUTH CAROLINA

v.

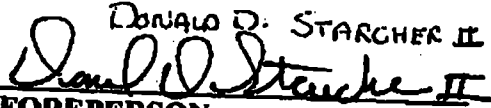
MELVIN DANIEL, II

Defendant.

COURT OF GENERAL SESSION
INDICTMENT # 2004-GS-15-0400

VERDICT

We, the jury, by unanimous consent, find the Defendant Melvin Daniel:

☒ Guilty of Homicide by Child Abuse or Neglect☐ Not Guilty of Homicide by Child Abuse or NeglectDONALD D. STARCHER II

FOREPERSONWalterboro, South Carolina
July 18, 2007

Please indicate your finding by checking the appropriate line and certify this finding by the foreperson's signature. Please inform the bailiff when you have reached your verdict

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS

10-CP-15-805

CIVIL ACTION COVERSHEET

Melvin Daniel, II #323062
Plaintiff(s)

-CP-

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

(Please Print)

Submitted By: Melvin Daniel, II #323062
Address: Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC. 29472

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

PATRICIA D. CLARK
COLLETON COUNTY
COMMON PLEAS
2010 AUG -2 PM 3:15

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Sexual Predator (510)			

Submitting Party Signature:

Date:

7/26/10

FORM 5

STATE OF SOUTH CAROLINA)

County of COLLETON)

IN THE COURT OF COMMON PLEAS

*10-CR-15-805*MELVIN DANIEL, II #323062)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2010 AUG -2 PM 3:15
 PATRICIA D. GRIFFIN
 CLERK OF COURT
 COMMON PLEAS

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution, P.O. Box
205, Ridgeville, SC. 29472
2. Name and location of Court which imposed sentence _____
Colleton County, Court of General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2004-GS-15-0400 (homicide by child abuse)

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 18, 2007 (20-years)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty trial by jury
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed conviction and sentence
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 23, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion no. 2010-UP-149 (per curiam)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel;
- (b) denial of due process,
- (c) denial of Sixth and Fourteenth Amend. U.S. Const.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached issues and memorandum of law in support.
- (b) same as above
- (c) same as above
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. n/a _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

first filing for post conviction relief

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. n/a _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. n/a _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) ~~first filing for post conviction relief~~
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? XXXX yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Andrew Grimes, Esquire
- ii. Harris Beach, Esquire
- iii. Kathrine Hudgins, Esquire
- (b) the proceedings at which each such attorney represented you:
- i. preliminary hearing, pretrial motions, etc.
- ii. trial and sentencing
- iii. direct appeal

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON

10-CP-15-805-

Melvin Daniel II, -- Petitioner,

-VS-

State of South Carolina -- Respondent,

PATRICIA P. GARY
COLLETON COUNTY
COMMON PLEAS
2010 AUG -2 PM 3:15

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION RELIEF
PURSUANT TO S.C. CODE ANN.
§§ 17-27-20 THROUGH 17-27-160

Respectfully Submitted,

18 
Melvin Daniel II,

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STANDARD OF REVIEW

The Sixth Amendment provides in part: "[i]n all criminal prosecutions, the accused shall enjoy the right... "...to have the Assistance of Counsel for his defense." U.S. Const. amend VI.

It is well established that the Sixth Amendment right to counsel "cannot be satisfied by mere formal appointment." Avery v. Alabama, 308 U.S. 444, 446 (1940). Rather, the Sixth Amendment guarantees criminal defendants the assistance of "a reasonable competent attorney." McMann v. Richardson, 397 U.S. 759, 770-71 n.14 (1970).

The United States Supreme Court defined the Sixth Amendment right to the effective assistance of counsel in Strickland v. Washington, 466 U.S. 668, 686 (1984). In Strickland, the Court established a two-part test for reviewing claims of ineffective assistance of counsel. Id at 690.

First, the petitioner must demonstrate that trial counsel's performance is "highly deferential." Id at 689. Indeed, courts must afford a strong presumption that counsel's performance was within the wide range of professionally competent assistance. See, Id.

Second, if the petitioner is able to demonstrate that his trial counsel's performance was objectively unreasonable, he must then "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Id at 694. As a result, a petitioner's trial counsel may be deemed ineffective only if his

conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id at 686.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON)

10-CP-15-805

Melvin Daniel II,) Indict.No. 2004-GS-15-0400
Petitioner,)
-V-) MEMORANDUM OF LAW IN SUPPORT
State of South Carolina) APPLICATION FOR POST CONVICTION
Respondent,) RELIEF PURSUANT TO: S.C.CODE ANN
) §§ 17-27-20 THROUGH 17-27-160

2010 AUG - 2
FEDERAL COURT
COLLETON COUNTY
COMMON PLEAS

COMES NOW, Melvin Daniel II, pro-se, herein after, petitioner, respectfully seeking relief in this Honorable Court pursuant to S.C. Code Ann. §§ 17-27-20 through 17-27-160, claiming that his constitutional rights were violated in a number of ways, including but not limited to his Sixth Amendment right to the effective assistance of trial counsel and his Fourteenth Amendment right to due process of law that is protected under the Federal Constitution.

Petitioner, through the issues presented, statement of facts and citations of authorities relied on will show unto this Honorable Court that he is entitled to the requested relief sought herein.

Respectfully Submitted,

[Signature]
Melvin Daniel II,

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO CONDUCT ANY PRETRIAL INVESTIGATION, INCLUDING BUT NOT LIMITED TO MEDICAL REPORTS AND POLICE REPORTS?

FACTS

Petitioner asserts that he was denied the effective assistance of trial counsel when counsel failed to conduct any pretrial investigation into the facts and circumstances surrounding the case. Petitioner further asserts that counsel was ineffective for failing to hire an expert witness to evaluate Petitioner's defense. Had counsel of hired an expert Petitioner could have reasonably refuted the State's evidence theory as put forth by the Prosecution, yet due to counsel's failure to investigate, counsel could not properly cross-examine the State's expert witness. At a minimum counsel has an obligation to conduct adequate pretrial investigation both factual and legal.

The adversarial process is protected by the Sixth Amendment and requires that the accused have "counsel acting in the role of an advocate." Anders v. California, 87 S.Ct. 1396 (1967). The

right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing envisioned by the Sixth Amendment. But if the process loses its character as a confrontation between adversaries then the constitutional guarantee is violated. See U.S. v. Cronin, 466 U.S. at 656-57, 104 S.Ct. at 2045-46.

Petitioner asserts he was denied the effective assistance of counsel as guaranteed by the Sixth Amendment when counsel failed to conduct any pretrial investigation and had counsel of investigated he would have realized that an expert witness was clearly going to be necessary and required in the instant matter.

DISCUSSION

The Sixth Amendment of the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right.. "...to have the assistance of counsel for his defense." U.S. Const. amend. IV. The right to the effective assistance of counsel means the right to "effective assistance of counsel." Culyer v. Sullivan, 446 U.S. 335, 344, 352 (1980); also see United States v. Morrison, 449 U.S. 361, 366 (1981); Tollett v. Henderson, 411 U.S. 258, 266-68.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir.), cert. denied ___ U.S. ___, 103 S.Ct. 1798. Therefore, permissible trial strategy can never include the "failure" to conduct a reasonably substantial investigation into

the case.

The test formulated in Strickland v. Washington, 466 U.S. 668 (1984), for determining whether counsel has rendered constitutionally ineffective assistance reflects this concern. In Strickland, the court identified two components to any ineffective assistance of counsel claim. (1) deficient performance; and (2) prejudice. Under that decision a criminal defendant alleging prejudice must show that counsel's errors were serious enough to deprive the defendant of a fair trial. Id; see also Kimmelman v. Morrison, 477 U.S. 365, 374 (the essence of an ineffective assistance of counsel claim is that counsel's unprofessional errors so upset the adversarial balance between the defense and prosecution that the trial was rendered unfair and the verdict rendered suspect.).

Preparation and investigation "must be more than perfunctory." Counsel has an affirmative duty to conduct appropriate investigation, both factual and legal. Coles v. Peyton, 389 F.2d 224, 226 (4th.Cir), cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defenses has often resulted in finding that the defendant was denied adequate representation. See Goodwin v. Swenson, 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of an attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panolpy of issues -- to which the defendant, a layman,

Counsel had an obligation to research and investigate. It is readily apparent from the nature of offense and dispute facts surrounding the incident counsel knew that expert witness testimony would be imperative in order to evaluate the State's case against Petitioner in order to ascertain any possible defenses Petitioner may have had and also at the same time would have allowed counsel to properly subject the State's case to a meaningful adversarial testing.

The Sixth and Fourteenth Amendments of the United States Constitution compel every state to provide legal counsel to indigent criminal defendants and in addition, require the state to provide appropriate but not unlimited services of experts necessary to a meaningful defense. See Ake v. Oklahoma, 470 U.S. 68 (1985). Indeed this Court has addressed this issue in the case of Bailey v. State, by stating:

...Thus although the State is not required to provide the indigent defendant with unlimited funding, it must insure that the defendant has competent counsel and the services of experts necessary to a meaningful defense: "We recognized long ago that mere access to the courthouse door does not by itself assure a proper functioning of the adversary process, and that a criminal trial is unfundamentally fair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense.

....[The Court] has often reaffirmed that fundamental fairness entitles indigent defendants to an adequate opportunity to present their claims fairly within the adversary system." See Bailey v. State, 309 S.C. 455, 459, 424 S.E.2d 503, 506 (1992)(quoting Ake, supra).

Here counsel's inactions denied Petitioner any meaningful adversarial testing. Surely when considering the nature of the allegations, and the type of critical issues involved any reasonable and competent attorney would have retained expert services. In the instant matter the deficient performance is easily seen and counsel was blatantly ineffective for failing to conduct any pretrial investigation and as a result Petitioner was prejudiced because he was not able to put the State's evidence to the test, thus rendering the verdict suspect and the trial unreliable.

For the aforementioned reasons, Petitioner respectfully asks this Court to grant the requested relief of a new trial.

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO HIRE AND CALL AN
EXPERT WITNESS TO CHALLENGE THE STATE'S SCIENTIFIC EVIDENCE?

FACTS

Petitioner asserts that he was denied the effective assistance of counsel by counsel failing to hire and call an expert witness to challenge the State's scientific evidence that was presented during trial, and as result Petitioner was prejudiced because he was denied his right to fair trial because counsel alone was not qualified to challenge or refute the State's expert witnesses since counsel was not qualified in this field.

This issue is more amplified since prior to trial counsel motioned the Court ex parte for funds to retain an expert witness on December 14, 2004, which was subsequently granted on December 16, 2004. Yet, counsel failed to retain and call an expert witness to properly challenge the State's "scientific evidence."

During trial the State's expert, Dr. Presnell took the stand and during cross-examination by counsel the following was recorded:

Q. But do you completely rule out a trip and fall?

A. You know you consider each case individually. Certainly there are falls from certain distances that can do internal damage but again remember what I was trying to explain about the (inaudible-cough). This isn't just a fall with blunt trauma and that's it. There is sheering injury that implies that there is more than just a trip and fall that occurred.

Q. If the child had been involved in falls immediately prior to this within two days of this injury. Could not that have a cumulative effect that would give you the same effect as you have here?

A. No. It still wouldn't be a sheer injury. I would think it more as something like a motor vehicle crash or something a lot more severe. I know there are some studies in the literature that have looked at kids on swings or see-saws that again have motion before they fall but aren't necessarily falling from a really high height but a lower height but again, other circumstances that go along with the description of how the injury actually happened. [Tr.p.172, L.22-25, p.173, L.1-17].

Q. If the mechanism of injury in the previous fall was not the same as the trip and fall, could that have the same effect?

A. Until you get a more concrete example, theoretically it's -- Again I bring up the (inaudible) because that's one of the controversial articles in our forensic literature. Is that you can't have, you know, single head trauma with short falls. [Tr.p.175, L.4-11].

As was seen in the underlined portions of Dr. Presnell's testimony Presnell refers to and relies on "medical literature and controversial medical literature" in order to substantiate the State's theory of defense, yet counsel being unqualified in the field of medicine could not properly cross-examine the State's expert. The issue becomes problematic since comparing Dr. Presnell's testimony to the medical literature is very clear there are inconsistencies and unsupported theories concerning

Presnell's theories and because counsel failed to hire and call an expert witness this testimony was placed before the jury to prove the truth of the matter asserted.

As will be seen infra counsel attempted to place his theory of defense to the State's expert and Presnell simply closes the door on a plausible theory, yet Presnell was allowed to present a theory of "violent shaking" and supports the theory by stating "there usually isn't any evidence of shaking", as was recorded:

Q. I mean if the child -- To give you a hypothetical; if the child had fallen and hit his head the day that he died, the previous day, and the day previous to the. Could that cause these injuries?

A. No. sir.

Q. And why is that?

A. It just doesn't happen.

Q. Now, how much does it take to cause a retinal hemorrhage?

A. Violent shaking.

Q. And don't people have detached retinas quite often? [Tr.p.126, L.14-25].

A. Detached retinas and retinal hemorrhage are not the same thing.

Q. Tell me what the difference is?

A. Detached retinas is where the retinas are actually pulled away itself. Retinal hemorrhages are bleeding within the retina themselves.

Q. And that's caused by a sudden injury?

A. That's caused by violent shaking.

Q. By violent shaking?

A. Yes. sir. That's my study.

Q. Okay. Did you find any other evidence of a shaking?

A. There usually isn't any evidence of any shaking, sir. [Tr.p.127, L.1-14].

Petitioner asserts he was denied the effective assistance of counsel when counsel failed to hire and call an expert witness to challenge the State's scientific evidence that presented a one-sided, unsupported theory of defense that denied Petitioner his right to a fair trial.

The "medical literature" refutes Presnell's theory that the [only] possible way for the retinas to be detached is by "violent shaking". There is good discussion concerning the "medical literature and controversial medical literature" that supports Petitioner's theory of defense, yet Petitioner could not properly present his theory of defense to the jury because counsel failed to hire and call an expert witness. The prejudice incurred is easily seen as the State was allowed to present Dr. Presnell's testimony as that of the truth of the matter asserted the denied Petitioner not only proper cross-examination, but it denied him the right to present a plausible defense.

DISCUSSION

Petitioner asserts that he was denied the effective assistance of counsel when counsel failed to hire and call an expert witness to challenge the State's "scientific evidence". Counsel's inactions are apparent from the record that counsel could not properly cross-examine the State's expert witness. Counsel's errors are fully magnified by the fact counsel was granted an ex parte application to obtain funds to retain an expert witness and counsel failed to hire and call an expert witness for Petitioner's defense. (emphasis supplied).

As was recorded in the underlined portions of Dr. Presnell testimony supra, Presnell relied on "studies in the literature, and the controversial articles in forensic literature." Yet, counsel could not properly cross-examine the State's experts concerning this type of testimony and reference to literature since counsel was surely not qualified in the medical field. (emphasis supplied).

Petitioner asserts that the medical testimony given by the State's experts put to the test of rigorous scrutiny by the scientific community and fails to meet the judicial standard of majority acceptance. See People v. Frye, 293 F. 1023 (D.C.Cir.1923). Petitioner asserts that testimony about syndromes refuted by peer reviewed literature are unsupported by scientific proof are more prejudicial than probative and should not have been admitted into evidence. See Florida v. Sercey, 825 So.2d 959 (2002). Specifically, such testimony contradicts and/or is

inadequately supported by empirical data and that the jury may have, as a result been mislead by the presentation and introduction of unsupported theories that violate the Frye standard and the holding in State v. Sercy, 825 So.2d 959 (Fla.1st DCA 2002) and progeny.

Pursuant to Frye, expert testimony is not admissible unless the expert is qualified to present a medical opinion on the issue, the testimony will assist the jury in determining a fact at issue and the expertise can be shown to be generally accepted in the relevant scientific field. Frye v. United States, 54 App. D.C. 46, 293 F. 1013 (1923). This "general acceptance" requirement is commonly referred to as the Frye standard.

Utilizing the Frye standard, the Florida Courts provide a tenable solution. Florida Courts require both the basic underlying principals and the methodology of scientific evidence be "sufficiently tested and accepted by the relevant scientific community." Brim v. State, 695 So.2d 268, 272 (Fla.1997), citing Frye v. United States, 293 F. 1013, 1014 (D.C.Cir.1923). See also Cerna v. South Florida Bioavailability Clinic, et at, 815 So.2d 652 (Fla.3rd D.C.A.2002).

In Florida, medical opinion evidence based on a physician's own knowledge and experience is generally considered an exception to the Frye standard and is [otherwise inadmissible]. Pure Opinion based on an expert's personal experience and training need not meet the Frye test, expert opinion testimony, which, by its nature, necessarily relies upon some scientific principal or test "which implies an infalibility not found in "pure opinion"

must meet the Frye test designed to ensure the jury will not be misled. Sercy at 978, citing Flanagan v. State, 625 So.2d 827, 828 (Fla.1993).

In Ramirez v. State, 651 So.2d 1164 (Fla.1995), the Florida Supreme Court considered the steps requisite to the admission of expert opinion testimony noting the trial judge must determine whether the expert's opinion testimony is based on a scientific principal or discovery that is "sufficiently established to have gained general acceptance in the particular field in which it belongs." Ramirez at 1166-67 (Fla.1995). In Ramirez, the court noted that the second step, that of determining general acceptance, embodies the Frye standard stating "[t]he principle inquiry under the Frye test is whether the scientific theory or discovery from which an expert derives an opinion is reliable." Sercy, at 979 citing Ramirez at 1167.

The application of the Frye standard would prohibit prosecution experts witnesses from testifying to "scientific fact" that (1), shaking alone of an otherwise healthy child causes retinal hemorrhages and subdural hematomas; (2) short distance falls cannot cause fatal injury; (3) chronic subdural hematomas do not rebleed spontaneously or with lesser trauma; (4) a child suffering from an ultimately fatal head injury cannot experience a lucent interval between the inception of the subdural and the child's death and (5) that retinal hemorrhages are exclusively diagnostic of non-accidental trauma.

The problem with the State's expert relying on "medical literature and controversial medical literature" is that the

scientific community appears to be split along the lines of training and discipline. Experts trained over the past 10 years in pediatrics or general medicine have been taught that shaking alone can cause subdural hematomas and retinal hemorrhages in an otherwise healthy infant. This group was also erroneously trained that short falls cannot cause death in a healthy infant or one with a previous subdural and that retina hemorrhages are diagnostic of abuse. See American Academy of Pediatrics. "Treaties on SBS -- American Academy of Pediatrics Tutorial on Shaken Baby Syndrome: Inflicted Cerebral Trauma." 10(7) Pediatrics; May (2001). Experts trained in biomechanic, engineering, neurosurgery, ophthalmology, and other similar fields who have taken a scientific approach of the mechanisms of head injuries known that the data tends to show otherwise. (emphasis supplied).

The prosecution of "Shaken Baby Syndrome" ("SBS") cases and non-accidental trauma cases involving children is usually based on five specific assumptions which are either demonstrably wrong and scientifically unsupported. The theories and testimony often presented by medical experts such as the case at bar, violate known rules of physics and fundamental concepts of biomechanical engineering. Furthermore, many of the fundamental assumptions behind a diagnosis of non-accidental head trauma or shaken baby syndrome are inconsistent and/or incompatible with known cases presented in scientific literature.

In the instant case Dr. Presnell was allowed to tell the jury

this "isn't just a fall with blunt trauma and that's it. There is a sheering injury that implies that there is more than just a trip and fall." [Tr.p.173, L.1-4]. The allowance of this testimony into evidence of such comparisons is particularly prejudicial because there is ample scientific evidence and medical literature showing that short falls of less than six feet can and do produce the amount of force required to cause subdural hematoma and retinal hemorrhages. See Aoki, N. and Masuzawa, H. "infantile Subdural Hematomas." Neurosurgery: Chapter 13; Neuropathology; pp.273-280 (1984); Reiber, G. "Fatal Falls in Childhood." 14(3) The American Journal of Forensic Medicine and Pathology; pp.201-207 (1993); Root, I. "Head Injuries from Short Falls." 13(1) The American Journal of Forensic Medicine and Pathology; pp.201-207 (1993); Hall, John R. "The Mortality of Childhood Falls." 29(9) The Journal of Forensic Medicine and Pathology; pp. 85-87 (1992).

A recent study by John Plunkett analyzed the Consumer Product Safety Commissions's database on falls from playground equipment that occurred between January 1988 and January 1999. See Plunkett, John. "Fatal Head Injuries Caused by Short Distance Falls." 22 American Journal of Forensic Medicine and Pathology; pp. 1-12 (2001). According to the study, 18 deaths were caused by falls of less than 10 feet. Thirteen of the children had subdural hematomas, and twelve of the children had lucid intervals ranging from five minutes to forty-eight hours. Four of the children that had fundoscope examinations also had retinal hemorrhages. The article is important in the study of childhood head injuries

because it supports many of the previous studies on short falls. See Gurdjian, E.S., Roberts, V.L. and Thomas, L.M. "Tolerance Curves of Acceleration and Intracranial Pressure and Protective Index of Experimental Head Injuries." 6(5) The Journal of Trauma; pp. 600-604 (1966); Mahajan BM, Beine WB. "impact attenuation performance of surface installed under playground equipment: Report to the Consumer Product Safety Commission." US Department of Commerce, National Bureau of Standards, Washington, DC: Publication Number NBSIR 79-1707. Feb. (1979), and refutes some of the fundamental assumptions upon which SBS cases have been prosecuted and convicted.

As is seen there is clearly controversial medical literature that refutes the State's experts and their theories. The fact counsel failed to hire and call an expert witness denied Petitioner the right to proper cross-examination and the right to present a plausible defense. Petitioner asserts he was denied the right to the effective assistance of counsel as well his Fourteenth Amendment right to a fair trial when counsel failed to hire and call an expert witness to challenge the State's scientific evidence.

For the aforementioned reasons, Petitioner respectfully prays that this Court will grant the requested relief of a new trial.

ISSUE (C) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE SOLICITOR'S IMPROPER CLOSING ARGUMENT THAT "BOLSTERED" THE STATE'S CASE AND DENIED PETITIONER A FAIR TRIAL?

FACTS

Petitioner asserts that he was denied the effective assistance of trial counsel when counsel failed to object to the Solicitor's improper closing argument that denied him his right to a fair trial.

During the State's case in chief Dr. *Schuh* testified as an expert for the State and during cross-examination Dr. Presnell made the following statement to the jury; as was recorded:

Q. And you testified primarily for the State of South Carolina?

A. Most commonly I am called to testify by the State of South Carolina but in my opinion, I testified for the child in order to determine the truth. [Tr.p.141, L.3-7].

Petitioner asserts that counsel should have objected to this statement and asked for a curative instruction in regards to Dr. *Schuh*'s improper statement that "in her opinion she testifies for the child." (emphasis supplied).

This error is further magnified by the Solicitor during closing argument, as was recorded:

These are experts. Their opinions are on the line. Their opinion is on the line when they come into court and testify. [Tr.p.252, L.13-15].

Her opinion. I think she testified numerous times. But, you know, Mr. Beach made an interesting question to her. You always testify for the State of South Carolina? And do you know what she told him? I testify for the child. [Tr.p.253, L.10-15].

It is clearly seen the Solicitor personalized and "bolstered" Dr. Schuh's improper testimony by assuring the Jury the Doctor, in her "opinion, testifies for the child", a reasonable juror could have been misled by the improper statement and made the jury's responsibility personal rather than as a jury to decide the issue from the facts and evidence and injected into the trial and to the jury an inflammation and a passion to decide the case for some other reason than the facts and the law.

DISCUSSION

The role of an American Prosecutor as a minister of justice is firmly established. See Berger v. United States, 295 U.S. 78, 88 (1935)(government attorney is the representative "of a sovereignty whose obligation to govern impartially is as compelling as it's obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done"). ABA Standards for Criminal Justice: Prosecution Function & Defense Function,

Standard 3-1.2(c)(3rd ed. 1993)("The duty of the prosecution is to seek justice, not merely to convict."); Nat'l Dist. Attys, National Prosecution Standards, standard 1.1(2nd. ed.1991)("The primary responsibility of the prosecution is to see that just is accomplished."). Thus, a prosecutor may not seek a conviction at any price. See State v. Porter, 526 S.W.2d 359, 362-63 (Minn.1995); Salitros, 499 N.W.2d at 817.

A solicitor's closing argument must be carefully tailored not to appeal to the personal biases of the jury. See Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004), cert. denied 544 U.S. 943, 125 S.Ct. 1645, 161 L.Ed.2d 511 (2005). The argument must not be calculated to arouse the juror's passions or prejudices. Jurors are sworn to be governed by the evidence, and it's their duty to consider the facts of the case impartially. Id.

In the instant case the Solicitor improperly "bolstered" the State's case by vouching for the veracity of the State's witness, that "their opinions are on the line." (emphasis supplied).

A review of a solicitor's closing argument is based upon the standard of whether his comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. State v. Caldwell, 300 S.C. 494, 504, 388 S.E.2d 816, 822 (1990). A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981).

Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit

personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony. See State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001). In Kelly, the Court found an assistant solicitor improperly "bolstered" a witness' credibility through improper questioning. While the assistant solicitor in Kelly did not assert he had personal knowledge his witness was testifying truthfully, he improperly phrased his questions in the first person. Id. In the instant case the Solicitor clearly told the jury that they could believe Dr. Presnell's testimony because her opinion was on the line when she said she "testifies for the child." (emphasis supplied).

The Court, quoting State v. Gilstrap, 205 S.C. 412, 416, 32 S.E.2d 163, 164-65 (1944), reasoned... "The rule followed in this State, and We think in most jurisdictions, is that if upon the whole case, it appears to the Court that the defendant was prejudiced by the language used, as a result of which he did not have a fair trial and impartial trial, it would be the duty of the Court to reverse the case and remand it for a new trial." The Court further opined: "an argument of this nature addressed to the jury tends to completely destroy and nullify all sense of impartiality in a case of this kind. It's logical effect is to arouse the passions and prejudices of the jury. Jurors are sworn to be governed by the evidence and it is their duty to regard the facts of the case impartially. See State v. Cannon, 93 S.E.2d 889; and State v. White, 246 S.C. 502, 144 S.E.2d 481, quoting Gilstrap supra.

Petitioner asserts that counsel should have objected to Dr. Presnell's "improper, opinion that she testifies for the child", as the failure to object was further amplified by the Solicitor's improper statements during closing that only served to "bolster" Dr. Schuh's testimony and the State's case when the Solicitor argued that "their opinions are on the line when they come to court and testify, and what did she say "I testify for the child." This statement clearly lead the jurors to believe that Dr. Schuh was advocating for the victim and the Solicitor's improper statements were not only prejudicial but were only placed before the jury in a self-serving manner that denied Petitioner his right to fair trial.

Petitioner asserts that counsel's deficient performance denied Petitioner his right to a fair and impartial trial. For the aforementioned reasons, Petitioner respectfully prays that this Court will grant a new trial.

ISSUE (D) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE COMMENTS OF THE TRIAL COURT THAT PREMATURELY DIRECTED A VERDICT FOR THE STATE?

FACTS

Petitioner asserts that he was denied the effective assistance of trial counsel when counsel failed to object to the the Trial Court's comments to the jury that prematurely directed a verdict for the State and denied Petitioner his right to a fair trial.

At the onset of the trial the Trial Court made the following statement to the jury without objection from counsel, as was recorded:

And if I make a mistake as to the law and a party to this case can appeal the case to the Appellate Court and if the Appellate Court agrees that I have made a mistake on the law, they'll reverse the case and send it back for a new trial. [Tr.p.52, L.22-25, p.53, L.1-2].

Petitioner asserts that it was error for the trial court make the statement to the jury and in doing so the statement only served the purpose of prematurely directing a guilty verdict for the State. Petitioner asserts that a reasonable jurist could have easily interpreted the statement to mean that the "jury can go ahead and convict Petitioner and if something was done wrong another court would correct it." This statement absolved the jury of the responsibility for its verdict. As a result counsel was constitutionally ineffective for failing to object to the

statements made by the trial judge.

DISCUSSION

The law in this area is as easy to state as it is difficult to apply. The proper role of a trial judge was best summarized by the Supreme Court in the following oft-quoted words: "In a trial by jury a judge is not a mere mediator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law. Quercia v. United States, 289 U.S. 466, 469, 53 S.Ct. 698, 698-99 (1933).

The trial judge is more than a mere arbitrator to rule upon objections and to instruct the jury. However, great care must be taken by a judge to "always be calmly judicial, dispassionate and impartial." The judge should sedulously avoid all appearances of advocacy as to the questions which are ultimately to be submitted to the jury. Frantz v. United States, 62 F.2d 737, 739 (6th.Cir.1933).

As good a summary as any of the applicable law was recently stated by Judge Pierce Lively in the United States v. Frazier, 584 F.2d 790, 794 (6th.Cir.1978): "The basic requirement is one of impartiality in demeanor as well as in actions." The problem is that potential prejudice lurks behind every intrusion into a trial made by a presiding judge. The reason for this is that a trial judge's position before a jury is "overpowering." United States v. Lanham, 416 F.2d 1140, 1144 (5th.Cir.1969), citing Adler v. United States, 182 F. 464 (5th.Cir.1919). See Quercia v.

United States, supra at 470, 53 S.Ct. 525.

The Tenth Circuit has recognized the prejudice that may result from a trial judge's comments on the guilt of the defendant and have reversed cases where such prejudicial remarks have usurped or tainted the fact finding duties of the jury. McBride v. United States, 314 F.2d 75 (10th.Cir.1963); Davis v. United States, 227 F.2d 568 (10th.Cir.1955).

Petitioner asserts the comment by the trial judge in the instant case merely served to remind the jury that its decision could be reviewed on appeal. Ostensibly, this statement absolved the jury of the responsibility for its verdict and enabled them to render an erroneous decision; as such a reasonable jurist could have interpreted the comment to simply mean "convict the defendant and if something was done wrong another Court will fix it."

United States v. Fiorito, 300 F.2d 424 (7th.Cir.1962) is supportive in this instance. In Frioito the judge explicitly instructed the jury that the court of appeals would review the judgement. Id at 426. In that situation, the Seventh Circuit concluded that "such dilution of the final responsibility of the jury as was thus inferred as permissive to the jury in its determination of the verdict [was] prejudicial to the defendant. Id at 427.

Such instructions are usually unnecessary and the other circuits have counseled against them unless there is some special reason to give such instructions in a particular case. See, e.g., United States v. Green, 445 F.2d 1158, 1162 (2nd.Cir.1971)("It

might have been better procedure not to have told the jury...."[not] to worry because this court would reverse if there were error."); Commonwealth v. Burke, 376 Mass. 539, 382 N.E.2d 192, 195 (1978)("[I]n the absence of special circumstances, the judge should not refer to the appellate process.").

The Fifth Circuit has also reversed convictions because of similar remarks. See United States v. Hill, 417 F.2d 279 (5th.Cir.1969). Other courts as well have reversed convictions because the jury was reminded that a higher court would be reviewing any possible mistakes. See Fiorito supra, and United States v. Lulasik, 341 F.2d 325, 330 (7th.Cir.1965).

The language used by the trial court in the instant matter parroted the same language admonished and held unacceptable by the Sistering Circuits. Counsel clearly should have objected to the trial court's comments that prematurely directed a verdict for the State and denied Petitioner his right to a fair trial.

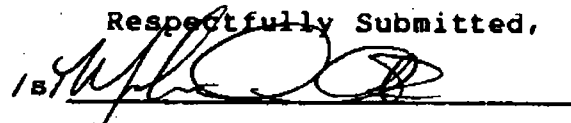
For the aforementioned reasons, Petitioner respectfully prays that this Court will grant the requested relief of a new trial.

CONCLUSION

WHEREFORE, Petitioner believes through the issues presented, citations of authorities relied on that he has shown unto this Honorable Court that he is entitled to the requested relief of a new trial.

For the requested relief, Petitioner respectfully prays.

Respectfully Submitted,

15 

Melvin Daniel, II

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
IN THE COURT OF COMMON PLEAS

10-CR-15-805

CERTIFICATE OF SERVICE

I, Melvin Daniel, II, do hereby swear and declare that I have mailed the Original and (1) one copy of the enclosed Application for Post Conviction Relief and Memorandum of Law in Support, to the Colleton County Clerk of Court, Patricia C. Grant, P.O. Box 620, Walterboro, SC. 29488.

This was done by placing the aforesaid in a properly addressed, sufficient postage affixed and placed in the U.S. Mail here at Lieber Corr. Inst. in Ridgeville, SC.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 24th DAY OF July, 2010

Sylva Jones
Notary Public

My Comm. Expires 1/24/2018

Respectfully Submitted,

Melvin Daniel, II

Melvin Daniel, II

2010 AUG -2 PM 3:36
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
IN THE COURT OF COMMON PLEAS

10-CP-15-805-

Indict.No. 2004-GS-15-0400

Melvin Daniel II, -- Petitioner,

-VS-

State of South Carolina -- Respondent,

PATRICIA J. GORMAN
COLLETON COUNTY
COMMON PLEAS
2010 AUG -2 PM 3:16

**MOTION FOR AUTHORIZATION FOR
EXPENDITURE OF FUNDS FOR EXPERT
AND INVESTIGATION SERVICES**

Respectfully Submitted,

1st 

Melvin Daniel II,

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) *10-CA-15-805*

Melvin Daniel II,) Indict.No. 2004-GS-15-0400
Petitioner,)
-V-) MOTION FOR AUTHORIZATION FOR
State of South Carolina) EXPENDITURE OF FUNDS FOR EXPERT
Respondent,) AND INVESTIGATION SERVICES

2010 AUG -2 PM 3:16

PATRICIA J. GRANT
COLLETON COUNTY
COMMON PLEAS

COMES NOW, above captioned Petitioner who respectfully moves this Honorable Court pursuant to a Motion for Authorization for Expenditure of Funds for Expert and Investigation Services to allow him to hire an expert witness. Pursuant to S.C. Code Ann. §17-3-50(B): Ake v. Oklahoma, 470 U.S. 68 (1985), also see Bannister v. State, 333 S.C. 298, 303, 523 S.E.2d 459 (1999)(PCR applicant must produce testimony of favorable witness to establish prejudice).

In support of Petitioner's motion he will show unto this Court the following:

(1) Petitioner was indicted for one count of homicide by child abuse. Indict.No.(2004-GS-15-0400).

(2) Due to the nature of the charge and the fact that Petitioner is not and would not be qualified to give the testimony sought to be introduced during the post conviction relief hearing.

(3) Petitioner seeks to introduce the expert testimony to support his version of events and trial defenses as part of his post conviction relief hearing.

(4) Before, Petitioner was ultimately arrested the police interviewed Petitioner.

(5) During the interview, Petitioner told the police that the child tripped and fell while he was playing with toys.

(6) Petitioner seeks to introduce expert testimony to show that short falls may cause fatal injuries to children and that it is possible for [prior] injuries to later surface and cause severe harm and possibly death to a child.

(7) During the investigation of the case, Petitioner learned through hospital records that the child fell at the hospital after his birth and that the child fell on at least two other occasions two-three days prior to the incident at issue.

(8) Petitioner seeks to introduce expert testimony about second-impact injuries.

(9) Petitioner is indigent and is financially unable to obtain expert services necessary for adequate presentation.

(10) For Petitioner to carry his burden of proof through the preponderance of evidence standard required during pcr hearings, Petitioner believes that it is absolutely necessary to have the services of a medical expert to assist him in presenting the issue for post conviction relief.

CONCLUSION

WHEREFORE, Petitioner respectfully prays this Court will grant his Motion for Expenditure of Funds for Expert and Investigation Services to him to hire an expert witness.

Respectfully Submitted,

1st 

Melvin Daniel II,

Submitted this 20 day of July, 2010

19. State clearly the relief you seek in filing this application:

vacate sentence and conviction and remand for new trial, or
in the alternative, any relief this Court deems just.

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Dorchester)

I, Melvin Daniel, II, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Melvin Daniel, II

SWORN to and subscribed before me this 26th
 day of July, 2010

Sylvia Jones (L.S.)
 Notary Public

My Commission Expires: 1/24/2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Melvin Daniel, II, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

10th day of July, 2010.


Notary Public

My Commission Expires: 1/24/2018

PATRICIA C. GRAY
COLLETON COUNTY
COMMISSIONER
2010 AUG -2 PM 3:15

STATE OF SOUTH CAROLINA)
)
County of Colleton)

INDICTMENT #04GS15-0400

At a Court of General Sessions, convened on August 30, 2004,
the Grand Jurors of Colleton County present upon their oath:

COUNT:

HOMICIDE BY CHILD ABUSE
16-3-85 (A)(1)

That Melvin Daniel, II did in Colleton County on or about May 10, 2004,
willfully and unlawfully cause the death of [REDACTED], a child under the age
of eleven while committing child abuse and/or neglect as defined in Section
20-7- 490 and the death occurred under circumstances manifesting an extreme
indifference to human life, to wit: Melvin Daniel, II did cause severe head
trama to [REDACTED], consisting of retinal damage, swelling of the brain, also
known as "Shaken Baby Syndrome", then delayed contacting medical or law
enforcement assistance for approximately two hours.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

Charles M. Mendenhall

WITNESSES

Det. James Clites

Capt. Bob Carter

ARREST WARRANT #:

G622629

Arrested on May 12, 2004

ACTION OF GRAND JURY

Tom Bil
 Foreman: *Virginia A. Cobb S.F.O.*
 Grand Jury

VERDICT

David D. Starnes
 Foreman: *Scituary*
 Petit Jury
 Date: *18 July 2007*

DOCKET #: 04GS15-0400

THE STATE OF SOUTH CAROLINA
County of Colleton

COURT OF GENERAL SESSIONS

Term: August, 2004

THE STATE

Vs.

Melvin Daniel, II

INDICTMENT FOR

0500

HOMICIDE BY CHILD ABUSE

16-3-85 (A)(1)

ARREST WARRANT

G-622629

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 Walterboro

THE STATE

against

Daniel II Melvin

Address: 200 Dorsey St. Apt E6
Walterboro SC 29488

Phone: _____ SSN: _____

M Race: B Height: 600 Weight: 160

DL State: CA DL#: _____

Agency ORI#: _____

Prosecuting Agency: WPD

Prosecuting Officer: _____

Offense: Homicide By Child Abuse

Offense Code: _____

Code/Ordinance Sec. 16-3-85

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

RETURN

 A copy of this arrest warrant was delivered to
 defendant Melvin Daniel II
 on 05-12-04

PH. M. Wragg P-36.

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 Walterboro

 Personally appeared before me the affiant Det. James Clites who
 being duly sworn deposes and says that defendant Melvin Daniel II
 did within this county and state on 5-10-2004 violate the criminal laws of the

 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Walterboro)

in the following particulars:

DESCRIPTION OF OFFENSE: Homicide By Child Abuse 16-3-85

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

 Sworn to and subscribed before me
 on 5/12/04

Signature of Issuing Judge (L.S.)

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 Walterboro

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 5-10-04 defendant Melvin Daniel II

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Walterboro) as set forth below:

DESCRIPTION OF OFFENSE: Homicide By Child Abuse 16-3-85

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code: _____

(L.S.)

Judge's Address 709

Walterboro SC 29488

Judge's Telephone 843 549 1559

 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

WITNESSES

Name: Inventor, Jim Cates
 Address: WPD
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
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 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

04-400

Bennett

5/27/04

Andrew Grimes

Round over

APPENDIX

Affidavit

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
CITY OF WALTERBORO**

Personally appeared before me, **Detective James Clites** one who, being duly sworn, deposes and says that:

Melvin Daniel II

Address: 200 Dorsey St Apt F6 Walterboro, SC 29488

Race: B Sex: M Ht: 600 Wt: 160 Hr: Blk Eyes: Brn
SSN: D.O. ST: CA Phone: 538-2078

Defendant

did within this County and State on the **10th DAY OF May, 2004**, violate the criminal laws of the State of South Carolina in the following particulars:

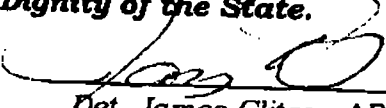
**Homicide By Child Abuse
16-3-85**

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

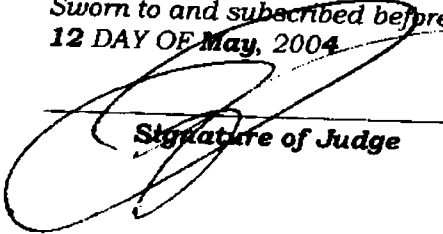
That on May 10th, 2004, between the hours of 0700-1130 hrs while at 189 Beach Rd Apt E1, Walterboro, County of Colleton and State of South Carolina, the defendant **Melvin Daniel II**, did commit the offense of **Homicide by Child Abuse** in violation of section 16-3-85, of the South Carolina Code of Laws of 1976, as amended.

In that the defendant did intentionally or otherwise cause severe head trauma to the victim, [REDACTED] (15 months of age) consisting of retinal damage, swelling of the brain, also known as shaken baby syndrome, then delay contacting medical or law enforcement assistance for an approx. period of 2 hours. This action resulted in the death of the victim.

The Affiant, **Detective James Clites**, is a witness to prove the same. All against the Law, Peace and Dignity of the State.


Det. James Clites, AFFIANT

Sworn to and subscribed before me this
12 DAY OF May, 2004


Signature of Judge

Address: **242 Hampton St.**
Walterboro, SC 29488
OCA# 0400624

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Melvin Daniel, II, #323062,	)	2010-CP-15-805
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on August 2, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. The Applicant was indicted at the August 2004 term of the Colleton County Grand Jury for homicide by child abuse (2004-GS-15-400). Harris Beach, Esquire, represented the Applicant. On July 16-18, 2007, the Applicant proceeded to trial, after which a jury found him guilty as indicted. The Honorable Perry M. Buckner sentenced the Applicant to confinement for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Kathrine H. Hudgins of the South Carolina Office of Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Daniel, Op. No. 2010-UP-149 (S.C. Ct. App. filed February 23, 2010). The Remittitur was issued on March 12, 2010.

Attached and incorporated herein by reference are the records of the Colleton County

Clerk of Court, the records of the South Carolina Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated March 12, 2010.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
 - a. Failed to conduct any pretrial investigation, including but not limited to medical reports and police reports.
 - b. Failed to hire and call an expert witness to challenge the State's scientific evidence.
 - c. Failed to object to the solicitor's improper closing argument that bolstered the State's case and denied Applicant a fair trial.
 - d. Failed to object to the comments of the trial court that prematurely directed a verdict for the State.
2. Denial of due process.
3. Denial of Sixth and Fourteenth Amendments, U.S. Constitution.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant further alleges that he was denied due process of law. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "...specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be

dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.
This allegation is so vague that it is impossible for the State to respond.

V.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing on the foregoing issues.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

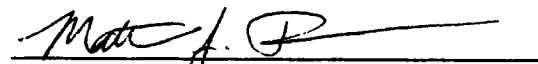
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

11/16, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS

2010-CP-15-805

MELVIN DANIEL, II, 323062,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

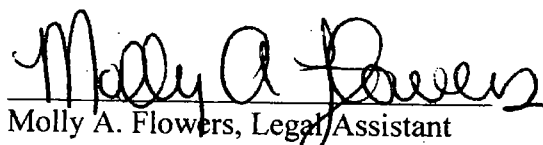
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James G. Longtin, Esquire
P.O. Box 973
Walterboro, SC 29488

DATED this 16th day of November, 2010.


 Molly A. Flowers, Legal Assistant
 For Respondent

CMTI3300

SCDC OFFENDER MANAGEMENT SYSTEM

08/30/1

DMCOMITA

RELEASE DATE SCREEN

C048593

SCDC# > 9323062

LOC: LIEBER

DANTEL II, MELVIN -

SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE... ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY... N

SEXUAL PREDATOR... NOT APP

DNA STATUS... COMPLETED

GPS REQUIREMENT... N

PREA DECISION... :

CURRENT SENTENCE: 020-00-000

CONSECUTIVE SENTENCE... N

020-00-000

CURRENT SENT START DATE: 05/17/2007

PROJECTED COMPLETION DATES

MAXOUT DATE... 05/12/2024

CURRENT EWC... 3 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC... NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 05/17/2024

NEXT PAROLE HEARING DATE: 05/17/2024

TOTAL GT DAYS EARNED... 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS... 000281

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS... 000000

CATEGORY 4 OR 5 OFFENSE

TOTAL EXTRA EARNED CREDITS... 000

TOTAL SERVICE TIME EARNED... 001183

PFKEYS:

5: HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 08/30/10

C048

DANIEL II, MELVIN - FBI # 47442FCB SID# SC01555764 SCDC # 323062

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION .: LIEBER CORRECTIONAL INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 20 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: EA0037B

RACE....: B SEX....: M

PROJ MAXOUT DATE: 05/12/2024

PROJ PAROLE DATE: 05/17/2024

EWC JOB...: CARPENTER HELPER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: MAINTENANCE

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 27 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

*** NO PREVIOUS NUMBERS ***

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CATEGORY
HOMICIDE BY CHILD ABUSE	20 0 0 COLLETON	5/17/20 7 U 5

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

DETAINERS (HOLD, WANTED, NOTIFY):

TRAF MARIJ(10-100LBS, 1ST

NOTIFY

OPEN ARREST NOTIFICATION CATEG: 4

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

1/16/10 DISRESPECT

OTHER

3/21/ 9 SOLICIT EMPLOYEE, I/M, VIO CONVICTED

MAJOR

3/21/ 9 POSS. OR/ATTEMPT TO POSS CONVICTED

MAJOR

HISTORY OF MOVEMENTS:

9/ 6/ 7 LIEBER

INCARCERATED

ADMINISTRATIVE

7/25/ 7 KIRKLAND

INCARCERATED

R&E PROCESSING

7/25/ 7 LIEBER

INCARCERATED

NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
CARPENTER HELPER	01/05/10	0/ 0/ 0		3F5
CANTEEN OPERATOR HEL	10/08/08	10/21/ 9	INMATE REQUEST	3F5
WARDKEEPER ASSISTANT	11/09/07	10/ 7/ 8	INMATE REQUEST	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
NO SCHOOL ASSIGNMENTS			

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF Colleton
STATE VSAKA: MELVIN DANIEL, IIRace: B Sex: M Age: DOB: [REDACTED] SS#: Address: 200 DORSEY ST APT 56City, State, Zip: WALTERBORO, SC 29488DL# [REDACTED] SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 04 -GS- 15- 0400A/W#: G622129Date of Offense: 05/10/04S.C. Code §: 16-3-95(A)(1)(3)(4)CDR Code #: 2 13/5/6

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Homicide by Child AbuseIn violation of § 16-3-95 of the S.C. Code of Laws, bearing CDR Code # 2356☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ plus 20% fee: \$Payment Terms:
☐ set by SCDPPPSRecipient:

*Fine:

\$14-1-206 (Assessments 107.5%)		
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	
\$56-5-2995 (DUI Assessment)	\$12	
\$35.13 (Public Def/Prob)	\$500	
\$73.3, 1B TP (Law Enforcement Funding)	\$25	25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	
\$50-21-114(BUI Breath Test Fee)	\$50	
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)		3.75
TOTAL		128.75

PTUP

 days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.Patricia C. Grant

Clerk of Court/Deputy Clerk

Court Reporter: Ronda L. Cummings

PRESIDING JUDGE

Judge Code: 0611212Sentence Date: 7/18/07

CERTIFIED TRUE COPIES OF RECORDS

Patricia C. Grant
CLERK OF COURT, GENERAL SESSIONS COURT
COLLETON COUNTY, SOUTH CAROLINA
DATE: 7-17-07

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

MELVIN DANIEL, II #3323062,)

APPLICANT,)

STATE OF SOUTH CAROLINA,)

RESPONDENT,)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-15-805

SUPPLEMENTAL APPLICATION FOR
POST-CONVICTION RELIEF

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

2013 AUG -2 PM 2:57

The Applicant, Melvin Daniel, II, by and through his counsel, Gerald A. Maree, respectfully supplements his Original Application for Post Conviction Relief as follows:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) – Ineffective assistance of Counsel;
- (b) – Denial of due process,
- (c) – Denial of Sixth and Fourteenth Amend, U.S. Const.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) 1. See attached issues and memorandum of law previously submitted with original application.
- (a) 2. Defense Counsel stipulated to the admission of prejudicial photographs of the child being admitted into the evidence.
- (a) 3. Defense Counsel failed to argue the elements of the state's charge and a definition of Reasonable Doubt to the jury during closing argument.

(a) 4. Defense Counsel failed to motion for a change of venue due to pretrial publicity.

(a) 5. Defense Counsel failed to use preemptory challenges to strike potentially biased jurors.

(a) 6. Defense Counsel failed to procure expert testimony to benefit the Defendant and failed to properly cross-examine the state's expert witnesses with medical literature.

(a) 7. Defense Counsel failed to impeach the testimony of Heather Aiken concerning the child falling and sustaining an injury to his head prior to 05-10-2004.

(a) 8. Defense Counsel failed to introduce the statements given by Heather Aiken to Detective Clites of the Walterboro Police Department.

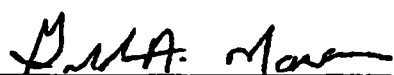
(a) 9. Defense Counsel failed to subpoena more character witnesses favorable to the Defendant

(a) 10. Defense Counsel failed to notify the court and the Defendant that he had a relationship with members of Heather Aiken's family that could create a potential conflict of interest.

(a) 11. Defense Counsel did not preserve the trial record for an effective Appeal.

(b) Same as above

(c) Same as above


Gerald A. Maree, Attorney for Applicant
P.O. Box 1202, Walterboro, SC 29488
843-549-7653

August 2, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
MELVIN DANIEL, II #3323062,)
APPLICANT,)
STATE OF SOUTH CAROLINA,)
RESPONDENT,)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-15-805

SECOND SUPPLEMENTAL
APPLICATION FOR
POST-CONVICTION RELIEF

2014 FEB 18 PM 12:24

RECEIVED
COLLETON
COMMON PLEAS

The Applicant, Melvin Daniel, II, by and through his counsel, Gerald A. Maree, respectfully supplements his Original and First Supplemental Application for Post Conviction Relief as follows:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) – Ineffective assistance of Counsel;
- (b) – Denial of due process,
- (c) – Denial of Sixth and Fourteenth Amend, U.S. Const.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) 1. See attached issues and memorandum of law previously submitted with original application.
- (a) 2. Defense Counsel stipulated to the admission of prejudicial photographs of the child being admitted into the evidence.

(a) 3. Defense Counsel failed to argue the elements of the state's charge and a definition of Reasonable Doubt to the jury during closing argument.

(a) 4. Defense Counsel failed to motion for a change of venue due to pretrial publicity.

(a) 5. Defense Counsel failed to use preemptory challenges to strike potentially biased jurors.

(a) 6. Defense Counsel failed to procure expert testimony to benefit the Defendant and failed to properly cross-examine the state's expert witnesses with medical literature.

(a) 7. Defense Counsel failed to impeach the testimony of Heather Aiken concerning the child falling and sustaining an injury to his head prior to 05-10-2004.

(a) 8. Defense Counsel failed to introduce the statements given by Heather Aiken to Detective Clites of the Waltherboro Police Department.

(a) 9. Defense Counsel failed to subpoena more character witnesses favorable to the Defendant

(a) 10. Defense Counsel failed to notify the court and the Defendant that he had a relationship with members of Heather Aiken's family that could create a potential conflict of interest.

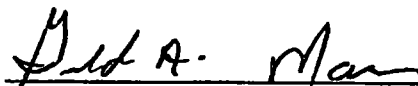
(a) 11. Defense Counsel did not preserve the trial record for an effective Appeal.

*** (a) 12. Defense Counsel failed to request a lower/shorter sentence during the sentencing stage of the trial. Further, Defense**

Counsel failed to file a Post Trial Motion for Reconsideration of Sentencing.

(b) Same as above

(c) Same as above



Gerald A. Maree, Attorney for Applicant

P.O. Box 1202

Walterboro, SC 29488

Telephone: 843-549-7653

Fax: 843-549-6817

February 18, 2014

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF COLLETON

CASE NO. 2010-CP-15-0805

3 MELVIN DANIEL)

4 vs.)

5 STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

6

7

FEBRUARY 20, 2014
BEAUFORT, SC

8

9

B E F O R E:

10

HONORABLE JAMES R. BARBER, III

11

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

13

GERALD A. MAREE, ESQUIRE
Attorney for Melvin Daniel

14

15

ASHLEIGH R. WILSON, ESQUIRE
Attorney for the State of South Carolina

16

17

Ruth L. Mott, RPR, CRR
Official Court Reporter

18

19

20

21

22

23

24

25

I N D E X

	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
1					
2					
3	HARRIS BEACH				
4	MR. MAREE	3		44	
5	MS. WILSON		32		
6	ANDREW GRIMES				
7	MR. MAREE	51			
8	MS. WILSON		64		
9	MARK SHUMAN, M.D.				
10	MR. MAREE	66		82	
11	MS. WILSON		78		85
12	HARRIS BEACH - REBUTTAL				
13	MS. WILSON	89			
14	MR. MAREE		89		
15	CERTIFICATE OF REPORTER	92			

E X H I B I T S

	NO.	DESCRIPTION	ID	EVD
16				
17	D-1	ORDER	9	9
18	D-2	ARTICLE	55	55
19	D-3	EMAIL	59	59
20	D-4	STATEMENT	76	76
21	D-5	AFFIDAVIT	88	88
22				
23				
24				
25				

1 MS. WILSON: Ashley Wilson for the State of South
2 Carolina. This is Melvin Daniel versus the State of South
3 Carolina, Docket No. 2010-CP-15-805. Mr. Daniel proceeded to
4 trial on July 18th, 2007 for homicide by child abuse, and he
5 was convicted and sentenced to 20 years by Judge Buckner. He
6 filed a timely notice of appeal of this conviction. The
7 appellate court dismissed his allegation and reviewed his
8 case pursuant to Anders. The remittitur was sent on March
9 12th, 2010. He filed this application for post conviction
10 relief on August 2nd, 2010. The state filed its return on
11 November 16th, 2010, and today Mr. Daniel is here and
12 represented by Mr. Gerald Maree, and he was represented at
13 trial by Mr. Harris Beach.

14 THE COURT: Mr. Maree, are you ready to proceed?

15 MR. MAREE: Yes, we are, Your Honor.

16 THE COURT: Want to call your first witness.

17 MR. MAREE: I call Harris Beach.

18 HARRIS BEACH,
19 being first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. MAREE:

21 Q. How are you doing, Mr. Beach?

22 A. Fine, thank you.

23 Q. Can you state your name for the record?

24 A. My name is Harris Beach.

25 Q. And, Mr. Beach, are you still practicing law as we speak

1 today?

2 A. I have retired from the public defender's office, but I
3 do practice in the 608 Program.

4 Q. And when did you retire?

5 A. July 1.

6 Q. Of?

7 A. Of last year.

8 Q. Of 2013?

9 A. Yes.

10 Q. And you were the public defender for Colleton County?

11 A. I was.

12 Q. And how long were you in that capacity?

13 A. Ten years.

14 Q. And did you do private practice prior to that?

15 A. Private practice prior to that, that's correct.

16 Q. And where was that?

17 A. In Walterboro.

18 Q. In private practice did you participate in criminal
19 cases?

20 A. Yes, I did.

21 Q. And what would you equate is the percentage of the
22 criminal cases that you did in private practice as opposed to
23 civil?

24 A. Probably 25 percent.

25 Q. 25 percent criminal?

1 A. 25 percent criminal, yes.

2 Q. Do you remember the year you started working in the
3 Colleton County Public Defender's Office?

4 A. Was 2002 or 2003, somewhere in there.

5 Q. In what capacity?

6 A. I was assistant public defender.

7 Q. And who was the head public defender at that time?

8 A. Oh, gosh, I forgot the gentleman's name -- Wendell
9 Adams.

10 Q. Mr. Adams?

11 A. Yes.

12 Q. And at some point in time did you become the head public
13 defender?

14 A. I left for a few months, and when I came back Andrew
15 Grimes was the chief public defender at that time, and I was
16 his assistant, and upon his leaving the office I became the
17 head of the office.

18 Q. Do you know approximately what time it was that you
19 became the head of the office?

20 A. Probably 2006, somewhere in there.

21 Q. We are here today on the PCR application of Melvin
22 Daniel, II. Do you recall representing Mr. Daniel in
23 Colleton County?

24 A. Yes, I do.

25 Q. Do you remember what the charges were?

1 A. It was homicide by child abuse.

2 Q. In your private practice had you ever represented
3 somebody with that charge before?

4 A. Never that specific charge. I had had child abuse
5 charges and I'd had a significant family practice, and I'd
6 have some child abuse situations in that but never a homicide
7 by child abuse.

8 Q. In your criminal practice had you ever represented
9 someone even for any type of homicide?

10 A. Oh, yes.

11 Q. Murder or manslaughter or whatever.

12 A. Yes.

13 Q. But not homicide by child abuse.

14 A. Not homicide by child abuse.

15 Q. So when you got this appointment, was this the first
16 time you had represented a defendant in a homicide by child
17 abuse case?

18 A. Yes, that's correct.

19 Q. Did you get the case directly or did you inherit it from
20 Andrew Grimes?

21 A. I inherited it from Mr. Grimes. He was working on it
22 when I came back to the office.

23 Q. So he was the first attorney, court-appointed attorney
24 on the case?

25 A. That's correct.

1 Q. What percentage, as far as the preparation for the
2 trial, would you associate Mr. Grimes representing the
3 defendant as opposed to you -- the applicant -- as opposed to
4 you representing him?

5 A. I think the incident happened in 2004. I believe Mr.
6 Grimes left in -- somewhere around 2006. I know that he did
7 a considerable amount of work on the file. He did a
8 considerable amount of research, and he contacted the
9 Listserv to see if other people had other ideas about this
10 case, and he did computer research on finding articles about
11 the particular charge, and so I would say that he probably
12 did at least 50 percent of the work on the case.

13 Q. Okay.

14 A. I inherited a pretty complete file.

15 Q. So you probably inherited it around 2006 or so would you
16 say?

17 A. That's right, and I think we tried it in 2007.

18 Q. July of 2007 --

19 A. Right.

20 Q. -- that sound correct?

21 A. That sounds right.

22 Q. And do you feel in that year and a half or so you had
23 the case primarily to yourself that you had ample time to
24 prepare for the trial?

25 A. I thought we had ample time. It was a very frustrating

1 case because the research didn't bear out our theory of the
2 case, but as for time-wise, I felt like we probably had
3 adequate time.

4 Q. Some of the things that you mentioned that Mr. Grimes
5 had done prior to you assuming responsibility of the case, do
6 you recall him obtaining an order of the Court for expert
7 funding?

8 A. I do not.

9 Q. You don't recall him obtaining that order?

10 A. He may have, but off the top of my head I don't recall
11 it. I know that is probably something he would have done
12 but --

13 Q. That sounds like something he would have done.

14 A. Yes.

15 Q. You're familiar with working beside him, that's
16 something that he normally he would have done?

17 A. Yes. He's very thorough, and I enjoyed working with
18 him.

19 Q. If I showed you a copy of that order, would it refresh
20 your memory?

21 A. It may very well.

22 MR. MAREE: May I approach, Your Honor?

23 THE COURT: You may.

24 THE WITNESS: I do recall seeing this order.

25 Q. And it indicates that you all had obtained \$15,000 to

1 apply towards expert funding fees, correct?

2 A. Yes.

3 Q. And it was signed by Judge Daniel Pieper?

4 A. Judge Pieper, yes.

5 MR. MAREE: Your Honor, I move to mark that as

6 Applicant's 1.

7 THE COURT: So admitted.

8 (Applicant's Exhibit 1 marked for identification and
9 admitted into evidence.)

10 Q. Mr. Beach, do you recall using any of the funds to
11 obtain an expert to assist the applicant in his case?

12 A. No.

13 Q. Why not?

14 A. We couldn't -- as I say we -- I couldn't find anyone who
15 I thought was helpful to the case.

16 Q. Who did you talk to?

17 A. Well, first thing I did was I went over all the evidence
18 that Mr. Grimes had put together, all the cases, all the
19 articles, and I did some follow-ups on some of the articles,
20 and I also took it to my internist to discuss it with him
21 about our theory and going forward with it and those -- he is
22 the only doctor I actually talked to.

23 Q. Your personal internist?

24 A. Yes, my personal internist.

25 Q. And he could not help you or point you in the right

1 direction any kind of way?

2 A. He was very discouraging. He said he did not feel that
3 what I was arguing fit the facts of the case.

4 Q. Did you attempt to speak to anybody who was a forensic
5 pathologist?

6 A. No, I did not.

7 Q. In the file that you inherited from Andrew Grimes were
8 there any communications that you were able to review where
9 Mr. Grimes had communicated with forensic pathologists?

10 A. There may have been. I don't recall any right offhand.

11 Q. But you did get a chance to review the file?

12 A. Yes.

13 Q. Do you remember the name of Dr. John Plunkett at all?

14 A. That name is familiar but I don't -- I don't
15 specifically remember him, but I do remember the name.

16 Q. Do you remember reviewing any literature written by Dr.
17 John Plunkett that was left in the file when you inherited
18 it?

19 A. I may have. There was a pile of different articles. I
20 read all of them.

21 Q. If you read it, do you recall the substance of the
22 article?

23 A. No.

24 Q. If I would give you a copy of that article today, would
25 it refresh your memory?

1 A. Probably not. There was so many of them and -- there
2 were so many medical articles on that particular charge, I
3 doubt very seriously -- I'd have to go back through and
4 reread the whole thing.

5 Q. Well, would it, do you recall whether any of the
6 material you read in the articles was helpful to my client's
7 position?

8 A. I don't think any of them were.

9 Q. So do you remember the substance of the articles?

10 A. No.

11 Q. You just don't remember today or you just -- what are
12 you telling me? You don't remember it today as we speak?

13 A. I don't remember what was in the individual articles.

14 Q. But there were a lot of articles?

15 A. A lot of articles, yes.

16 Q. Do you have any kind of notes today --

17 A. No.

18 Q. -- of anything that you may have kept on the file?

19 A. No.

20 Q. No handwritten notes?

21 A. No.

22 Q. So you can't tell us today any substance of the articles
23 that Andrew Grimes left for you to review?

24 A. That's correct.

25 Q. Besides speaking to your internist and reading the

1 literature, the medical literature in the file, did you do
2 anything else to try to procure an expert to assist the
3 applicant's position?

4 A. I did some more research on the computer, Googled a few
5 things and tried to find some more articles and some more
6 information, but I did not speak to anybody other than those.

7 Q. What were you able to ascertain from the articles that
8 you Googled?

9 A. Well, the articles that I had read and that I had
10 Googled after that seemed to say about the same thing, that
11 the severity of the injury did not match what we were trying
12 to portray as what happened.

13 Q. Did you come across any articles in your research or
14 even with the articles that were left by Attorney Grimes that
15 dealt with fatal injuries to children with short distance
16 falls? Do you recall any articles dealing with that subject
17 matter?

18 A. There were some articles that at least alluded to it. I
19 don't recall whether there was a specific article on that
20 specific issue of short fall and traumatic injury.

21 Q. If you did see one of those articles when you were
22 preparing for trial, do you agree or disagree that those
23 articles could have assisted Mr. Daniel in his defense?

24 A. Well, it's according to what the articles said, but yes,
25 they could have, yes.

1 Q. Mr. Beach, what type of investigation did you do to
2 prepare for trial, besides reviewing the articles and talking
3 to your internist, what other things did you do, as far as
4 investigative procedures, to prepare for trial?

5 A. I talked with the defendant, I talked with the people we
6 were going to call as the defendant's witnesses, I went back
7 over some notes that Mr. Grimes had on other people who were
8 potential witnesses, and I talked to -- I believe I talked to
9 some of them, I'm not absolutely certain about that but --
10 and basically prepared a strategy of attacking the State's
11 evidence.

12 Q. Did you ever visit the crime scene?

13 A. I don't think I did.

14 Q. Why not?

15 A. There were some pictures of the crime scene but I don't
16 think I did. I think the crime scene was an apartment and it
17 had already been rented out again. It had not been preserved
18 for this case.

19 Q. So that's the reason why you didn't visit the crime
20 scene?

21 A. I think that's correct, yes.

22 Q. You are aware that there was an order permitting you to
23 inspect the crime scene, correct?

24 A. Yes, mm-hmm.

25 Q. And you chose not to do that?

1 A. Right.

2 Q. And again, your reasoning is because it was occupied by
3 someone?

4 A. I believe it was occupied at that time by someone else.
5 I'm not absolutely sure of that, but I believe it was. Also,
6 we had a pretty clear picture of what was there, and I did
7 not go.

8 Q. What did you do to have a clear picture about what was
9 there?

10 A. Well, we had the reports from the officers, I believe
11 there were some photographs of the scene itself, and I had
12 what Mr. Daniel told me was the layout of the apartment and
13 where the computer had been, where the computer line had
14 been, where the baby had supposedly tripped and fallen. We
15 had a pretty good picture of what was there.

16 Q. Did you have a good picture of the type of carpet that
17 was in the apartment?

18 A. I really do not recall.

19 Q. Do you recall Mr. Daniel telling you that the carpet in
20 the house was very thin and that it just sat on top of a
21 concrete slab?

22 A. I do remember that, yes.

23 Q. With that information did you go out then and test it or
24 get any kind of confirmation to corroborate what he said?

25 A. No.

1 Q. Are you aware that several of the State's experts
2 testified that they did not believe that this child could
3 fall a short distance on carpet, are you aware that that's
4 what three of the State's experts testified to?

5 A. All three of them testified to that, yes.

6 Q. So with that being said, you don't believe that if you
7 had investigated to prove or to corroborate what Mr. Daniel
8 was saying, that the rug was very thin and it sat right on
9 top of a concrete slab, that that would help him in his
10 defense?

11 A. I think it could have, yes.

12 Q. But you didn't do it?

13 A. I didn't do it.

14 Q. When you went to trial, Mr. Beach, were you aware of the
15 potential witnesses the State was going to call?

16 A. Yes.

17 Q. Did you know that they were going to call a forensic
18 pathologist?

19 A. Yes.

20 Q. You knew that they were going to qualify that person as
21 an expert.

22 A. Yes.

23 Q. You knew that they were going to call another doctor to
24 testify to pediatric abuse.

25 A. Yes.

1 Q. And they were going to qualify her as an expert.

2 A. Yes.

3 Q. They also called a neurosurgeon from MUSC, did you know
4 that?

5 A. Yes.

6 Q. And they were going to qualify him as an expert.

7 A. Yes.

8 Q. In light of that you did not feel that you needed to get
9 an expert to assist Mr. Daniel in his defense.

10 A. I did not have an expert, I was not able to find one,
11 and we just didn't have one.

12 Q. Even without an expert physically at trial why didn't
13 you attempt to cross-examine the State's expert witnesses
14 with medical literature contrary to their positions?

15 A. I didn't think there was any medical literature
16 specifically contrary to their position.

17 Q. Again, I ask you, are you familiar with the article
18 published by Dr. John Plunkett?

19 A. No. I remember the name, but I can't tell you today
20 that I'm familiar with it.

21 Q. So your reasoning for not even cross-examining them with
22 medical literature was because you just didn't find any that
23 would effectively cross-examine them, is that fair to say?

24 A. That's correct.

25 Q. So what was your theory at trial?

1 A. Theory at trial was that we could raise reasonable doubt
2 based upon the fall, based upon the existence of the hematoma
3 on the child's head and based upon the good character of the
4 defendant.

5 Q. Did you in good faith think that that was sufficient to
6 overcome three State's experts?

7 A. It was all we had.

8 Q. My question is do you think in good faith that was
9 sufficient to overcome the testimony of three State's medical
10 experts?

11 A. Yes.

12 Q. Who did you call as witnesses at the trial?

13 A. We called as witnesses, of course we called Mr. Daniel,
14 he was our final witness, we called his sister, and we called
15 his girlfriend, who was the mother of his child.

16 Q. And they were basically character witnesses?

17 A. They were character witnesses. They were fact witnesses
18 also. The sister had been involved in the treatment of the
19 child, but they were character witnesses.

20 Q. Mr. Beach, getting back to the testimony of the State's
21 experts, Dr. Erin Presnell was qualified as a forensic
22 pathologist expert. Do you have a copy of the transcript
23 with you, the trial transcript?

24 A. Yes, I do.

25 Q. Do you have it with you right there?

1 A. Not there. I have to go back to my file and get it.

2 MR. MAREE: I would like to question you on it.

3 I'd like to question him on it, Your Honor. Can he get
4 that?

5 THE COURT: Ask him what you want to ask him.

6 MR. MAREE: I wanted to ask him, Your Honor, is some of
7 the testimony by Dr. Presnell, and I was going to point
8 directly to what she said in it, but anyway, I'll go ahead
9 and ask the question.

10 Q. In the transcript on page 173 Dr. Presnell alludes to
11 some medical literature that may be contrary to her position.
12 Do you recall her testifying to that?

13 A. I do remember that, yes.

14 Q. Why didn't you ask her at that particular time to
15 explain what medical literature she meant that was contrary
16 to her position?

17 A. I do not recall why that was not done at that time.

18 Q. You don't recall?

19 A. No.

20 Q. But I'm saying when you are cross-examining any witness
21 and they open the door to talk about something that's
22 contrary to their own position -- she brought it up, you
23 didn't. She brought up the fact that there was some
24 literature out there that was contrary to her position. Why
25 didn't you ask the simple question, what literature you're

1 alluding to?

2 A. I don't know why I didn't ask her.

3 Q. But today as we sit here do you think that that would
4 have been a reasonable question to ask?

5 A. Yes.

6 Q. That would have been a responsible question to ask?

7 A. Yes.

8 Q. You think that it would have helped the client in his
9 defense?

10 A. I think it could have, yes.

11 Q. Do you recall Dr. Sara Schuh testifying --

12 A. Yes.

13 Q. -- for the prosecution?

14 A. Yes, I do.

15 Q. She was also sworn in as an expert in pediatric abuse.

16 A. Yes.

17 Q. In your cross-examination of Dr. Schuh and in your
18 investigation of the entire file did you come across an audio
19 transcript of a speech given by Dr. Schuh a few years back
20 prior to this trial?

21 A. I don't recall one.

22 Q. It's a pretty thick transcript, and it was in the file.
23 You don't recall reviewing that or seeing a transcript from
24 Dr. Schuh?

25 A. No, I do not.

1 MR. MAREE: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 Q. Mr. Beach, now looking at it, are you familiar at all
4 with that being in your file?

5 A. No, sir, I'm not. It may have been, but I don't
6 specifically recall it.

7 Q. Can you state for the record what this document is?

8 A. No.

9 Q. You don't recall it at all?

10 A. I don't recall it at all.

11 Q. Fair enough. What research at all did you do for -- or
12 what preparation did you do to prepare you for
13 cross-examining Dr. Schuh? What did you do to prepare
14 yourself? You said you knew that they were going to call
15 these witnesses and they were going to swear them as experts.
16 What did you do to prepare yourself to cross-examine Dr.
17 Schuh?

18 A. Went back over the medical literature that I had, went
19 back over the medical reports that I had specific to this
20 incident to see what the facts were, to see what I could ask
21 Dr. Schuh and to see what were the responses that had been
22 made earlier.

23 Q. Did you find anything helpful?

24 A. Well, the general information was helpful because it
25 helped me to understand where she was coming from.

1 Q. So you found information to help you assist in her case,
2 presenting her case? I'm trying to understand what you're
3 telling me. Did you find anything helpful to defend Mr.
4 Daniel?

5 A. I found general information and based my
6 cross-examination on that information. I don't know whether
7 I could say whether it was specifically helpful to him or
8 hurtful to him, but it helped me understand what she was
9 testifying to.

10 Q. Mr. Beach, let me ask you this, the file that you
11 inherited from Andrew Grimes, had anybody tampered with that
12 file from the time that Mr. Grimes left the public defender's
13 office in Colleton County to the time that you inherited it?

14 A. I don't think so.

15 Q. So it would be safe to say that whatever Andrew Grimes
16 left in that file, and you admitted that it was a voluminous
17 amount of materials, was most likely there when you assumed
18 responsibility of the file, correct?

19 A. Yes, correct.

20 Q. But you still don't recall anything about Dr. Schuh?

21 A. I do not recall that document.

22 Q. And you don't recall anything by Dr. Plunkett?

23 A. No. Like I said, I do remember the name, the name rings
24 a bell, but specifically, no.

25 Q. Mr. Beach, there were several photographs admitted into

1 evidence --

2 A. Yes.

3 Q. -- during the trial, if you recall.

4 A. Yes, I do.

5 Q. You recall several photographs being admitted into
6 evidence in this case?

7 A. I do.

8 Q. Do you recall that several of them were autopsy
9 photographs?

10 A. I do, yes.

11 Q. Did you challenge any of the State's introduction of
12 these photographs into evidence?

13 A. We had a pretrial conference, or may not have been
14 pretrial, may have been during the trial itself, in camera,
15 in which the Court reviewed the -- all the photographs, a lot
16 more photographs than the ones that were admitted, and the
17 Court ruled on those photographs at that time. I was arguing
18 that they were gruesome, and some of them were, and we got
19 most of them put out. There were only a few that came in
20 there. What I wanted was the ones that showed the hematoma
21 and the ones that could help us show that the child may have
22 fallen and hit his head.

23 Q. So it's your testimony that the judge ruled on the
24 admissibility of the photographs --

25 A. Yes.

1 Q. -- in camera?

2 A. Yes.

3 Q. Mr. Beach, had you had an opportunity to read this
4 transcript prior to coming to trial?

5 A. Yes, I have.

6 Q. And it's still your position that the judge went ahead
7 and ruled on the photographs coming into evidence, or do
8 you -- let me ask you this: Did you stipulate to the
9 photographs coming into evidence?

10 A. We stipulated to some of the photographs, yes.

11 Q. So which one is it then?

12 A. We stipulated to some of the photographs. We made in
13 camera -- we went over all the photographs. The judge
14 indicated that he was going to admit a good portion of them,
15 I got with the solicitor, we stipulated to however many were
16 in evidence.

17 Q. So it's your position today that the trial judge went
18 ahead and told you in camera that he was going to admit a
19 good bit of the photographs?

20 A. He indicated that, yes, sir.

21 Q. Then why did he tell you and the solicitor, prosecutor,
22 to go into a room and decide what photographs to pick?

23 A. We went into a room with the judge and did that.

24 Q. You all went into a room with the judge and you picked
25 the photographs out?

1 A. Yes.

2 Q. Mr. Beach, do you recall Judge Buckner telling you that
3 there was a case State v. Fletcher that had just come out and
4 that he wanted -- in light of that he wanted you all to read
5 that case and then decide what photographs, if any, that you
6 all were going to stipulate to or select; do you also recall
7 on the record he indicated that if he found those photographs
8 to be prejudicial, that he would still not admit them, do you
9 recall that?

10 A. I do recall that, yes.

11 Q. So in essence he gave you an opportunity to still resist
12 or fight the photographs coming into evidence, correct?

13 A. That's correct.

14 Q. He did not tell you you had to stipulate to them,
15 correct?

16 A. No, he did not tell us that, that's correct.

17 Q. He did tell you that he still could rule that they were
18 inadmissible, correct?

19 THE COURT: Mr. Maree, what's your position, that no
20 photographs should have been admitted?

21 MR. MAREE: Your Honor, we just believe that --

22 THE COURT: Do you all acknowledge that some photographs
23 would?

24 MR. MAREE: There's some photographs I would say that
25 would be admitted, yes.

1 THE COURT: How many were admitted?

2 MR. MAREE: There were 17 photographs that were
3 stipulated to.

4 THE COURT: So 17 were admitted.

5 MR. MAREE: I don't know if they all went to the jury
6 because they eventually -- looks like they only put eight or
7 nine of them through their witnesses, but they premarked 17
8 photos.

9 THE COURT: The ones that weren't admitted don't have
10 anything to do with it, do they? They wouldn't have affected
11 anything in the trial because they didn't go to the jury,
12 right?

13 MR. MAREE: The ones that were not admitted, no.

14 THE COURT: So you're talking about eight photographs
15 were admitted.

16 MR. MAREE: Yes.

17 THE COURT: What number do you think should have been
18 admitted? Which ones is it that you believe should not have
19 been admitted?

20 MR. MAREE: Your Honor, I believe Photograph No. 15.

21 THE COURT: All right, Photograph 15, so seven of them
22 should have been admitted. Is there something else that
23 should have been not admitted?

24 MR. MAREE: Photograph No. 12.

25 THE COURT: Six of them.

1 MR. MAREE: Photograph No. 7.

2 THE COURT: Five of them.

3 MR. MAREE: Your Honor, to me, if we go down, all the
4 photographs of the autopsy I would contend should not have
5 been admitted.

6 THE COURT: And what's the basis for that?

7 MR. MAREE: The threefold balancing test. These
8 photographs are very gruesome, they -- they're very gruesome,
9 they were enlarged, they were in color.

10 THE COURT: So your position is, how many did we say,
11 eight of them, there's eight photographs that should not have
12 been admitted.

13 MR. MAREE: We believe that the testimony given by the
14 State's experts, that there were other means that they could
15 have gotten that evidence in, there were CAT scans, I believe
16 there were MRI's -- certainly there were CAT scans that some
17 of the witnesses, the State witnesses testified to what they
18 were finding by CAT scan.

19 THE COURT: You're going to have somebody testify that
20 they wouldn't have been helpful in explaining what the
21 witness was saying or in corroborating any other evidence?

22 MR. MAREE: Certainly could be --

23 THE COURT: Which I think is the criteria, right?

24 MR. MAREE: Yes, as long as it's not calculated to
25 appeal to the prejudice of the jury.

1 THE COURT: Well, it's all prejudicial. Anything they
2 introduce is prejudicial. They're not trying to introduce
3 something that's helpful to the defendant, would you agree
4 with that?

5 MR. MAREE: Yes, I agree with that, Your Honor.

6 THE COURT: So it's prejudicial, and the Courts have
7 held that even though it may be prejudicial, the probative
8 value, if it's used to corroborate or to explain, it's
9 admitted. Now, just to say we have 16 pictures or whatever,
10 of which nine of them weren't admitted and eight of them
11 were, I need to understand what it is that these
12 photographs -- other than they're gruesome. I understand
13 that. I've tried homicide by child abuse cases where there
14 have been head injuries and autopsies. In order for me to
15 make the decision I have to understand what it is you're
16 specifically saying as to that photograph or photographs.

17 MR. MAREE: Your Honor, in this case there was never a
18 balancing test done because the judge didn't have to do one.
19 The defense counsel stipulated to 17 photographs coming in
20 and I understand --

21 THE COURT: Eight of them came in.

22 MR. MAREE: The reason why they didn't all come in, Your
23 Honor, is because the State's own witnesses were saying that
24 the photographs were cumulative. Several times in this
25 transcript their own witnesses say it's unnecessary.

1 THE COURT: If it's not evidence, it's not evidence
2 so -- all right, let's proceed.

3 Q. Mr. Beach, when you went and met with the deputy
4 solicitor, assistant solicitor --

5 A. Yes.

6 Q. -- trying the case, and you agreed to stipulate to the
7 photographs, why didn't you say, let's see the witness
8 proffer their testimony before you stipulated to them, why
9 wasn't that part of your strategy, to see what they would
10 proffer as their testimony before you would stipulate and
11 agree to let them in?

12 A. I have no idea. These were the photographs of the child
13 and I didn't do that.

14 Q. So, I mean, it's your position that just because they're
15 photographs of a child that they should be admissible?

16 A. No.

17 Q. Did you realize -- well, I know you knew as a trial
18 attorney that by stipulating you would pretty much cut off
19 any opportunity that the applicant, the defendant at that
20 time, would have to appeal that issue, correct?

21 A. Correct.

22 Q. Did you take that into consideration when you decided to
23 stipulate to it?

24 A. Yes.

25 Q. That he would not have any appealable issues if you did

1 that.

2 A. On that specific issue.

3 Q. On that particular issue.

4 A. Right, correct.

5 Q. So did you confirm with Mr. Daniel about that before you
6 decided to do it?

7 A. I talked with him about what we were doing. I don't
8 know whether we talked about appeal or anything like that,
9 but I told him what we were doing at the time.

10 Q. But did you explain to him that if you would agree to
11 stipulate to the photographs that that would cut off any
12 right that he would have to appeal on that issue?

13 A. I'm almost certain that I did not.

14 Q. Do you think that that's a good practice to do that?

15 A. Not particularly.

16 Q. After the conviction, Attorney Beach, do you recall the
17 jury sending a note to the judge asking not to give the
18 defendant the maximum penalty?

19 A. I do.

20 Q. What did you at that time feel the maximum penalty would
21 be?

22 A. I thought he could have gotten life for it.

23 Q. What did you feel would be the minimum sentence he could
24 have received?

25 A. I think the minimum was 20 years.

1 Q. Were you aware that that sentence could have been --
2 possibly could have been suspended --

3 A. I had --

4 Q. -- it was in the judge's discretion to sentence him
5 lower than 20 years?

6 A. I had seen that particular statute in the past. It
7 wasn't discussed at that time.

8 Q. So after the conviction and you're on the record with
9 the judge dealing with sentencing you were aware that there
10 were cases and situations where people have been convicted
11 for homicide by child abuse and received sentences less than
12 20 years, correct?

13 A. Not specifically homicide by child abuse, but I knew
14 that that procedure was available.

15 Q. Were you familiar with the case of State v. McNight in
16 2003?

17 A. No.

18 Q. Did you review that case at all before you tried the
19 case, before you tried Mr. Daniel's case?

20 A. I don't recall the case. I don't recall reviewing it.

21 THE COURT: One of the grounds that you -- I didn't see
22 it in your amended application -- was that he was ineffective
23 for failing to argue that the Court should have reduced --
24 given a sentence lower than 20 years?

25 MR. MAREE: Yes, we argued that he did not ask for that

1 in the sentencing stage.

2 THE COURT: I didn't see that grounds in your --

3 MR. MAREE: Yes, we amended it. You may not have that
4 one, Judge. We recently amended it.

5 THE COURT: How many grounds have you got now?

6 MR. MAREE: Judge, we're going to cut it down.

7 THE COURT: Sort of a shotgun approach, huh?

8 MR. MAREE: Yes. We're going to cut it down, Your
9 Honor.

10 THE COURT: All right.

11 Q. Mr. Beach, I'd just ask you to look at this case here.

12 A. Okay.

13 Q. State v. Regina D. McNight.

14 A. Yes, sir.

15 Q. Are you familiar with the holding, the first --
16 basically the first sentence on the second page of the
17 holding?

18 THE COURT: What does it say, you can suspend a homicide
19 by child abuse to something less than 20?

20 MR. MAREE: Was convicted of homicide by child abuse,
21 sentenced to 20 years, suspended upon the service of 12
22 years.

23 THE COURT: And the Court said that that was --

24 MR. MAREE: They affirmed it.

25 THE COURT: Was that an issue that you couldn't suspend?

1 MR. MAREE: No, I just brought this in, Your Honor, to
2 show that that was in practice at the time, that he could
3 get -- that in fact there's cases out there where it was
4 being done. He indicated that he was not aware of it. We're
5 at the sentencing stage. I'm just asking why he did not ask
6 for a lower sentence in light of the fact that the jury sent
7 a letter to the judge and -- you know, a compassionate
8 letter, and I'm asking was he aware that he could have asked
9 the Court for a sentence less than 20 years.

10 Q. Based on this case, Mr. Beach, were you aware?

11 A. I'm not familiar with this case, but I did argue the
12 letter to the Judge, and I asked him to go as low as he
13 possibly could.

14 THE COURT: All right, Mr. Maree, proceed if you would.

15 MR. MAREE: Beg the Court's indulgence.

16 Your Honor, I have nothing further for the witness.

17 THE COURT: All right. Anything from the State?

18 MS. WILSON: Yes, Your Honor.

19 CROSS-EXAMINATION BY MS. WILSON:

20 Q. Mr. Beach, just as an initial matter, do you think that
21 it was likely Judge Buckner knew which type of crimes could
22 have suspended sentences?

23 MR. MAREE: Your Honor, I object to that question for
24 him to be able to know what Judge Buckner thought.

25 THE COURT: I think asking the question what he thought

1 is probably something he's not in the position to do. He can
2 certainly testify as to his experiences with Judge Buckner in
3 terms of past sentencing, but I don't think you can -- I'm
4 not sure Judge Buckner can tell you what Judge Buckner thinks
5 from time to time.

6 MS. WILSON: Okay, Your Honor.

7 Q. Mr. Beach, you testified that a life sentence was a
8 possibility for homicide by child abuse; is that correct?

9 A. That's correct.

10 MS. WILSON: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 Q. Mr. Beach, what I've just handed you is a copy of Code
13 Section 24-21-410?

14 A. Yes.

15 Q. And could you, could you read for the Court just the
16 first line of that code section?

17 A. A defendant may not be placed on probation by the Court
18 if he fails to comply with this provision.

19 Q. Wrong one, sorry, sorry, it's right here (indicating).

20 A. Can I get my -- I have diabetic retinopathy, Judge, and
21 I have to have my magnifying glass.

22 THE COURT: Just tell me what the statute says. We can
23 certainly take judicial notice what the statute was.

24 MS. WILSON: That's fine. Thank you. Your Honor, this
25 is just Code Section 24-21-410 which states, after the

1 conviction or plea of any offense, except a crime punishable
2 by death or life imprisonment, the judge of a court of record
3 with criminal jurisdiction at the time of the sentence may
4 suspend the imposition or execution of a sentence and place
5 the defendant on probation or may impose a fine and also
6 place the defendant on probation, so just the part that says
7 except a crime punishable by death or life sentence. I can
8 present this to the Court, unless you don't want it.

9 THE COURT: Okay.

10 MR. MAREE: Are you admitting that into evidence?

11 MS. WILSON: No, I'm just showing it to the Court for
12 his reference.

13 Q. Mr. Beach, based on that does it appear that a suspended
14 sentence was available for this charge, homicide by child
15 abuse?

16 A. I don't think it would have been. I haven't researched
17 the point, but I don't think it would have been.

18 Q. Kind of starting back to when you initially started
19 representing Mr. Daniel, do you recall exactly when you might
20 have been appointed to take over the case, or did it just get
21 passed along as part of the office?

22 A. It just passed along inside the office. The public
23 defender's office was appointed under that name and we were
24 just assigned cases.

25 Q. And do you recall how many times you met with Mr. Daniel

1 before trial?

2 A. It was several times. He came by the office several
3 times, he and his family came by the office several times, we
4 discussed it, I asked him to come in one time prior to trial
5 so we could go over a few things. I don't know the exact
6 number, but I know we met on different occasions.

7 Q. Okay. And did you file any Brady or Rule 5 motions in
8 Mr. Daniel's case?

9 A. Yes, I did. Well, actually it had been done by Mr.
10 Grimes earlier. We had full discovery.

11 Q. And did you review the documents that you received with
12 Mr. Daniel?

13 A. I'm not -- I don't think I did.

14 Q. Do you think it was done by Mr. Grimes?

15 A. I think so. As thorough as Mr. Grimes is, I think it
16 probably was.

17 Q. And before trial did you talk to Mr. Daniel about the
18 elements of the charge he was facing and what the State had
19 to prove?

20 A. Yes.

21 Q. Did he talk to you about his version of the facts?

22 A. Yes.

23 Q. Did you also talk to him about what defenses you could
24 present?

25 A. Yes.

1 Q. And what did you all conclude after that conversation?

2 A. Well, we -- we went over everything, Mr. Daniel, from
3 the very first, when he was with Mr. Grimes and with me, said
4 that he did not do it, he was not guilty of it, he was not
5 going to plead to anything, he was going to go forward with
6 trial and we went based on that. He stuck to that the entire
7 way through. We went through it. I told him what we had,
8 what they had, what we were going to have to show, how we
9 were going to have to poke holes in their case, and we went
10 from there.

11 Q. And did Mr. Daniel give you any type of potential
12 witnesses or leads that you needed to investigate?

13 A. I don't believe he gave me any specific witnesses that I
14 needed to go out -- there was a list of some people in the
15 file, and I think we either talked with them or figured out
16 that they didn't have anything really that telling to come to
17 trial over.

18 Q. Did you feel like you had enough time to prepare for Mr.
19 Daniel's trial?

20 A. I dreaded it coming, but I did feel we had enough time.
21 It was a very frustrating case.

22 Q. And after Mr. Grimes left the office did you speak with
23 him about the case?

24 A. Couple times, yes. I tried to keep him apprised of what
25 was going on because it was his case and he was very

1 interested in it and worked very hard on it.

2 Q. Was Mr. Grimes able to help you find some type of expert
3 testimony that would have been beneficial to present?

4 A. No.

5 Q. Did you get a chance to speak with any of the State's
6 experts or did you simply review their statements and
7 records?

8 A. I reviewed -- I know them. I think I knew two of them.
9 We've been in cases before, so I knew their reputation, and I
10 knew what they were going to bring to the trial, but I did
11 not sit down and talk with them prior to their testimony.

12 Q. But you reviewed their reports?

13 A. Yes.

14 Q. And you testified you did some additional research other
15 than what Mr. Grimes did to try to find any type of medical
16 testimony or articles to support your defense theory, and can
17 you say again what your conclusion was after reviewing all
18 that?

19 A. The conclusion after my attempt was that it was
20 basically the same as when I had received it, there just
21 wasn't anything specific enough to be on point to help us
22 out.

23 Q. You also testified about reviewing some photos of the
24 scene and talking to Mr. Daniel about the state of the scene
25 at the time of the incident. Did you feel like that was

1 sufficient?

2 A. I thought it was. I pretty well know how those
3 apartments are laid out, and I thought I had a pretty good
4 grasp of what the physical layout was.

5 Q. And do you recall eliciting testimony from Mr. Daniel at
6 trial about the thin or thickness of -- I guess the nature of
7 the carpet?

8 A. Right offhand I don't recall. I did reread the
9 transcript, but I don't recall whether I asked that or not.

10 Q. Did you feel like your cross-examination of the State's
11 expert witnesses was sufficient?

12 A. I thought it was. The State's expert witnesses were
13 really primed. Mr. Knight had really gotten them ready, and
14 they were very, very anxious to see a conviction. They
15 weren't there just pushing paper. They were very arrogant.
16 They were very much on guard against anything that I was
17 coming after them with. I thought that we made some progress
18 with them showing their arrogance to the jury, showing some I
19 believe inconsistencies in what they had said, showing
20 that -- what I thought was telling was that they didn't
21 really remember the child that much. They had impersonalized
22 the child to make it -- to make the child just a figure. One
23 of them got a little tied up with whether or not it was
24 shaken baby syndrome or traumatic brain injury, that was a
25 thing that we were able to get out of them, and I think

1 that -- I think we got about as much out of them as we were
2 going to get out of them, and there was a lot to argue to the
3 jury when the case came -- when we got to the point of jury
4 argument.

5 Q. You also testified that you called two witnesses in
6 addition to Mr. Daniel at trial, and were the witnesses you
7 called able to testify positively about Mr. Daniel's
8 character and his interaction with children?

9 A. Yes. They testified that he kept their children before
10 and after this incident. They testified that they trusted
11 their children with him. Also the mother of the deceased
12 child testified, I thought, very positively about Mr. Daniel,
13 about his character and about her leaving children with him,
14 and we got that over to the jury.

15 MS. WILSON: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 MS. WILSON: Beg the Court's indulgence.

18 Q. Mr. Beach, I understand that you have a little bit of
19 difficulty reading. I'm going to read to you a statement
20 made by Dr. Presnell during the trial proceeding. It's on
21 page 173 of the transcript.

22 A. Thank you.

23 Q. And it starts at Line 5, and this is the part of the
24 transcript that Mr. Maree was referring to about the
25 literature, and it starts on line 5. The question was -- you

1 asked, if the child had been involved in falls immediately
2 prior to this within two days of the injury could that not
3 have a cumulative effect that would give you the same effect
4 as you have here, and Dr. Presnell answered, no, it still
5 would be a shear injury. I would think it is more something
6 like a motor vehicle crash or something, a lot more severe,
7 then this is when she says, I know there are some studies in
8 the literature that have looked at kids on swings or seesaws
9 that, again, have motion before they fall but aren't
10 necessarily falling from a real high height but a lower
11 height, but again, other circumstances that go along with the
12 description of how the injury actually occurred. Do you
13 recall that testimony?

14 A. I do.

15 Q. And it appears in that testimony that Dr. Presnell is
16 saying that this literature says that the kids are on swings
17 or seesaws, does that appear accurate to you from what I read
18 to you?

19 A. That was my understanding, yes.

20 Q. And this literature wouldn't specifically help this case
21 because no facts in this case support the fact that the
22 victim was on a swing or a seesaw at the time; is that
23 correct?

24 A. That's correct.

25 Q. So that literature wouldn't particularly be helpful.

1 A. Not at all.

2 Q. Also, do you recall how many photos were presented at
3 trial by the solicitor?

4 A. There was a big stack of them.

5 Q. Do you want to guesstimate?

6 A. I don't recall the exact number. I think we --

7 THE COURT: How many that were introduced?

8 MS. WILSON: How many the State had that they were
9 considering admitting to the Court.

10 THE WITNESS: I think they had about 35 or something
11 like that, but I'm not sure of that figure. I know it was
12 about twice what we had stipulated to.

13 Q. And it's your testimony that you recall Judge Buckner
14 indicating that he was going to admit some of the photos?

15 A. He did.

16 Q. And ultimately you agreed -- you discussed with the
17 solicitor which photos to admit and you agreed on a set
18 number?

19 A. Yes, not a set number, individual --

20 Q. Well, particular photos.

21 A. Individual photographs.

22 Q. And how did you decide which photos you would agree to
23 stipulate to?

24 A. We went through them and I raised hell about which ones
25 were particularly gruesome and we went back and forth.

1 THE COURT: Would that be the same as objected to?

2 THE WITNESS: Yes, sir, yes, Your Honor, I objected to
3 them in private while we were there, and we just, we went
4 through them and just sorted them out.

5 Q. Would you agree that you chose the least prejudicial
6 photos of the bunch to stipulate to?

7 A. Yes. But I did want to show the hematoma, and in order
8 to show that you had to -- you had to introduce some fairly
9 gruesome photographs.

10 Q. And would you agree that it was a strategic choice to
11 stipulate to certain photos with the solicitor as opposed to
12 just having the Court enter in all of them?

13 A. Yes.

14 MS. WILSON: Beg the Court's indulgence.

15 Q. Also there was some questioning earlier about whether or
16 not you talked to Mr. Daniel about the fact that stipulating
17 to the photos would kind of remove them for review on appeal,
18 and do you generally explain how every objection you raise at
19 trial would affect a defendant's appellate rights right then?

20 A. If I have time I try to keep the defendant informed
21 about what we're doing and hopefully some of the
22 ramifications of what we do, but sometime I don't have the
23 time to do that, and I know that we did -- I did tell him
24 what I was doing, what we were trying to do, what we were
25 trying to keep out, what we were trying to keep from

1 happening. I did not specifically talk to him about appeal,
2 though.

3 Q. And did you discuss with Mr. Daniel your inability to
4 find a witness to testify to the defense's theory?

5 A. Yes. That occurred in our -- I know in our last meeting
6 before trial we went over that because I particularly wanted
7 him to know that I did not have an expert in our stable. We
8 did not have somebody to go forward with that.

9 Q. And do you feel like you were able to adequately
10 challenge the experts' testimony at trial without an expert?

11 A. I think so. It was a collateral attack but still it was
12 an attack on it.

13 Q. And ultimately were you able to incorporate any of the
14 testimony from the State's expert witnesses in your defense
15 and your closing and use it for Mr. Daniel's advantage?

16 A. Used a lot of their testimony in the closing itself,
17 mainly to show what I talked about earlier, impersonalization
18 of the child, not really knowing really what child this was,
19 just speaking generically and trying to get over to the jury
20 the issue I thought was very important was the arrogance of
21 these witnesses.

22 Q. Did you feel the need to call any additional character
23 witnesses for Mr. Daniel at trial?

24 A. No. I gave that some thought. What I wanted to put in
25 front of the jury was -- the unique defense we had was that

1 he was trusted with children before this incident happened,
2 he was trusted with children after this incident happened, he
3 had no criminal record, he was a clean cut young man who made
4 a good appearance and made a good witness. I thought we had
5 good character witnesses, particularly in light of the nice
6 things that the child's mother said about him.

7 MS. WILSON: Nothing further from the State.

8 THE COURT: All right. Mr. Maree, anything else?

9 MR. MAREE: Just briefly, Judge.

10 REDIRECT EXAMINATION BY MR. MAREE:

11 Q. Mr. Beach, briefly, I'm just getting a little confused
12 on your testimony of what you recall Judge Buckner telling
13 you about the photographs. I thought you had indicated
14 earlier on direct examination that Judge Buckner did tell you
15 that he was going to conduct a balancing test later. Is that
16 the case, or is it the case that he already decided in camera
17 that he was going to allow the photographs in?

18 A. I'm trying to remember the exact progression of it. He
19 told us in camera that some of the photographs are coming in
20 and he wanted an agreement as to which ones.

21 Q. But all the photographs we're talking about are not --
22 they're not autopsy photographs, correct?

23 A. Not all of them, that's correct.

24 Q. All right. Now --

25 A. But most of them -- most of them that we were talking

1 about in that situation were autopsy photographs.

2 Q. But not all of them, correct?

3 A. Not all of them.

4 Q. So on page 112 of the transcript Judge Buckner says, I
5 will encourage you to take a look and then go over to --
6 offer to me what photographs you believe you should object
7 to, or if you can agree to them so be it. I understand I'm
8 going to hear quite a bit of expert testimony this afternoon,
9 and it's hard for me to put the cart before the horse other
10 than to listen to the argument of counsel.

11 Wouldn't you agree with that that he is not telling you
12 he's going to admit anything until -- unless you all agree to
13 it until he hears from the expert testimony from the State
14 witnesses?

15 A. No.

16 Q. You don't agree with that?

17 A. No.

18 Q. So you're still saying he in camera told you that he was
19 going to admit the photographs.

20 A. Some photographs.

21 Q. The statute that was submitted to you earlier, I forgot
22 the name of the code section, did it have an effective date
23 on that particular form, did you see where it had an
24 effective date of 2010?

25 A. I think -- I don't know.

1 Q. Okay. I don't have a copy of it but --

2 A. I didn't look.

3 Q. Can I get it back from the Court and ask you to look at
4 it? Can you see it?

5 A. Yes.

6 THE COURT: At the top of it it says effective 2010.

7 THE WITNESS: That's right.

8 Q. It says effective 2010.

9 A. 2010.

10 Q. And Mr. Daniel's trial took place in July of 2007.

11 A. 2007, yes.

12 Q. So you would agree that that didn't apply at the time of
13 his sentencing, correct?

14 A. I don't know. I'd have to see the earlier version of
15 it, the version that's -- obviously this version didn't apply
16 until 2010, but what the original was I just -- I do not
17 recall what the original was.

18 Q. And it was your testimony, I believe, that you spoke to
19 Andrew Grimes twice on this case?

20 A. I know I spoke to him twice, yes.

21 Q. About this particular case with Melvin Daniel after he
22 left the public defender's office in Colleton County?

23 A. Yes.

24 Q. What did he tell you?

25 A. Now, this wasn't a sit-down conference and go over the

1 notes and everything. This was when we met at the public
2 defenders' conference and at the criminal law seminar with
3 the bar meeting and we discussed the case.

4 Q. So I guess my question is you discussed the merits of
5 Mr. Daniel's case with him or strategy or whatever with Mr.
6 Grimes?

7 A. Yes.

8 Q. Okay.

9 A. Not in detail but in general terms.

10 MR. MAREE: I don't have any further questions.

11 THE COURT: Anything further?

12 MS. WILSON: No, Your Honor. The State would just like
13 for the Court to take judicial notice that that statute
14 hasn't been altered since 2007 at the time of the trial.

15 THE COURT: Hasn't been altered since 2010?

16 MS. WILSON: As far as I know, Your Honor, it hasn't
17 been.

18 THE COURT: I think their position is the trial occurred
19 in 2007, right?

20 MS. WILSON: Well, Your Honor, that's what I was saying,
21 if you'll take judicial notice that it's my understanding
22 that that statute hasn't been altered since the time of
23 trial. It hasn't been altered at the time -- it's the same
24 as what it was at the time of trial.

25 THE COURT: Have you got the statute that says it was --

1 MS. WILSON: I can get you a 2007 copy of the statute,
2 but that's my understanding, it hasn't changed.

3 THE COURT: This one specifically says effective at such
4 and such a time.

5 MS. WILSON: I understand that.

6 THE COURT: But I'll tell you, I'm not too impressed
7 with that argument. I mean, unless Judge Buckner's going to
8 come in here and testify that if somebody had gotten up and
9 argued to suspend the sentence I'd have given him eight
10 years, I don't -- I think part of your burden is you've got
11 to show that but for this stuff you'd have been successful in
12 something other than what happened in this case. Would you
13 agree with that?

14 MR. MAREE: Oh, yes, definitely there's a prejudicial
15 effect.

16 THE COURT: If you were correct in this, everybody that
17 doesn't argue nothing less than one day, then they're subject
18 to being PCR'ed because they didn't argue for less than
19 whatever they argued for.

20 MR. MAREE: Your Honor, I'm just asking --

21 THE COURT: You're saying that he was ineffective
22 because he didn't argue for something less than the 20, which
23 is what the statute says the minimum is. Granted that you
24 believe they could have suspended it because somebody had in
25 the past it, well, I can tell you this, probably the first

1 ten years I was on the bench I was suspending burglary firsts
2 until my dear friend Judge Childs decided she didn't think it
3 was suspendable, and of course she refused to do it and let
4 it be appealed, and she was right, couldn't be suspended, and
5 then she went to the federal court, so she didn't have to
6 deal with that anymore, the rest of the other 46 judges did,
7 so you used to be able to get pleas on something that you
8 could suspend on a burglary first but --

9 MR. MAREE: I understand, Your Honor.

10 THE COURT: That's not an argument that impresses me at
11 this time.

12 MR. MAREE: Okay. We're going to move on.

13 THE COURT: All right, Mr. Beach, I think you're
14 finished.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You can step down.

17 MR. MAREE: We would call Andrew Grimes.

18 THE COURT: Mr. Maree, let me ask you a couple things.
19 You have through Mr. Beach have put in the grounds of failing
20 to object to the photographs. Are you still going to go into
21 things such as reasonable doubt, change of venue?

22 MR. MAREE: No, Your Honor. We're trying to move on.

23 THE COURT: I'm trying to understand which ones --

24 MR. MAREE: I know.

25 THE COURT: Peremptory challenges?

1 MR. MAREE: No, sir.

2 THE COURT: You're obviously making an issue on expert
3 testimony. I don't know who Heather Aiken is. Is she going
4 to be an issue in this case?

5 MR. MAREE: We have an affidavit by -- no, Heather
6 Aiken, no, we're not going that way, Your Honor.

7 THE COURT: All right. And more character witnesses, is
8 that still grounds?

9 MR. MAREE: No, sir.

10 THE COURT: So your real issues in this case, as I
11 understand it, the photographs and the --

12 MR. MAREE: The expert.

13 THE COURT: Basically the expert for purposes of, one,
14 educating him for attacking the witnesses of the State; and,
15 two, failing to call an expert that might counter what the
16 State's experts testified.

17 MR. MAREE: Yes, sir, and/or not just doing a reasonable
18 investigation of the literature and cross-examining State's
19 experts.

20 THE COURT: Their expert would have been able to assist
21 in that regard. If he'd have had the expert, he could have
22 told him what literature might be available that would
23 support the defense position, so those are your real issues.

24 MR. MAREE: Those are my real issues, Your Honor.
25 Correct.

1 THE COURT: I understand. Thank you.

2 ANDREW GRIMES,

3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. MAREE:

5 Q. Mr. Grimes, state your full name for the record, please.

6 A. Andrew David Grimes.

7 Q. Sir, what do you do for an living?

8 A. I'm an attorney with the Charleston County Public
9 Defender's Office.

10 Q. And how long have you been employed there?

11 A. Since approximately January of 2007 or December of 2006.

12 Q. And what's your position at the public defender's
13 office?

14 A. I'm a staff attorney.

15 Q. Prior to obtaining that job where were you employed?

16 A. I was briefly in private practice then was at Colleton
17 County Public Defender's Office and also worked as a
18 part-time Judge in the City of Hanahan, and before that I was
19 an assistant public defender in Dorchester County and had a
20 private practice, and after law school I clerked for several
21 judges.

22 Q. Do you recall the years you were employed with the
23 Colleton County Public Defender's Office?

24 A. I know I left in around November of 2006 after the
25 Melvin Daniels trial, a different person.

1 Q. When you say Melvin Daniels, with an S, you're talking
2 about a different -- whole different person from Melvin
3 Daniel without an S, correct?

4 A. Yes, sir.

5 Q. Okay.

6 A. And I probably got there -- Mr. Adams had some health
7 problems, and they contacted me about coming over there I
8 want to say maybe 2003, 2004.

9 Q. And in your capacity as public defender did you by
10 chance represent Melvin Daniel --

11 A. Yes, sir.

12 Q. -- on the charge of homicide by child abuse?

13 A. Yes, sir.

14 Q. What did you do as his defense attorney to investigate
15 the charge, investigate the case for Melvin Daniel?

16 A. As best I can recall, after he was arrested and charged,
17 it was kind of high profile in Walterboro, given the nature
18 of the charge, it was in the paper. You know, met with Mr.
19 Daniel, talked about the case, tried to get a grasp of what
20 was going on. You know, I remember we had a preliminary
21 hearing. Judge Bennett, I think she had accommodated us in
22 the past on some other matters, but she wanted to hold this
23 one I guess at the detention center for security reasons. I
24 think the father of the child was a veteran, had come back
25 from Iraq, and there was some worry there might be some type

1 of retaliation or incident at the courthouse, so we moved it
2 to the local jail. Then --

3 Q. Let me ask you this, Mr. Grimes, did you do any
4 investigation into the charges of homicide by child abuse, or
5 what theories did you come up with as his defense lawyer as
6 far as representing Melvin Daniel?

7 A. That this was an accident, it was caused by a short fall
8 and researched a lot of medical journals, talked with Dr.
9 Presnell, went down and met with her at MUSC, did try to
10 contact Dr. John Plunkett. I probably was not as diligent as
11 I should have been in finding an expert.

12 Q. Who was Dr. John Plunkett?

13 A. He was referred to me by Chris Wellborn from Rock Hill.
14 He had done some shaken baby syndrome cases, and he was one
15 of the leading experts in this area, and he suggested that if
16 we go to trial, we need an expert in biomechanical
17 engineering, you know, a pathologist, and Dr. Plunkett had
18 done a lot of research in this area and been published, and
19 so he seemed to be -- if he couldn't testify, he would know
20 someone who could testify.

21 Q. Were you able to research any literature that was
22 consistent with your theory of the case?

23 A. Yes, sir.

24 Q. And what, again, was your theory of the case?

25 A. That the young child, I guess, had tripped over the

1 wire, hit his head, and for whatever reason it caused his
2 death and, you know, it was not -- you know, I think even Dr.
3 Presnell agreed it wasn't shaken baby syndrome, but it wasn't
4 any type of purposeful assault on the child, it was just a
5 tragic accident.

6 Q. Did you find an article written by Dr. John Plunkett in
7 your research?

8 A. Yes, sir.

9 MR. MAREE: May I approach, Your Honor?

10 THE COURT: You may.

11 Q. You have one, Andrew?

12 A. Yes.

13 Q. You have a copy of an article with Dr. John Plunkett.
14 Can you tell the Court, what periodical is it listed in?

15 A. The American Journal of Forensic Medicine and Pathology.

16 Q. And what is the name of the article?

17 A. Fatal Pediatric Head Injuries Caused by Short Distance
18 Falls.

19 Q. Did you get an opportunity to review that article?

20 A. Yes, sir.

21 Q. Did you think in your opinion, as Mr. Daniel's attorney
22 at the time, that it would be helpful in his defense?

23 A. Yes, sir, as Mr. Beach said, there were some things that
24 might not have been as helpful, some of the ways some of the
25 accidents happened, but there were other accidents in there

1 that were discussed, I think it was 14 -- 18 case studies he
2 did on various accidents based upon the Consumer Protection
3 Agency reports, law enforcement agency reports, talking about
4 accidents on playgrounds, and couple of them involved sort of
5 being on maybe a platform, not that far off the ground, where
6 a child would fall and suffer a fatal injury. And I talked
7 with Dr. Presnell about this article. She did recognize it,
8 you know, as peer reviewed in her field, and if I couldn't
9 find an expert, I was going to use that sort of under the
10 treatise exception to try to show the jury that you can have
11 a short fall, you know, it's not unheard of, and also I sent
12 her -- or she had another article.

13 Q. Before you go to that article, Andrew --

14 A. Yes, sir.

15 MR. MAREE: I would like to have that admitted as
16 Applicant's exhibit.

17 (Applicant's Exhibit 2 marked for identification and
18 admitted into evidence.)

19 Q. Mr. Grimes after looking at that article and reviewing
20 it did you attempt to reach out to Dr. Plunkett?

21 A. Yes, sir, I did send him an email at the address I think
22 Mr. Wellborn gave me, did not receive a response, probably
23 wasn't as diligent as I should have been and didn't follow up
24 more with him, and I can't recall why, it was just due to
25 caseload or the case not sort of progressing as quickly as it

1 might have been, but I did -- I did not again follow up with
2 him too much.

3 Q. Do you recall speaking or emailing, communicating by
4 email --

5 A. With Dr. Presnell?

6 Q. -- with a Dr. Barnes in California.

7 A. I don't recall that.

8 Q. If I gave you a document, would it refresh your memory?

9 A. It may.

10 Q. Can you identify that document for me, Mr. Grimes?

11 A. Sir?

12 Q. Can you identify that document for me?

13 A. Yes, sir, looks like it's an email from an old America
14 Online address. When I was in private practice I used the
15 ADGrimesPA and looks like I emailed Dr. Barnes about the
16 case, and he sent a brief response.

17 Q. When you were communicating with Dr. Barnes, what were
18 you communicating with him for; what was the substance of you
19 communicating with him?

20 A. Give me a minute to refresh my memory on the email.

21 Q. Okay.

22 A. Looks like I was trying to find -- to hire an expert
23 witness who could help me review any potential defenses or
24 evidence in mitigation and give background on the case, some
25 of the State's findings or allegations.

1 Q. Did he respond to you in any kind of way?

2 A. Yes, sir, looks like he responded on June 29th, 2005.

3 Q. Can you read his response?

4 A. As a pediatric, I think he may have misspelled it, I
5 assume it's neurologist, I am willing to review the imaging
6 exams and records; however, you need other experts, including
7 a forensic pathologist, slash, neuropathologist. I'm
8 referring you to John Plunkett, CC'd above, Pat B.

9 Q. So that was another attempt that you made to obtain the
10 services of an expert?

11 A. Yes, sir.

12 Q. Okay.

13 A. Appears that way.

14 Q. You'd mentioned earlier that you interviewed Dr.
15 Presnell, who was the State's expert in forensic pathology.
16 Do you recall that?

17 A. Yes, sir.

18 Q. How did you interview her, by phone or by email?

19 A. In person. Went down to MUSC, met her at her office and
20 we talked about the case. She went over some of the slides
21 with me. We talked about I think Dr. Plunkett's article.

22 Q. And I think you mentioned earlier that you'd asked her
23 whether or not she considered the publication that contained
24 Dr. Plunkett's article as an authority in her field or words
25 to that effect, correct?

1 A. Yes, sir, and that was done by email.

2 Q. Do you have a copy of that email?

3 A. Yes, sir.

4 Q. Can you read the first I guess three lines of that email
5 for the Court from Erin Presnell to you?

6 A. The one dated July 11th, 2006?

7 Q. Yes, July 11th or July 10th. It's hard to tell from the
8 email.

9 A. I'm sorry, I have a string of e-mails here.

10 Q. Can you speak of the one where she's responding to
11 whether or not you considered -- she considered that to be an
12 authority, the publication --

13 A. Yes, sir.

14 Q. -- as an authority?

15 A. She said sorry for the delayed response. Dr. Plunkett's
16 article has some applicability issues. Yes, the AJFMP is a
17 recognized peer-reviewed journal in my field of medicine.

18 Q. And that AJFMP is the initials for the article that --
19 publication that contained Dr. Plunkett's article, correct?

20 A. Yes, sir.

21 Q. All right. The article that you testified earlier that
22 we admitted into evidence.

23 A. Yes, sir.

24 MR. MAREE: All right. I would like to move that as
25 Applicant's 3.

1 THE COURT: Like to move what?

2 MR. MAREE: This email.

3 MS. WILSON: No objection.

4 THE COURT: So admitted.

5 (Applicant's Exhibit 3 marked for identification and
6 admitted into evidence.)

7 THE COURT: Mr. Maree, can you and the Attorney General
8 come over here?

9 (Judge and attorneys confer.)

10 Q. Mr. Grimes, in your opinion in your experiences as a
11 public defender and a criminal defense attorney do you
12 believe that the publications that you researched and
13 reviewed would have been helpful in the defense of Melvin
14 Daniel at his trial?

15 A. Yes, sir, there were several either -- I think there was
16 a couple newspaper articles, had some anecdotal evidence,
17 some other journals I found talking about how people have
18 been convicted of homicide by child abuse and then the
19 conviction overturned based on some flaws in the shaken baby
20 syndrome, testimony or other proof that's come out, there's
21 been some other literature, it would have -- I think one was
22 a child actually filmed falling, but when the coroners
23 examined the child, they said it was sort of shaken baby
24 syndrome or something similar to that, even though there was
25 proof contrary, undisputable proof otherwise.

1 Q. So in essence, in your research some of the publications
2 that you reviewed revealed children dying in short distance
3 falls but initially was thought to be some type of trauma
4 done or inflicted upon the child?

5 A. Yes, sir.

6 Q. Okay. So similar to the facts of Melvin Daniel here in
7 some instance.

8 A. I mean, similar in the fact it would be a short fall,
9 there would be cases a little bit different.

10 Q. Correct. What I mean by similar meaning that there was
11 accusation of someone harming the child but eventually it
12 turned out that the child died from a short distance fall.

13 A. Yes, sir.

14 Q. Okay.

15 A. An accidental short distance fall.

16 Q. Yes. And you would have used those publications -- even
17 if you did not have an expert at trial, would you have used
18 those experts to impeach or at least cross-examine the
19 State's experts?

20 MS. WILSON: Your Honor, I'm going to object, Mr. Grimes
21 wasn't the trial attorney in this case, and it seems like
22 he's being called to determine whether or not Mr. Beach
23 was -- his performance was sufficient. That's the Court's
24 job not Mr. Grimes, as another attorney.

25 THE COURT: I'm going to let him testify as to that,

1 whether that would have been something he would have used.

2 THE WITNESS: I definitely would have used it with Dr.
3 Presnell. Dr. Schuh I think I was going to use the
4 transcript of the speech to impeach her, and the other
5 doctors, I think one seemed to be a little bit more of a fact
6 witness, so I don't know if I would have been able to use it
7 on him. And I think the other doctor didn't seem too bad
8 except on cross he started talking about shaken baby
9 syndrome, which was at odds with what Dr. Presnell said, so
10 you could use Dr. Presnell to impeach him.

11 Q. Speaking of Dr. Schuh's audio transcript, did you obtain
12 that while you were in the public defender's office in
13 Colleton County?

14 A. I think I obtained it before I was there because I had
15 used it in a PCR in Dorchester County with Judge Goodstein on
16 a CSC of a minor case. Boyd Young, who was at that time a
17 staff attorney at Charleston County Public Defender's Office,
18 had got the transcript I think from Guy Vitetta, and he told
19 me how he had used it kind of effectively in a trial to show
20 Dr. Schuh's bias against defense attorneys.

21 Q. Did you have it as a part of Melvin Daniel's file in the
22 public defender's office in Colleton County?

23 A. I don't recall if I did, very well may have.

24 Q. Okay.

25 A. I mean, I knew -- I had it in one of my other files, so

1 I knew of it. I just don't recall everything I had in this
2 file given the passage of time and that.

3 Q. Let me ask you this, Andrew, let me ask you another way:
4 You were intending to use that to impeach the credibility of
5 Dr. Schuh?

6 A. Yes, sir.

7 Q. You don't know whether or not, though, that you had it
8 in the file of Melvin Daniel at the time, even though you
9 were representing him?

10 A. No, I can't say for sure what all articles I had in the
11 file. I had a little folder, kind of a mini library, I
12 guess, of stuff, and I don't recall each and every article
13 that I had in there.

14 Q. Fair enough. The testimony of Attorney Beach indicated
15 that he spoke to you at least on two occasions concerning
16 this case with Melvin Daniel after you left the public
17 defender's office. Do you recall talking with him about Mr.
18 Daniel's case?

19 A. I heard the last part, what he said about at the public
20 defenders' conference and criminal law update by the bar, and
21 I may have asked or touched base with him at the public
22 defender conference. You know, I can't recall any specific
23 conversation with him about Mr. Daniel's case. And I'm
24 probably 100 percent sure I never talked to him at the bar
25 criminal law update because I stopped going to those since I

1 get all my CLE credits through the public defender
2 conference.

3 Q. Did he ever communicate with you in any way to confirm
4 with you as far as strategy on Mr. Daniel's case?

5 A. No, sir.

6 Q. He indicated that you had done a voluminous amount of
7 work on this case prior to leaving the public defender's
8 office. Would you agree with that?

9 A. Apart from finding an expert, I think I did a fair
10 amount of work on it.

11 Q. Do you think, absent finding an expert, that you had
12 done extensive research and had left extensive -- the
13 research that you had obtained in the file with your
14 successor, Mr. Beach?

15 A. There was a good foundation. It was probably more that
16 could have been done. There's always more probably that
17 could be done on a case but...

18 Q. But the periodicals that you're saying that you
19 researched, you think that you left those in the file?

20 A. Oh, I know they were in the file, yes, sir.

21 Q. You say you know they were in the file?

22 A. I remember printing stuff out, and when we went over the
23 file I remember seeing them in there.

24 THE COURT: Anything further, Mr. Maree?

25 MR. MAREE: Nothing further, Your Honor.

1 THE COURT: Anything from the State?

2 MS. WILSON: Yes, Your Honor.

3 CROSS-EXAMINATION BY MS. WILSON:

4 Q. Mr. Grimes, it's your testimony today that you passed
5 along the documents in your investigation to Mr. Beach; is
6 that correct?

7 A. Whatever I had in the file was left at the office for
8 Mr. Beach. As I researched the case, I would print stuff
9 out, into the file and just -- you know, all my documents and
10 notes from meeting witnesses and stuff.

11 Q. And ultimately you didn't try Mr. Daniel's case; is that
12 correct?

13 A. That's correct.

14 Q. And so it was up to Mr. Beach to make any decisions
15 about what to present at trial; is that correct?

16 A. Yes, ma'am.

17 Q. And you didn't assist with him making any strategic
18 decisions at trial?

19 A. No, he never asked for any assistance on it.

20 Q. You also testified that you interviewed Dr. Presnell and
21 that you brought to her or I guess -- yes, brought to her
22 attention this article by Plunkett. After you interviewed
23 with her and corresponded with her via email about that, did
24 she change her opinion about the victim being able to trip
25 over the cord and fall to obtain an injury?

1 A. No.

2 Q. Mr. Grimes, is it possible that you could have tried the
3 case and could have presented an expert witness and the
4 article that you referenced and Mr. Daniel still could have
5 been convicted?

6 A. Yes, ma'am.

7 MS. WILSON: Thank you.

8 THE COURT: Anything?

9 MR. MAREE: I don't have anything, Your Honor.

10 THE COURT: Mr. Grimes, did you consider this a tough
11 case on the defense's part?

12 THE WITNESS: Yes, sir. You know, a young child who
13 suffers injury from what most people would consider an
14 accidental or sort of small fall, common sense-wise most
15 people would say you can't suffer that type of injury.

16 THE COURT: So you thought you were going to have a
17 difficult time at best if you went to trial on this case.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Thank you, sir, you may step
20 down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right, Mr. Maree, do you want to call
23 your next witness?

24 MR. MAREE: Call Dr. Mark Shuman.

25 MS. WILSON: Your Honor, before we call this witness can

1 we please take a five-minute break?

2 THE COURT: Sure.

3 (Recess held.)

4 THE COURT: All right, Doctor, if you'll come up here,
5 please.

6 MARK SHUMAN, M.D.,
7 being first duly sworn, testified as follows:

8 MR. MAREE: Judge, before we elicit the testimony of Dr.
9 Shuman, there is an affidavit from a Kathrine Hudgins, who
10 was the appellate defense -- appellate defender for the
11 applicant. She has submitted an affidavit I wanted the Court
12 to consider. I'd already given it to opposing counsel.

13 THE COURT: Are you all agreeable to having an
14 affidavit?

15 MS. WILSON: Can I have one second to review it?

16 THE COURT: Go ahead.

17 DIRECT EXAMINATION BY MR. MAREE:

18 Q. Dr. Shuman, state your name for the record.

19 A. Mark Shuman.

20 Q. And where do you live?

21 A. Miami, Florida.

22 Q. What do you do for a living?

23 A. I'm an associate medical examiner for Miami-Dade County.

24 Q. And are you a medical doctor?

25 A. Yes.

1 Q. How long have you been a medical doctor?

2 A. I graduated from the University of Pittsburgh Medical
3 School in 1993.

4 Q. And where did you do your residency?

5 A. I did a year of general surgery residency at Washington
6 Hospital Center in Washington, D.C. I then decided to switch
7 careers. I took a year off and did a year of basic science
8 research in prostate cell biology and cancer at University of
9 Pittsburgh. I then moved to Miami and I did four years of
10 anatomic and clinical pathology at Jackson Memorial Hospital
11 and then did a one-year forensic pathology fellowship in the
12 Miami-Dade County Medical Examiner Department, and I'm board
13 certified in anatomic, clinical and forensic pathology.

14 Q. What type of accrediting associations or boards do you
15 belong to?

16 A. The American Board of Pathology.

17 Q. How long have you been practicing in the field of
18 forensic pathology?

19 A. Just over 13 years.

20 Q. And do you testify in Court?

21 A. Yes.

22 Q. Have you ever been qualified as an expert in the field
23 of forensic pathology?

24 A. Yes.

25 Q. How many times would you estimate that you have been

1 qualified as --

2 THE COURT: Are you attempting to qualify him as an
3 expert?

4 MR. MAREE: Yes.

5 THE COURT: Do you all have any objections to him being
6 qualified as an expert in the field of forensic pathology?

7 MR. MAREE: No, Your Honor.

8 THE COURT: All right. We will find him an expert in
9 the field of forensic pathology.

10 Q. Dr. Schuh, did you have an opportunity to review some
11 records pertaining to the case involving the State of South
12 Carolina versus Melvin Daniel?

13 A. Yes.

14 Q. Do you recall what records or documents that you
15 reviewed?

16 A. I'll have to check my notes to be more specific to get
17 you an idea, but in general there were some pre and postnatal
18 records of [REDACTED] mother before and after birth, there was
19 the birth records, there was pediatrician's records, there
20 was the autopsy reports, there was some -- and the other
21 coroner's records. I believe there was one other ER visit
22 that the child had, and then there were some police reports
23 and forensic files including some statements of Deon's mother
24 and Mr. Daniel and some neighbors and then the -- some fire
25 rescue that had shown up to the scene. I read the trial

1 transcript testimony of Dr. Presnell and a little bit of Mr.
2 Daniel, and without getting more specific, that was about it.
3 I looked at the autopsy photographs and also the histology
4 slides from the autopsy, the microscopic sections.

5 Q. Did you have an opportunity to review the statement
6 given by the applicant, Melvin Daniel, to the Walterboro
7 Police Department?

8 A. Yes.

9 Q. Okay. And do you have that in your possession?

10 A. I do, yes.

11 Q. Okay.

12 THE COURT: Do you want him to pull it out? Are you
13 going to give him a copy?

14 Q. Do you have a copy?

15 A. The statement you said?

16 Q. Yes.

17 A. Actually, I don't have a copy of the statement.

18 Q. All right. Thank you. Is that a statement rendered by
19 Melvin Daniel, II, to the Walterboro City Police Department?

20 A. Yes.

21 Q. And it is dated May 10, 2004; is that correct?

22 A. Yes.

23 Q. Do you recall reviewing this document?

24 A. Yes.

25 Q. And in reviewing this document did you think that it was

1 important for you to know this factual status of how this
2 incident occurred according to Mr. Daniel?

3 A. Yes.

4 Q. Why did you feel that it was necessary or important to
5 you to know how Mr. Daniel -- his account of how this
6 incident occurred with the minor child?

7 A. Well, in forensic pathology basically what we do in
8 every case is we examine bodies, and we have to look at what
9 we see in the body and correlate it to what we're told
10 happened. That's the only thing we can do. We can't look at
11 the body and make something up about how something happened.
12 And when we look at the body and we see what the findings
13 are, we can say it is or is not consistent with the story
14 that we're given, and it's always best to get that first
15 story that we're given because, you know, we want to know
16 what was told right at the beginning, what was told from the
17 beginning.

18 Q. And in reviewing Mr. Daniel's statement what is your
19 understanding of his account of how the incident occurred
20 with the deceased child?

21 A. Well, in the statement and what he had said is they were
22 running and the child tripped over a cable and fell and hit
23 his head, but I think as important as the actual incident
24 that occurred is also what happened afterwards because he
25 gives a classic story of what happens in somebody that has a

1 head injury, and that is the child cries, has a bump on the
2 head, he said he put some ice on it, calmed the child down,
3 everything seemed to be okay, and [REDACTED] was watching TV, fell
4 asleep on the sofa, and then he couldn't wake him up, and
5 that's a classic story that somebody has a head injury, and
6 it's hard to make something up like that. So in my mind,
7 looking at the autopsy, you know, findings, impact on the
8 head, you know, you have the internal bleeding in the brain
9 and things like that, everything fits that scenario.

10 Q. Just to back up just for one second, Dr. Schuh. In your
11 capacity as a forensic pathologist is that with Dade County
12 in Florida?

13 A. Yes, Miami-Dade County.

14 Q. Miami-Dade County. And are you called upon to testify
15 for the prosecution as an expert?

16 A. Yes.

17 Q. So you render expert testimony both as a -- for the
18 prosecution and the defense?

19 A. Yes.

20 Q. And in your past experiences, I guess, how many times do
21 you think you've testified as an expert?

22 A. It's probably somewhere around 60 or so.

23 Q. And how would you split the percentage of times that
24 you've testified for the State or the defense?

25 A. It's been more for the State than for the defense,

1 defense is probably 25 times maybe, the rest would be all for
2 the prosecutor, but I've testified for prosecutors in a
3 number of different districts in Florida and California,
4 since I worked there for a year, and in some of the -- some
5 islands, the Turks and Caicos Islands and in the Cayman
6 Islands as well.

7 Q. And are you familiar with -- you say your familiar with
8 the testimony that was rendered by Dr. Presnell?

9 A. Yes.

10 Q. She was the State's expert in forensic pathology,
11 correct?

12 A. Yes.

13 Q. And I believe that she also performed the autopsy.

14 A. That's correct.

15 Q. Are you familiar with the fact that she indicated that
16 she does not believe that the type of injury sustained by the
17 minor child could be sustained from a simple trip and fall on
18 a floor with his head.

19 A. I'm aware that that's what she said, yes.

20 Q. Do you agree with that?

21 A. No.

22 Q. Why don't you?

23 A. Well, there's a number of studies out there that have
24 shown that short, what usually people consider a short fall,
25 something they consider possibly innocuous, maybe less than

1 five feet or so, have been injurious -- seriously injured and
2 have caused death. In fact, it's already been discussed,
3 that paper by Dr. Plunkett, in fact, one of those cases was
4 videotaped, and the child was sitting on a plastic jungle gym
5 and just fell off and slipped and hit his head. His head was
6 probably somewhere between three and four feet -- three and a
7 half, four feet above the ground when it struck and it hit
8 the carpet over concrete. The fact that some of those cases
9 in that article are on swings and seesaws is irrelevant other
10 than, you know, the height of the actual fall. So if you're
11 on a swing, you can use your body muscles to get yourself up
12 higher, you might be higher, but the actual motion on a
13 seesaw or motion on a swing doesn't matter. What matters is
14 the velocity at which you strike the ground, which is mostly
15 based on the height in a fall like that, and what part of
16 your body hits the ground and what the ground is like, so if
17 you hit something hard, it's worse than hitting obviously
18 something soft. So in a fall like this where a child's
19 running, I mean, [REDACTED] was only about two, two and a half feet
20 tall, so for him to fall straight down onto his head, it
21 would be a just over two-feet fall, which is a fairly
22 significant fall. It's probably right at the borderline of
23 causing a serious injury, doesn't usually happen. But in
24 this case we have a child who's running, and if you run and
25 trip, you have an initial velocity that's going to be added

1 to whatever the velocity is that is caused by gravity, and
2 that could definitely cause a serious head injury.
3 Fortunately, most of the time when a child falls like that,
4 they don't hit their head in the right place or, you know,
5 the surroundings may not be the same, but there is going to
6 be the occasion where it does happen, and when you have, you
7 know, a story that says one thing, you have the evidence of
8 the impact, you know, as it was described, then you have to
9 just say that's what happened because you can't make up
10 anything else. You could think of, you know, hundreds or
11 thousands of ways something like this could happen, but when
12 somebody tells you this is what happened and that's what you
13 see, then that's what happened.

14 Q. In your experience as a forensic pathologist have you
15 seen cases where -- let me ask you this question, Dr.

16 Presnell indicated that she saw subarachnoid hemorrhaging,
17 retinal hemorrhaging and I think subdural hemorrhaging. Have
18 you seen similar injuries in other people where there was no
19 abusive trauma to a child?

20 A. Yes. All those things are what you get with head
21 injuries. When you have a head injury, you get subdural
22 hemorrhage, you get subarachnoid hemorrhage, the brain swells
23 and you can get retinal hemorrhages, so all of those things
24 are part of a head injury. They're not specific for being
25 abuse or accidental. It's just something you see in a head

1 injury in general.

2 Q. So, in essence, hypothetically someone in a car accident
3 could have those symptoms or have those findings on
4 diagnostic review?

5 A. Yes.

6 Q. A person who just fell and hit their head accidentally
7 could have those findings on a diagnostic review?

8 A. Yes. I mean, falls from standing height causing head
9 injuries with death are common in adults. We see probably at
10 least one a week in our office where an adult trips and falls
11 or falls from a standing height somehow or off a stool or
12 something and hits their head and dies from it, so it's
13 pretty common in adults.

14 Q. I believe -- well, I know that Mr. Daniel testified at
15 his trial that the flooring where the child hit was, it was
16 carpeted, but I believe his testimony was that it was a very
17 thin piece of carpet and you could feel the concrete slab
18 right underneath it. Would that have any impact on the fall
19 of [REDACTED] if in fact the carpet was thin and there was a layer
20 of concrete underneath it?

21 A. Yes, absolutely, and it's mostly the subfloor that's
22 going to be the issue. Most of the time the subfloor is
23 going to be concrete or wood and it's going to be hard
24 anyway, and there's also been some studies with anatomic test
25 dummies, you know, the crash test dummies, where they've

1 dropped them and done some studies like that onto different
2 services. Even your regular carpet with a carpet pad doesn't
3 protect much when there's a hard surface underneath it, so
4 absolutely that would be a very hard surface and the -- like
5 I said before, it's the velocity at which you hit the ground,
6 and it's how fast you stop. It's the sudden stop that's the
7 problem, and the hard surface is going to make that stop be
8 very quick.

9 Q. And again, in reviewing Mr. Daniel's statement that he
10 gave to Walterboro Police Department, do you find this to be
11 a credible statement?

12 A. Yes.

13 MR. MAREE: Your Honor, I'd move to have this as an
14 exhibit for Applicant.

15 (Applicant's Exhibit 4 marked for identification and
16 admitted into evidence.)

17 Q. Dr. Shuman, if you were retained at the time of -- well,
18 first of all, were you a forensic pathologist in 2007 --

19 A. Yes.

20 Q. -- in July of 2007?

21 A. Yes.

22 Q. Were you testifying as an expert in July 2007?

23 A. Yes.

24 Q. And if you were retained at that time, do you believe
25 that your testimony that you're giving today would have been

1 the same in July of 2007?

2 A. Absolutely, yes.

3 Q. In your experiences in participating in these type of
4 trials, does it help for the defendant to have an expert
5 witness in forensic pathology testify on his behalf?

6 A. I mean, I think it's imperative, and in this case I
7 would have, if I were contacted, I would say also, get a
8 biomechanical engineer because to explain how the running,
9 tripping and falling is different than just falling over, you
10 know, a biomechanical engineer would be the one that would be
11 able to explain, you know, the physics of that and how it's
12 not the same as just falling over or falling off of
13 something, that initial velocity is important in making that
14 determination.

15 Q. Right. Do you agree with the findings of Dr. Presnell
16 that this was abusive head trauma?

17 A. No.

18 Q. And if you had testified in 2007, you would have given
19 testimony contrary to what she testified to?

20 A. Yes.

21 Q. As far as the cause of death?

22 A. Right, the cause of death is the head injury. The
23 abusive part doesn't need to be there. It's not abusive.
24 It's accidental.

25 Q. And can you say to a degree of medical certainty that

1 this was an accidental death to [REDACTED]

2 A. Yes.

3 MR. MAREE: Beg the Court's indulgence just one minute.

4 Q. In your practice as a forensic pathologist have you seen
5 personally any children die of short distance falls?

6 A. Yes.

7 MR. MAREE: I have no further questions at this time,
8 Your Honor.

9 THE COURT: All right. Madam Attorney General.

10 MS. WILSON: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MS. WILSON:

12 Q. Dr. Shuman, it's your testimony that the story given by
13 Mr. Daniel -- or the injuries suffered by the victim are
14 consistent with Mr. Daniel's story; is that correct?

15 A. Yes.

16 Q. Is it also possible that the victim's head injury could
17 have been consistent with child abuse?

18 A. Of course.

19 Q. And the symptoms you referred to about the baby falling,
20 then crying and then falling asleep and being unable to be
21 awakened and ultimately dying, could that also be consistent
22 with an injury that was the result of child abuse?

23 A. It would be consistent with a head injury.

24 Q. And are you aware of how fast the child was running when
25 he fell?

1 A. No.

2 Q. Do you know anything about the velocity or speed?

3 A. No.

4 Q. And you also testified that usually if you just -- if a
5 child -- and you said that the victim was around two feet,
6 usually a fall just standing at two feet doesn't usually
7 result in a serious injury; is that correct?

8 A. Well, I said two feet is really probably around the
9 threshold of causing serious injury if you hit the right way,
10 and he was about two and a half feet tall so, you know, a
11 standing height fall is not as likely, but adding the
12 velocity of running or movement prior adds to that and makes
13 it more likely.

14 Q. So it's your testimony that it's possible to fall with
15 some velocity and then suffer a severe injury; is that
16 correct?

17 A. I'm not sure I understand that question, some velocity.

18 Q. Well, some speed, a running fall could possibly result
19 in a serious injury.

20 A. Oh, yes.

21 Q. But is it also possible that a running fall could not
22 result in a serious injury?

23 A. Oh, of course.

24 Q. And you can't say for sure that the victim, [REDACTED]
25 injuries weren't caused by abuse, is that correct?

1 A. For sure? No, I can never say for sure, but I can say
2 that when the injury is consistent with the findings, then I
3 have to say that's what happened.

4 MS. WILSON: Beg the Court's indulgence.

5 Q. And so you also testified that with a reasonable degree
6 of medical certainty that you can say that the injury was an
7 accident; is that correct?

8 A. Yes.

9 Q. And how can you say with reasonable certainty that this
10 didn't result in abuse and it was an accident?

11 A. Because there's nothing to distinguish abuse versus
12 accident in any particular single impact head injury. If
13 there's multiple injuries or something like that, then I
14 would be suspicious, but we have a single head impact injury,
15 and we have an explanation that fits that injury, so that is
16 what happened.

17 Q. So you also testified at the start of your testimony
18 that as a pathologist you look at the injury from the autopsy
19 and you compare it to the story about what -- how they say
20 the injury happened; is that correct?

21 A. Yes.

22 Q. And so do you mean to say that the story provided is the
23 only possible way for an injury to result?

24 A. No.

25 Q. So it's possible the injury could have resulted in a way

1 differently than Mr. Daniel explained.

2 A. Yes, but possibilities aren't what I'm going for. I
3 want to know what happened, and if what he says happened
4 happened and it fits that, then that's what happened. We can
5 always make up all kinds of ways of something happening.
6 There was a paper written by somebody named Moritz in the
7 1950's, and then it was re-published in the '80's, about
8 mistakes in forensic pathology, and one of them was doing
9 just that, making things up like you're Sherlock Holmes or
10 something. We don't do that. I don't make anything up. I
11 say what happened, tell me what happened, if it fits what
12 happened, that's what happened. If it doesn't fit, then we
13 need to figure out what happened.

14 Q. So is it your testimony that the conclusion reached by
15 Dr. Presnell was not possible but your conclusions are
16 possible?

17 A. It's not that it's not possible. What she has concluded
18 is based on dogma and not science. She's basing it on years
19 of what people think happens, and what they say happens is
20 not actual science. If you're going to say that retinal
21 hemorrhages mean abuse, then that's not science. That's not
22 true. Retinal hemorrhages happen in accidental injuries,
23 they result in inflicted injuries, they result from natural
24 diseases. So there's nothing about, you know, what we're
25 seeing here that means that it's abuse, so I think that, you

1 know, her conclusions are based on flawed logic and
2 unscientific reasoning.

3 MS. WILSON: Thank you.

4 THE WITNESS: You're welcome.

5 MR. MAREE: Just briefly, Your Honor.

6 REDIRECT EXAMINATION BY MR. MAREE:

7 Q. Dr. Shuman, you reviewed the autopsy report from Dr.
8 Presnell, correct?

9 A. Yes.

10 Q. And in that report do you recall her indicating any
11 other injuries to this child other than head injury?

12 A. Well, there's the head injury and there's a couple other
13 bruises on the -- smaller bruises on the jaw.

14 Q. Do you recall in her testimony at trial that she may
15 have associated that with a medical procedure?

16 A. Yes, I mean, yes, and I would too. That looks like
17 finger marks from using a -- it's called a -- it's a BVM,
18 it's a mask that you use for resuscitation they used in --
19 the fire rescue used. In order to put the mask on so it has
20 a real tight seal you put your fingers underneath the jaw and
21 hold it on.

22 Q. And I believe that's consistent with her testimony too,
23 that she may have thought it was medically induced.

24 A. Yes.

25 Q. In your experiences when you see abuse on a child do you

1 see a lot of cases where it's just in head injury and no
2 other physical injuries to the child?

3 A. On occasion we do. I mean, you know, pediatric
4 homicides usually fall into one of two things, either they're
5 head injury or abdominal injury. Sometimes it's an isolated
6 injury and oftentimes there's other injuries also, so it can
7 happen, we've seen it.

8 Q. But in this particular case there were no other findings
9 of any significant injury other than the head injury,
10 correct?

11 A. That's right. And, you know, the most important thing
12 is the story that goes along with it fits. You know, when we
13 have a head injury that's isolated and somebody that's caring
14 for the child says, I don't know what happened, I just found
15 him dead, then we have a problem.

16 Q. In your experiences as a forensic pathologist and just
17 in your experience in that field where does it get to a point
18 where some forensic people see the same thing that you're
19 seeing and just automatically say abuse, what gets us there,
20 why is that?

21 A. Well, that's why I say it's the dogma. There are people
22 who think that short falls don't cause serious injuries, even
23 though there's plenty of evidence to the contrary, and then
24 there's people who use statistics improperly by saying short
25 falls rarely cause serious head injuries, therefore it didn't

1 happen. But you can't apply a statistic to an individual, so
2 if you're the one who wins the lottery, you won the lottery
3 even though it's very unlikely it's going to happen. It's
4 the same thing in tragedies also. If you're the one that
5 this happened to, you know, it happened to you, so you can't
6 apply a statistic, you know, in something we know happens.
7 Then there's other dogma out there about other things with
8 retinal hemorrhages and things like that that supposedly mean
9 something but they don't.

10 Q. Dr. Shuman, you had an opportunity to review the
11 pictures of [REDACTED] the deceased child, correct?

12 A. Yes.

13 Q. Did you see a hematoma on his forehead?

14 A. Yes.

15 Q. The placement of that hematoma, is that consistent --

16 MS. WILSON: Objection, Your Honor. I think this line
17 of questioning is outside the scope of my cross-examination.

18 THE COURT: I'm going to let him ask the question
19 because I'm going to ask him.

20 Q. The hematoma that you saw in the picture of the deceased
21 child, is that consistent with the child falling forward and
22 hitting his head and causing an injury?

23 A. Yes.

24 MR. MAREE: I don't have anything further, Your Honor.

25 MS. WILSON: Briefly, Your Honor.

1 RECROSS-EXAMINATION BY MS. WILSON:

2 Q. Dr. Shuman, so basically your testimony here today is
3 that the only difference between your explanation about what
4 happened and Dr. Presnell's explanation is that your
5 explanation is consistent with the defendant's story; is that
6 correct?

7 A. No. Well, first of all, I'm taking into account and not
8 discounting his story because his story is plausible and
9 that's what he said happened from the beginning before the
10 child even was really -- they didn't even know how badly
11 injured the child was at the time when he first told the
12 story, so, yes, you know, that and, you know, knowing that
13 short falls like this can cause this and that it fits. Since
14 everything fits, that's what happened.

15 MS. WILSON: Thank you.

16 THE WITNESS: Sure.

17 THE COURT: Doctor, did you read the testimony of Dr.
18 Cochran, Dr. Schuh and Dr. Vandergrift?

19 THE WITNESS: I had not, no.

20 THE COURT: You say that within a reasonable degree of
21 medical certainty you believe the injury was accidental based
22 upon, one, the injury itself and, two, it's consistent with
23 the story that the defendant gave at the time that he was
24 initially interviewed.

25 THE WITNESS: That's correct, yes.

1 THE COURT: And he had no other injuries.

2 THE WITNESS: That's right.

3 THE COURT: Didn't he have an injury to his eye socket?

4 THE WITNESS: No. There was injuries in the back of the
5 eye, in the retinas. They're not injuries, though, they're
6 retinal hemorrhages.

7 THE COURT: That's as a result of the trauma to the
8 brain?

9 THE WITNESS: Yes. It happens when the brain swells
10 quickly or you get an increase in cranial pressure fast.

11 THE COURT: How immediate would the results have been to
12 this child, the loss of consciousness, would it have been on
13 an immediate basis --

14 THE WITNESS: Not necessarily.

15 THE COURT: -- based on this injury?

16 THE WITNESS: No. I mean, his -- actually, the story he
17 gives fits very well. I mean, there are --

18 THE COURT: He suffered severe brain injury.

19 THE WITNESS: Yes, but usually there's a little bit of
20 consciousness. You can have anywhere -- I mean, they can
21 range anywhere from immediately unconscious at the time of
22 the impact to the head to a few days, actually, afterwards.

23 THE COURT: I'm talking about this injury right here
24 after reading the autopsy results.

25 THE WITNESS: Yes. It's very difficult to distinguish.

1 One of the -- actually, now that you mention it, one of the
2 things Dr. Presnell said this child had but didn't have is
3 something called diffuse axonal injury, which is a shearing
4 injury of the axons. You can see that under a microscope.
5 It's not there. That is something that you see with somebody
6 who's immediately unconscious. So in this instance the most
7 common scenario is for there to be a brief time of
8 consciousness before becoming lethargic.

9 THE COURT: Brief being a matter of minutes?

10 THE WITNESS: Minutes, yes.

11 THE COURT: All right. Were you aware that the treating
12 pediatrician at the medical university as well as I think the
13 neurosurgeon opined that this was as a result of abuse?

14 THE WITNESS: Yes. I typically see that. They look at
15 the CT scans and they say they see subdural hemorrhage and
16 they'll see retinal hemorrhages and they automatically
17 associate that with abuse.

18 THE COURT: All right. Thank you, sir. You may step
19 down.

20 THE WITNESS: No problem.

21 THE COURT: Anything further?

22 MR. MAREE: Just the affidavit, Your Honor.

23 THE COURT: Do you all have any objection to the doctor
24 leaving? I understand he wants to catch an airplane.

25 MR. MAREE: Yes, we've got to get him out of here.

1 MS. WILSON: Your Honor, we're just going to strike a
2 phrase from the affidavit, and the State doesn't have any
3 objection, and then we can let the doctor go.

4 MR. MAREE: So we're going to redact that in some kind
5 of form or fashion.

6 MS. WILSON: I just marked it out.

7 MR. MAREE: Your Honor, what she's doing is --

8 THE COURT: I assume you all want me to read this.

9 MR. MAREE: Yes.

10 THE COURT: Is it something that I'm not going to be
11 able to read?

12 MR. MAREE: Do you want me to mark it out a little
13 better?

14 THE COURT: Delete that portion of the statement you
15 don't want me to read.

16 MR. MAREE: Your Honor, it's not a hearsay statement. I
17 just agreed to keep it out because they're going to consent
18 to having it in.

19 THE COURT: The whole statement's hearsay, isn't it?

20 MR. MAREE: I thought affidavits in PCR hearings were
21 admissible by statute.

22 THE COURT: I don't know about that.

23 MR. MAREE: It is.

24 (Applicant's Exhibit 5 marked for identification and
25 admitted into evidence.)

1 THE COURT: Are you all going to offer anything else?

2 MR. MAREE: No, sir.

3 THE COURT: Anything from the State?

4 MS. WILSON: Yes, Your Honor, briefly. Your Honor, the
5 State would like to recall Mr. Beach.

6 THE COURT: Mr. Beach, you're still under oath.

7 HARRIS BEACH,

8 being previously duly sworn, testified on rebuttal as
9 follows:

10 DIRECT EXAMINATION BY MS. WILSON:

11 Q. Mr. Beach, you were here listening to Dr. Shuman's
12 testimony today, is that correct?

13 A. Yes.

14 Q. Based on his demeanor and testimony today, would you
15 have wanted to call him in the applicant's trial in South
16 Carolina?

17 A. I don't understand the question.

18 Q. Would you have wanted to call Dr. Shuman at Mr. Daniel's
19 trial?

20 A. Well, seeing as I didn't have an expert at all, yes, I
21 would have.

22 MS. WILSON: Thank you.

23 THE COURT: Anything else?

24 CROSS-EXAMINATION BY MR. MAREE:

25 Q. Do you believe that the testimony given by Dr. Shuman

1 would have been helpful to the applicant at trial?

2 A. Yes.

3 MR. MAREE: Thank you.

4 THE COURT: All right. Thank you, sir, you may step
5 down.

6 MR. MAREE: We don't have anything else, Your Honor.

7 MS. WILSON: Nothing further from the State.

8 MR. MAREE: The Applicant has decided not to testify.

9 THE COURT: All right. Mr. Daniel.

10 THE APPLICANT: Yes.

11 THE COURT: Just a couple questions. I'm sure your
12 attorney's explained this to you, but do you understand what
13 happens if you are successful in your efforts?

14 THE DEFENDANT: Yes.

15 THE COURT: What?

16 THE DEFENDANT: I ask for a new trial.

17 THE COURT: And do you understand that if you get a new
18 trial and go to trial and you're convicted, you could get up
19 to life in prison?

20 THE DEFENDANT: Yes.

21 THE COURT: And you're not going to get less than 20
22 years under any circumstance.

23 THE DEFENDANT: Yes.

24 THE COURT: And you still want to go forward with this?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. We'll take it under advisement.

2 MS. WILSON: Thank you, Your Honor.

3 MR. MAREE: Thank you, Your Honor. Thanks for your time
4 and patience.

5 --- END OF TRANSCRIPT OF RECORD ---

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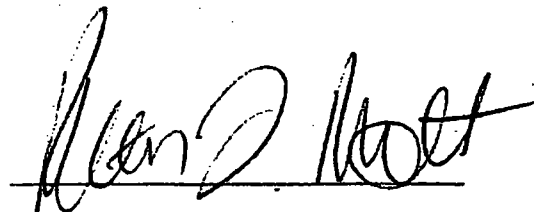
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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF COLLETON
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the trial of the captioned case, relative to appeal, in the
10 Fourteenth Judicial Circuit Court for Colleton County, South
11 Carolina, on the 20th of February, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 June 13, 2014

16
17
18 

19 Ruth L. Mott, RPR, CRR

20 Official Court Reporter
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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

)
COUNTY OF COLLETON) FOR THE FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina,) Indictment No.: 2004-GS-15-0400

-VS-

Melvin Daniel II,

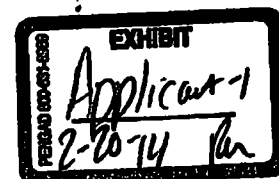
Defendant.

COLLETON COUNTY
GENERAL
04 DEC 16 AM 8:30

ORDER AUTHORIZING FUNDS FOR EXPERT SERVICES

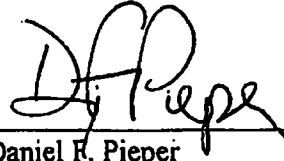
This matter came to be heard by me *ex parte* pursuant to S.C. Code Ann. 17-3-50(B). The Defendant, **Melvin Daniel II**, by and through his appointed counsel, Andrew D. Grimes, requests the Court to authorize the expenditure of funds to obtain the services of a medical expert. Counsel for the Defendant believes that these funds are absolutely necessary to ensure the proper investigation and preparation of this defense in this matter.

After reviewing the Defendant's request, the Court finds that the Defendant's request is reasonable and necessary for his defense. Accordingly, the Court approves, the expenditure of up to \$15,000.00 for obtaining the services of a medical expert. See S.C. Code Ann. § 17-3-50(B) and (C). Upon the expert's filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source, the Court will issue an order directing the Office of Indigent Defense or other appropriate agency to pay

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the expert for his or her services.

IT IS SO ORDERED.



Daniel R. Pieper
Chief Administrative Judge

Walterboro, South Carolina

December 14, 2004

2/2P

Fatal Pediatric Head Injuries Caused by Short-Distance Falls

John Plunkett, M.D.



Physicians disagree on several issues regarding head injury in infants and children, including the potential lethality of a short-distance fall, a lucid interval in an ultimately fatal head injury, and the specificity of retinal hemorrhage for inflicted trauma. There is scant objective evidence to resolve these questions, and more information is needed. The objective of this study was to determine whether there are witnessed or investigated fatal short-distance falls that were concluded to be accidental. The author reviewed the January 1, 1988 through June 30, 1999 United States Consumer Product Safety Commission database for head injury associated with the use of playground equipment. The author obtained and reviewed the primary source data (hospital and emergency medical services' records, law enforcement reports, and coroner or medical examiner records) for all fatalities involving a fall.

The results revealed 18 fall-related head injury fatalities in the database. The youngest child was 12 months old, the oldest 13 years. The falls were from 0.6 to 3 meters (2-10 feet). A noncaretaker witnessed 12 of the 18, and 12 had a lucid interval. Four of the six children in whom funduscopic examination was documented in the medical record had bilateral retinal hemorrhage. The author concludes that an infant or child may suffer a fatal head injury from a fall of less than 3 meters (10 feet). The injury may be associated with a lucid interval and bilateral retinal hemorrhage.

Key Words: Child abuse—Head injury—Lucid interval—Retinal hemorrhage—Subdural hematoma.

Many physicians believe that a simple fall cannot cause serious injury or death (1-9), that a lucid interval does not exist in an ultimately fatal pediatric head injury (7-13), and that retinal hemorrhage is highly suggestive if not diagnostic for inflicted trauma (7,12,14-21). However, several have questioned these conclusions or urged caution when interpreting head injury in a child (15,22-28). This controversy exists because most infant injuries occur in the home (29,30), and if there is history of a fall, it is usually not witnessed or is seen only by the caretaker. Objective data are needed to resolve this dispute. It would be helpful if there were a database of fatal falls that were witnessed or wherein medical and law enforcement investigation unequivocally concluded that the death was an accident.

The United States Consumer Product Safety Commission (CPSC) National Injury Information Clearinghouse uses four computerized data sources (31). The National Electronic Injury Surveillance System (NEISS) file collects current injury data associated with 15,000 categories of consumer products from 101 U.S. hospital emergency departments, including 9 pediatric hospitals. The file is a probability sample and is used to estimate the number and types of consumer product-related injuries each year (32). The Death Certificate (DC) file is a demographic summary created by information provided to the CPSC by selected U.S. State Health Departments. The Injury/Potential Injury Incident (IR) file contains summaries, indexed by consumer product, of reports to the CPSC from consumers, medical examiners and coroners (Medical Examiner and Coroner Alert Project [MECAP]), and newspaper accounts of product-related incidents discovered by local or regional CPSC staff (33). The In-Depth Investigations (AI) file contains summaries of investigations performed by CPSC staff based on reports received from the NEISS, DC, or IR files (34). The AI files provide details about the incident from victim and witness interviews, accident reconstruction, and review of law enforce-

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ment, health care facility, and coroner or medical examiner records (if a death occurred).

METHODS

I reviewed the CPSC, DC, IR, and AI files for all head and neck injuries involving playground equipment recorded by the CPSC from January 1, 1988 through June 30, 1999. There are 323 entries in the playground equipment IR file, 262 in the AI file, 47 in the DC file, and more than 75,000 in the NEISS file. All deaths in the NEISS file generated an IR or AI file. If the file indicated that a death had occurred from a fall, I obtained and reviewed each original source record from law enforcement, hospitals, emergency medical services (EMS), and coroner or medical examiner offices except for one autopsy report. However, I discussed the autopsy findings with the pathologist in this case.

RESULTS

There are 114 deaths in the Clearinghouse database, 18 of which were due to head injury from a fall. The following deaths were excluded from this study: those that involved equipment that broke or collapsed, striking a person on the head or neck (41); those in which a person became entangled in the equipment and suffocated or was strangled (45); those that involved equipment or incidents other than playground (6 [including a 13.7-meter fall from a homemade Ferris wheel and a 3-meter fall from a cyclone fence adjacent to a playground]); and falls in which the death was caused exclusively by neck (carotid vessel, airway, or cervical spinal cord) injury (4).

The falls were from horizontal ladders (4), swings (7), stationary platforms (3), a ladder attached to a slide, a "see-saw", a slide, and a retaining wall. Thirteen occurred on a school or public playground, and five occurred at home. The database is not limited to infants and children, but a 13-year-old was the oldest fatality (range, 12 months–13 years; mean, 5.2 years; median, 4.5 years). The distance of the fall, defined as the distance of the closest body part from the ground at the beginning of the fall, could be determined from CPSC or law enforcement reconstruction and actual measurement in 10 cases and was 0.6 to 3.0 meters (mean, 1.3 ± 0.77 ; median, 0.9). The distance could not be accurately determined in the seven fatalities involving swings and one of the falls from a horizontal ladder, and may have been from as little as 0.6 meters to as much as 2.4 meters. The maximum height for a fall from a swing was assumed to

be the highest point of the arc. Twelve of the 18 falls were witnessed by a noncaretaker or were videotaped; 12 of the children had a lucid interval (5 minutes–48 hours); and 4 of the 6 in whom fundoscopic examination was performed had bilateral retinal hemorrhage (Table 1).

CASES

Case 1

This 12-month-old was seated on a porch swing between her mother and father when the chain on her mother's side broke and all three fell sideways and backwards 1.5 to 1.8 meters (5–6 feet) onto decorative rocks in front of the porch. The mother fell first, then the child, then her father. It is not known if her father landed on top of her or if she struck only the ground. She was unconscious immediately. EMS was called; she was taken to a local hospital; and was ictal and had decerebrate posturing in the emergency room. She was intubated, hyperventilated, and treated with mannitol. A computed tomography (CT) scan indicated a subgaleal hematoma at the vertex of the skull, a comminuted fracture of the vault, parafalcine subdural hemorrhage, and right parietal subarachnoid hemorrhage. There was also acute cerebral edema with effacement of the right frontal horn and compression of the basal cisterns. She had a cardiopulmonary arrest while the CT scan was being done and could not be resuscitated.

Case 2

A 14-month-old was on a backyard "see-saw" and was being held in place by his grandmother. The grandmother said that she was distracted for a moment and he fell backward, striking the grass-covered ground 0.6 meters (22.5 inches) below the plastic seat. He was conscious but crying, and she carried him into the house. Within 10 to 15 minutes he became lethargic and limp, vomited, and was taken to the local hospital by EMS personnel. He was unconscious but purposefully moving all extremities when evaluated, and results of fundoscopic examination were normal. A CT scan indicated an occipital subgaleal hematoma, left-sided cerebral edema with complete obliteration of the left frontal horn, and small punctate hemorrhages in the left frontal lobe. There was no fracture or subdural hematoma. He was treated with mannitol; his level of consciousness rapidly improved; and he was extubated. However, approximately 7 hours after admission he began to have difficulty breathing, both pupils suddenly dilated, and he was rein-

TABLE 1. Summary of cases

No.	CPSC No.	Age	Sex	Fall from	Distance M/F	Witnessed	Lucid Interval	Retinal hemorrhage	Subdural hemorrhage	Autopsy	Cause of death	FP
1	DC 9108013330	12 mos	F	Swing	1.5-1.8/5.0-6.0	No	No	N/R	Yes +IHF	No	Complex calvarial fracture with edema and contusions	No
2	AI 890208HBC3088	14 mos	M	See-saw	0.6/2.0	No	10-15 minutes	No	No	No	Malignant cerebral edema with herniation	No
3	IR F910368A	17 mos	F	Swing	1.5-1.8/5.0-6.0	No	No	N/R	Yes +IHF	Yes	Acute subdural hematoma with secondary cerebral edema	Yes
4	AI 821001HCC2283	20 mos	F	Platform	1.1/3.5	No	5-10 minutes	Bilateral multilayered	Yes +IHF	Limited	Occipital fracture with subdural/subarachnoid hemorrhage progressing to cerebral edema and herniation	Yes
5 ^a	DC 8312060661	23 mos	F	Platform	0.70/2.3	Yes	10 minutes	Bilateral, NOS	Yes	Yes	Acute subdural hematoma	Yes
6	DC 9451016513	26 mos	M	Swing	0.9-1.8/3.0-6.0	Yes	No	Bilateral multilayered	Yes +IHF	Yes	Subdural hematoma with associated cerebral edema	Yes
7 ^a	AI 891215HcC2094	3 yrs	M	Platform	0.9/3.0	Yes	10 minutes	N/R	Yes	No	Acute cerebral edema with herniation	No
8	AI 910515HCC2182	3 yrs	F	Ladder	0.6/2.0	yes	15 minutes	N/R	Yes (autopsy only)	Yes	Complex calvarial fracture, contusions, cerebral edema with herniation	Yes
9	DC 8253024577	4 yrs	M	Slide	2.1/7.0	Yes	3 hours	N/R	No	Yes	Epidural hematoma	Yes
10	AI 920710HWE4014	5 yrs	M	Horizontal ladder	2.1/7.0	No	No	N/R	Yes	No	Acute subdural hematoma with acute cerebral edema	Yes
11	AI 880517HCC5175	6 yrs	M	Swing	0.6-2.4/2.0-8.0	No	10 minutes	No	Yes +IHF	No	Acute subdural hematoma	Yes
12	AI 870324HCC3040	6 yrs	M	Horizontal ladder	3.0/10.0	Yes	45 minutes	N/R	No	No	Malignant cerebral edema with herniation	Yes
13	AI 881229HCC3070	6 yrs	F	Horizontal ladder	0.9/3.0	Yes	1+ hour	N/R	Yes +IHF	Yes	Subdural and subarachnoid hemorrhage, cerebral infarct, and edema	Yes
14	AI 830830HWE5025	7 yrs	M	Horizontal ladder	1.2-2.4/4.0-8.0	Yes	48 hours	N/R	No	Yes	Cerebral infarct secondary to carotid/vertebral artery thrombosis	Yes
15	AI 970409HCC1098	8 yrs	F	Retaining wall	0.9/3.0	Yes	12+ hours	N/R	Yes (autopsy only)	Yes	Acute subdural hematoma	Yes
16	AI 890621HCC3195	10 yrs	M	Swing	0.9-1.5/3.0-5.0	Yes	10 minutes	Bilateral multilayered	Yes	Yes	Acute subdural hematoma contiguous with an AV malformation	No
17	AI 920428HCC1671	12 yrs	F	Swing	0.9-1.8/3.0-6.0	Yes	No	N/R	No	Yes	Occipital fracture with extensive contra-coup contusions	Yes
18	AI 891016HCC1511	13 yrs	F	Swing	0.6-1.8/2.0-6.0	Yes	No	N/R	Yes +IHF	Yes	Occipital fracture, subdural hemorrhage, cerebral edema	Yes

^aThe original CT scan for case #7 and the soft tissue CT windows for case #5 could not be located and were unavailable for review.
 CPSC, Consumer Products Safety Commission; AI, accident investigation; IR, incident report; DC, death certificate; M, male; F, female; Distance, the distance of the closest body part from the ground at the start of the fall (see text); M/F, meters/feet; Witnessed, witnessed by a noncaretaker or videotaped; N/R, not recorded; IHF, including interhemispheric or taur; FP, forensic pathologist-directed death investigation system.

FATAL HEAD INJURIES WITH SHORT-DISTANCE FALLS

tubated. A second CT scan demonstrated progression of the left hemispheric edema despite medical management, and he was removed from life support 22 hours after admission.

Case 3

This 17-month-old had been placed in a baby carrier-type swing attached to an overhead tree limb at a daycare provider's home. A restraining bar held in place by a snap was across her waist. She was being pushed by the daycare provider to an estimated height of 1.5 to 1.8 meters (5-6 feet) when the snap came loose. The child fell from the swing on its downstroke, striking her back and head on the grassy surface. She was immediately unconscious and apneic but then started to breathe spontaneously. EMS took her to a pediatric hospital. A CT scan indicated a large left-sided subdural hematoma with extension to the interhemispheric fissure anteriorly and throughout the length of the falx. The hematoma was surgically evacuated, but she developed malignant cerebral edema and died the following day. A postmortem examination indicated symmetrical contusions on the buttock and midline posterior thorax, consistent with impact against a flat surface; a small residual left-sided subdural hematoma; cerebral edema with anoxic encephalopathy; and uncus and cerebellar tonsillar herniation. There were no cortical contusions.

Case 4

A 20-month-old was with other family members for a reunion at a public park. She was on the platform portion of a jungle gym when she fell from the side and struck her head on one of the support posts. The platform was 1.7 meters (67 inches) above the ground and 1.1 meters (42 inches) above the top of the support post that she struck. Only her father saw the actual fall, although there were a number of other people in the immediate area. She was initially conscious and talking, but within 5 to 10 minutes became comatose. She was taken to a nearby hospital, then transferred to a tertiary-care facility. A CT scan indicated a right occipital skull fracture with approximately 4-mm of depression and subarachnoid and subdural hemorrhage along the tentorium and posterior falx. Funduscopic examination indicated extensive bilateral retinal and preretinal hemorrhage. She died 2 days later because of uncontrollable increased intracranial pressure. A limited postmortem examination indicated an impact subgaleal hematoma overlying the fracture in the mid occiput.

Case 5

A 23-month-old was playing on a plastic gym set in the garage at her home with her older brother. She had climbed the attached ladder to the top rail above the platform and was straddling the rail, with her feet 0.70 meters (28 inches) above the floor. She lost her balance and fell headfirst onto a 1-cm (1/4-inch) thick piece of plush carpet remnant covering the concrete floor. She struck the carpet first with her outstretched hands, then with the right front side of her forehead, followed by her right shoulder. Her grandmother had been watching the children play and videotaped the fall. She cried after the fall but was alert and talking. Her grandmother walked/carried her into the kitchen, where her mother gave her a baby analgesic with some water, which she drank. However, approximately 5 minutes later she vomited and became stuporous. EMS personnel airlifted her to a tertiary-care university hospital. A CT scan indicated a large right-sided subdural hematoma with effacement of the right lateral ventricle and minimal subfalcine herniation. (The soft tissue windows for the scan could not be located and were unavailable for review.) The hematoma was immediately evacuated. She remained comatose postoperatively, developed cerebral edema with herniation, and was removed from life support 36 hours after the fall. Bilateral retinal hemorrhage, not further described, was documented in a funduscopic examination performed 24 hours after admission. A postmortem examination confirmed the right frontal scalp impact injury. There was a small residual right subdural hematoma, a right parietal lobe contusion (secondary to the surgical intervention), and cerebral edema with cerebellar tonsillar herniation.

Case 6

A 26-month-old was on a playground swing being pushed by a 13-year-old cousin when he fell backward 0.9 to 1.8 meters (3-6 feet), striking his head on hard-packed soil. The 13-year-old and several other children saw the fall. He was immediately unconscious and was taken to a local emergency room, then transferred to a pediatric hospital. A CT scan indicated acute cerebral edema and a small subdural hematoma adjacent to the anterior interhemispheric falx. A funduscopic examination performed 4 hours after admission indicated extensive bilateral retinal hemorrhage, vitreous hemorrhage in the left eye, and papilledema. He had a subsequent cardiopulmonary arrest and could not be resuscitated. A postmortem examination confirmed the retinal hemorrhage and indicated a right parietal scalp impact injury but no calvarial frac-

ture, a "film" of bilateral subdural hemorrhage, cerebral edema with herniation, and focal hemorrhage in the right posterior midbrain and pons.

Case 7

This 3-year-old with a history of TAR (thrombocytopenia-absent radius) syndrome was playing with other children on playground equipment at his school when he stepped through an opening in a platform. He fell 0.9 meters (3 feet) to the hard-packed ground, striking his face. A teacher witnessed the incident. He was initially conscious and able to walk. However, approximately 10 minutes later he had projectile vomiting and became comatose, was taken to a local hospital, and subsequently transferred to a pediatric hospital. A CT scan indicated a small subdural hematoma and diffuse cerebral edema with uncal herniation, according to the admission history and physical examination. (The original CT report and scan could not be located and were unavailable for review.) His platelet count was $24,000/\text{mm}^3$, and he was treated empirically with platelet transfusions, although he had no evidence for an expanding extra-axial mass. Resuscitation was discontinued in the emergency room.

Case 8

This 3-year-old was at a city park with an adult neighbor and four other children, ages 6 to 10. She was standing on the third step of a slide ladder 0.6 meters (22 inches) above the ground when she fell forward onto compact dirt, striking her head. The other children but not the adult saw the fall. She was crying but did not appear to be seriously injured, and the neighbor picked her up and brought her to her parents' home. Approximately 15 minutes later she began to vomit, and her mother called EMS. She was taken to a local emergency room, then transferred to a pediatric hospital. She was initially lethargic but responded to hyperventilation and mannitol; she began to open her eyes with stimulation and to spontaneously move all extremities and was extubated. However, she developed malignant cerebral edema on the second hospital day and was reintubated and hyperventilated but died the following day. A postmortem examination indicated a subgaleal hematoma at the vertex of the skull associated with a complex fracture involving the left frontal bone and bilateral temporal bones. There were small epidural and subdural hematomas (not identifiable on the CT scan), bilateral "contrecoup" contusions of the inferior surfaces of the frontal and temporal lobes, and marked cerebral edema with uncal herniation.

Case 9

A 4-year-old fell approximately 2.1 meters (7 feet) from a playground slide at a state park, landing on the dirt ground on his buttock, then falling to his left side, striking his head. There was no loss of consciousness, but his family took him to a local emergency facility, where an evaluation was normal. However, he began vomiting and complained of left neck and head pain approximately 3 hours later. He was taken to a second hospital, where a CT scan indicated a large left parietal epidural hematoma with a midline shift. He was transferred to a pediatric hospital and the hematoma was evacuated, but he developed malignant cerebral edema with right occipital and left parietal infarcts and was removed from the respirator 10 days later. A postmortem examination indicated a small residual epidural hematoma, marked cerebral edema, bilateral cerebellar tonsillar and uncal herniation, and hypoxic encephalopathy. There was no identifiable skull fracture.

Case 10

A 5-year-old was apparently walking across the horizontal ladder of a "monkey bar," part of an interconnecting system of homemade playground equipment in his front yard, when his mother looked out one of the windows and saw him laying face down on the ground and not moving. The horizontal ladder was 2.1 meters (7 feet) above compacted dirt. EMS were called, he was taken to a local hospital, and then transferred to a pediatric hospital. A CT scan indicated a right posterior temporal linear fracture with a small underlying epidural hematoma, a 5-mm thick acute subdural hematoma along the right temporal and parietal lobes, and marked right-sided edema with a 10-mm midline shift. He was hyperventilated and treated with mannitol, but the hematoma continued to enlarge and was surgically evacuated. However, he developed uncontrollable cerebral edema and was removed from life support 10 days after the fall.

Case 11

A 6-year-old was on a playground swing at a private lodge with his 14-year-old sister. His sister heard a "thump," turned around, and saw him on the grass-covered packed earth beneath the swing. The actual fall was not witnessed. The seat of the swing was 0.6 meters (2 feet) above the ground, and the fall distance could have been from as high as 2.4 meters (8 feet). He was initially conscious and talking but within 10 minutes became comatose and was taken to a local emergency room, then transferred to a tertiary-care hospital. A CT

scan indicated a large left frontoparietal subdural hematoma with extension into the anterior interhemispheric fissure and a significant midline shift with obliteration of the left lateral ventricle. There were no retinal hemorrhages. He was treated aggressively with dexamethasone and hyperventilation, but there was no surgical intervention. He died the following day.

Case 12

This 6-year-old was at school and was sitting on the top crossbar of a "monkey bar" approximately 3 meters (10 feet) above compacted clay soil when an unrelated noncaretaker adult saw him fall from the crossbar to the ground. He landed flat on his back and initially appeared to have the wind knocked out of him but was conscious and alert. He was taken to the school nurse who applied an ice pack to a contusion on the back of his head. He rested for approximately 30 minutes in the nurse's office and was being escorted back to class when he suddenly collapsed. EMS was called, and he was transported to a pediatric hospital. He was comatose on admission, the fundi could not be visualized, and a head CT scan was interpreted as normal. However, a CT scan performed the following morning approximately 20 hours after the fall indicated diffuse cerebral edema with effacement of the basilar cisterns and fourth ventricle. There was no identifiable subdural hemorrhage or calvarial fracture. He developed transtentorial herniation and died 48 hours after the fall.

Case 13

This 6-year-old was playing on a school playground with a 5th grade student/friend. She was hand-over-hand traversing the crossbar of a "monkey bar" 2.4 meters (7 feet 10 inches) above the ground with her feet approximately 1 meter (40 inches) above the surface. She attempted to slide down the pole when she reached the end of the crossbar but lost her grip and slid quickly to the ground, striking the compacted dirt first with her feet, then her buttock and back, and finally her head. The friend informed the school principal of the incident, but the child seemed fine and there was no intervention. She went to a relative's home for after-school care approximately 30 minutes after the fall, watched TV for a while, then complained of a headache and laid down for a nap. When her parents arrived at the home later that evening, 6 hours after the incident, they discovered that she was incoherent and "drooling." EMS transported her to a tertiary-care medical center. A CT scan indicated a right parieto-occipital skull frac-

ture, subdural and subarachnoid hemorrhage, and a right cerebral hemisphere infarct. The infarct included the posterior cerebral territory and was thought most consistent with thrombosis or dissection of a right carotid artery that had a persistent fetal origin of the posterior cerebral artery. She remained comatose and was removed from the respirator 6 days after admission. A postmortem examination indicated superficial abrasions and contusions over the scapula, a prominent right parietotemporal subgaleal hematoma, and a right parietal skull fracture. She had a 50-ml subdural hematoma and cerebral edema with global hypoxic or ischemic injury ("respirator brain"), but the carotid vessels were normal.

Case 14

A 7-year-old was on the playground during school hours playing on the horizontal ladder of a "monkey bar" when he slipped and fell 1.2 to 2.4 meters (4-8 feet). According to one witness, he struck his forehead on the bars of the vertical ladder; according to another eyewitness he struck the rubber pad covering of the asphalt ground. There are conflicting stories as to whether he had an initial loss of consciousness. However, he walked back to the school, and EMS was called because of the history of the fall. He was taken to a local hospital, where evaluation indicated a Glasgow coma score of 15 and a normal CT scan except for an occipital subgaleal hematoma. He was kept overnight for observation because of the possible loss of consciousness but was released the following day. He was doing homework at home 2 days after the fall when his grandmother noticed that he was stumbling and had slurred speech, and she took him back to the hospital. A second CT scan indicated a left carotid artery occlusion and left temporal and parietal lobe infarcts. The infarcts and subsequent edema progressed; he had brainstem herniation; and he was removed from life support 3 days later (5 days after the initial fall). A postmortem examination indicated ischemic infarcts of the left parietal, temporal, and occipital lobes, acute cerebral edema with herniation, and thrombosis of the left vertebral artery. Occlusion of the carotid artery, suspected pre-mortem, could not be confirmed.

Case 15

This 8-year-old was at a public playground near her home with several friends her age. She was hanging by her hands from the horizontal ladder of a "monkey bar" with her feet approximately 1.1 meters (3.5 feet) above the ground when she attempted to swing from the bars to a nearby 0.9-

meter (34-inch) retaining wall. She landed on the top of the wall but then lost her balance and fell to the ground, either to a hard-packed surface (one witness) or to a 5.1-cm (2-inch) thick resilient rubber mat (a second witness), striking her back and head. She initially cried and complained of a headache but continued playing, then later went home. Her mother said that she seemed normal and went to bed at her usual time. However, when her mother tried to awaken her at approximately 8:30 the following morning (12 hours after the fall) she complained of a headache and went back to sleep. She awoke at 11 a.m. and complained of a severe headache then became unresponsive and had a seizure. EMS took her to a nearby hospital, but she died in the emergency room. A postmortem examination indicated a right temporoparietal subdural hematoma, extending to the base of the brain in the middle and posterior fossae, with flattening of the gyri and narrowing of the sulci. (The presence or absence of herniation is not described in the autopsy report.) There was no calvarial fracture, and there was no identifiable injury in the scalp or galea.

Case 16

A 10-year-old was swinging on a swing at his school's playground during recess when the seat detached from the chain and he fell 0.9 to 1.5 meters (3–5 feet) to the asphalt surface, striking the back of his head. The other students but not the three adult playground supervisors saw him fall. He remained conscious although groggy and was carried to the school nurse's office, where an ice pack was placed on an occipital contusion. He suddenly lost consciousness approximately 10 minutes later, and EMS took him to a local hospital. He had decerebrate posturing when initially evaluated. Funduscopic examination indicated extensive bilateral confluent and stellate, posterior and peripheral preretinal and subhyaloid hemorrhage. A CT scan showed a large acute right frontoparietal subdural hematoma with transtentorial herniation. The hematoma was surgically removed, but he developed malignant cerebral edema and died 6 days later. A postmortem examination indicated a right parietal subarachnoid AV malformation, contiguous with a small amount of residual subdural hemorrhage, and cerebral edema with anoxic encephalopathy and herniation. There was no calvarial fracture.

Case 17

A 12-year-old was at a public playground with a sister and another friend and was standing on the seat of a swing when the swing began to twist. She

lost her balance and fell 0.9 to 1.8 meters (3–6 feet) to the asphalt surface, striking her posterior thorax and occipital scalp. She was immediately unconscious and was taken to a tertiary-care hospital emergency room, where she was pronounced dead. A postmortem examination indicated an occipital impact injury associated with an extensive comminuted occipital fracture extending into both middle cranial fossa and "contra-coup" contusions of both inferior frontal and temporal lobes.

Case 18

This 13-year-old was at a public playground with a friend. She was standing on the seat of a swing with her friend seated between her legs when she lost her grip and fell backwards 0.6 to 1.8 meters (2–6 feet), striking either a concrete retaining wall adjacent to the playground or a resilient 5.1-cm (2 inch) thick rubber mat covering the ground. She was immediately unconscious and was given emergency first aid by a physician who was nearby when the fall occurred. She was taken to a nearby hospital and was purposefully moving all extremities and had reactive pupils when initially evaluated. A CT scan indicated interhemispheric subdural hemorrhage and generalized cerebral edema, which progressed rapidly to brain death. A postmortem examination indicated a linear nondepressed midline occipital skull fracture, subdural hemorrhage extending to the occiput, contusion of the left cerebellar hemisphere, bifrontal "contra-coup" contusions, and cerebral edema.

DISCUSSION

General

Traumatic brain injury (TBI) is caused by a force resulting in either strain (deformation/unit length) or stress (force/original cross-sectional area) of the scalp, skull, and brain (35–37). The extent of injury depends not only on the level and duration of force but also on the specific mechanical and geometric properties of the cranial system under loading (38–40). Different parts of the skull and brain have distinct biophysical characteristics, and calculating deformation and stress is complex. However, an applied force causes the skull and brain to move, and acceleration, the time required to reach peak acceleration, and the duration of acceleration may be measured at specific locations (36,41). These kinematic parameters do not cause the actual brain damage but are useful for analyzing TBI because they are easy to quantify. Research in TBI using physical models and animal experiments has shown that a force resulting in angular acceleration pro-

duces primarily diffuse brain damage, whereas a force causing exclusively translational acceleration produces only focal brain damage (36). A fall from a countertop or table is often considered to be exclusively translational and therefore assumed incapable of producing serious injury (3,7-9). However, sudden impact deceleration *must* have an angular vector unless the force is applied only through the center of mass (COM), and deformation of the skull during impact *must* be accompanied by a volume change (cavitation) in the subdural "space" tangential to the applied force (41). The angular and deformation factors produce tensile strains on the surface veins and mechanical distortions of the brain during impact and may cause a subdural hematoma without deep white matter injury or even unconsciousness (42-44).

Many authors state that a fall from less than 3 meters (10 feet) is rarely if ever fatal, especially if the distance is less than 1.5 meters (5 feet) (1-6,8,9). The few studies concluding that a short-distance fall may be fatal (22-24,26,27) have been criticized because the fall was not witnessed or was seen only by the caretaker. However, isolated reports of observed fatal falls and biomechanical analysis using experimental animals, adult human volunteers, and models indicate the potential for serious head injury or death from as little as a 0.6-meter (2-foot) fall (48-52). There are limited experimental studies on infants (cadaver skull fracture) (53,54) and none on living subadult nonhuman primates, but the adult data have been extrapolated to youngsters and used to develop the Hybrid II/III and Child Restraint-Air Bag Interaction (CRABI) models (55) and to propose standards for playground equipment (56,63). We simply do not know either kinematic or nonkinematic limits in the pediatric population (57,58).

Each of the falls in this study exceeded established adult kinematic thresholds for traumatic brain injury (41,48-52). Casual analysis of the falls suggests that most were primarily translational. However, deformation and *internal* angular acceleration of the skull and brain *caused by the impact* produce the injury. What happens during the impact, not during the fall, determines the outcome.

Subdural Hemorrhage

A "high strain" impact (short pulse duration and high rate for deceleration onset) typical for a fall is more likely to cause subdural hemorrhage than a "low strain" impact (long pulse duration and low rate for deceleration onset) that is typical of a motor vehicle accident (42,61). The duration of deceleration for a head-impact fall against a nonyield-

ing surface is usually less than 5 milliseconds (39,59-61). Experimentally, impact duration longer than 5 milliseconds will not cause a subdural hematoma unless the level of angular acceleration is above $1.75 \times 10^5 \text{ rad/s}^2$ (61). A body in motion with an angular acceleration of $1.75 \times 10^5 \text{ rad/s}^2$ has a tangential acceleration of $17,500 \text{ m/s}^2$ at 0.1 meters (the distance from the midneck axis of rotation to the midbrain COM in the Duhaime model). A human cannot produce this level of acceleration by impulse ("shake") loading (62).

An injury resulting in a subdural hematoma in an infant may be caused by an accidental fall (43,44,64). A recent report documented the findings in seven children seen in a pediatric hospital emergency room after an accidental fall of 0.6 to 1.5 meters who had subdural hemorrhage, no loss of consciousness, and no symptoms (44). The characteristics of the hemorrhage, especially extension into the posterior interhemispheric fissure, have been used to suggest if not confirm that the injury was nonaccidental (9,62,65-68). The hemorrhage extended into the posterior interhemispheric fissure in 5 of the 10 children in this study (in whom the blood was identifiable on CT or magnetic resonance scans and the scans were available for review) and along the anterior falx or anterior interhemispheric fissure in an additional 2 of the 10.

Lucid Interval

Disruption of the diencephalic and midbrain portions of the reticular activating system (RAS) causes unconsciousness (36,69,70). "Shearing" or "diffuse axonal" injury (DAI) is thought to be the primary biophysical mechanism for immediate traumatic unconsciousness (36,71). Axonal injury has been confirmed at autopsy in persons who had a brief loss of consciousness after a head injury and who later died from other causes, such as coronary artery disease (72). However, if unconsciousness is momentary or brief ("concussion") subsequent deterioration *must* be due to a mechanism other than DAI. Apnea and catecholamine release have been suggested as significant factors in the outcome following head injury (73,74). In addition, the centripetal theory of traumatic unconsciousness states that primary disruption of the RAS will not occur in isolation and that structural brainstem damage from inertial (impulse) or impact (contact) loading *must* be accompanied by evidence for cortical and subcortical damage (36). This theory has been validated by magnetic resonance imaging and CT scans in adults and children (75,76). Only one of the children in this study (case 6) had evidence for any component of DAI. This child had focal hemor-

rhage in the posterior midbrain and pons, thought by the pathologist to be primary, although there was no skull fracture, only "a film" of subdural hemorrhage, no tears in the corpus callosum, and no lacerations of the cerebral white matter (grossly or microscopically).

The usual cause for delayed deterioration in infants and children is cerebral edema, whereas in adults it is an expanding extra-axial hematoma (77). If the mechanism for delayed deterioration (except for an expanding extra-axial mass) is venospasm, cerebral edema may be the only morphologic marker. The "talk and die or deteriorate (TADD)" syndrome is well characterized in adults (78). Two reports in the pediatric literature discuss TADD, documenting 4 fatalities among 105 children who had a lucid interval after head injury and subsequently deteriorated (77,79). Many physicians believe that a lucid interval in an ultimately fatal pediatric head injury is extremely unlikely or does not occur unless there is an epidural hematoma (7,8,11). Twelve children in this study had a lucid interval. A noncaretaker witnessed 9 of these 12 falls. One child had an epidural hematoma.

Retinal Hemorrhage

The majority of published studies conclude that retinal hemorrhage, especially if bilateral and posterior or associated with retinoschisis, is highly suggestive of, if not diagnostic for, nonaccidental injury (9,14-21). Rarely, retinal hemorrhage has been associated with an accidental head injury, but in these cases the bleeding was unilateral (80). It is also stated that traumatic retinal hemorrhage may be the direct mechanical effect of violent shaking (15). However, retinal hemorrhage may be caused experimentally either by ligating the central retinal vein or its tributaries or by suddenly increasing intracranial pressure (81,82); retinoschisis is the result of breakthrough bleeding and venous stasis not "violent shaking" (15,83). Any sudden increase in intracranial pressure may cause retinal hemorrhage (84-87). Deformation of the skull coincident to an impact nonselectively increases intracranial pressure. Venospasm secondary to traumatic brain injury selectively increases venous pressure. Either mechanism may cause retinal hemorrhage irrespective of whether the trauma was accidental or inflicted. Further, retinal and optic nerve sheath hemorrhages associated with a ruptured vascular malformation are due to an increase in venous pressure not extension of blood along extravascular spaces (81-83,88). Dilated eye examination with an indirect ophthalmoscope is thought to be more sensitive for detecting retinal bleeding than routine ex-

amination and has been recommended as part of the evaluation of any pediatric patient with head trauma (89). None of the children in this study had a formal retinal evaluation, and only six had fundoscopic examination documented in the medical record. Four of the six had bilateral retinal hemorrhage.

Pre-existing Conditions

One of these children (case 16) had a subarachnoid AV malformation that contributed to development of the subdural hematoma, causing his death. One (case 7) had TAR syndrome (90), but his death was thought to be caused by malignant cerebral edema not an expanding extra-axial mass.

Cerebrovascular Thrombosis

Thrombosis or dissection of carotid or vertebral arteries as a cause of delayed deterioration after head or neck injuries is documented in both adults and children (91,92). Case 14 is the first report of a death due to traumatic cerebrovascular thrombosis in an infant or child. Internal carotid artery thrombosis was suggested radiographically in an additional death (case 13) but could not be confirmed at autopsy. However, this child died 6 days after admission to the hospital, and fibrinolysis may have removed any evidence for thrombosis at the time the autopsy was performed.

Limitations

1. Six of the 18 falls were not witnessed or were seen only by the adult caretaker, and it is possible that another person caused the nonobserved injuries.
2. The exact height of the fall could be determined in only 10 cases. The others (7 swing and 1 stationary platform) could have been from as little as 0.6 meters (2 feet) to as much as 2.4 meters (8 feet).
3. A minimum impact velocity sufficient to cause fatal brain injury cannot be inferred from this study. Likewise, the probability that an individual fall will have a fatal outcome cannot be stated because the database depends on voluntary reporting and contractual agreements with selected U.S. state agencies. The NEISS summaries for the study years estimated that there were more than 250 deaths due to head and neck injuries associated with playground equipment, but there are only 114 in the files. Further, this study does not include other nonplayground equipment-related fatal falls, witnessed or not witnessed, in the CPSC database (32).

CONCLUSIONS

1. Every fall is a complex event. There must be a biomechanical analysis for any incident in which the severity of the injury appears to be inconsistent with the history. The question is not "Can an infant or child be seriously injured or killed from a short-distance fall?" but rather "If a child falls (x) meters and strikes his or her head on a nonyielding surface, what will happen?"
2. Retinal hemorrhage may occur whenever intracranial pressure exceeds venous pressure or whenever there is venous obstruction. The characteristic of the bleeding cannot be used to determine the ultimate cause.
3. Axonal damage is unlikely to be the mechanism for lethal injury in a low-velocity impact such as from a fall.
4. Cerebrovascular thrombosis or dissection must be considered in any injury with apparent delayed deterioration, and especially in one with a cerebral infarct or an unusual distribution for cerebral edema.
5. A fall from less than 3 meters (10 feet) in an infant or child may cause fatal head injury and may not cause immediate symptoms. The injury may be associated with bilateral retinal hemorrhage, and an associated subdural hematoma may extend into the interhemispheric fissure. A history by the caretaker that the child may have fallen cannot be dismissed.

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APPENDIX

Newtonian mechanics involving constant acceleration may be used to determine the impact velocity in a gravitational fall. However, constant acceleration formulas cannot be used to calculate the relations among velocity, acceleration, and distance traveled *during* an impact because the deceleration

is not uniform (45). This analysis requires awareness of the shape of the deceleration curve, knowledge of the mechanical properties and geometry of the cranial system, and comprehension of the stress and strain characteristics for the specific part of the skull and brain that strikes the ground. A purely translational fall requires that the body is rigid and that the external forces acting on the body pass only through the COM, i.e., there is no rotational component. A 1-meter-tall 3-year-old hanging by her knees from a horizontal ladder with the vertex of her skull 0.5 meters above hard-packed earth approximates this model. If she loses her grip and falls, striking the occipital scalp, her impact velocity is 3.1 m/second. An exclusively angular fall also requires that the body is rigid. In addition, the rotation must be about a fixed axis or a given point internal or external to the body, and the applied moment and the inertial moment must be at the identical point or axis. If this same child has a 0.5-meter COM and has a "matchstick" fall while standing on the ground, again striking her occiput, her angular velocity is 5.42 rad/second and tangential velocity 5.42 m/second at impact. The impact velocity is higher than predicted for an exclusively translational or external-axis angular fall when the applied moment and the inertial moment are at a different fixed point (slip and fall) or when the initial velocity is not zero (walking or running, then trip and fall), and the vectors are additive. However, the head, neck, limbs, and torso do not move uniformly during a fall because relative motion occurs with different velocities and accelerations for each component. Calculation of the impact velocity for an actual fall requires solutions of differential equations for each simultaneous translational and rotational motion (45). Further, inertial or impulse loading (whiplash) may cause head acceleration more than twice that of the midbody input force and may be important in a fall where the initial impact is to the feet, buttock, back, or shoulder, and the final impact is to the head (46,47).

The translational motion of a rigid body at constant gravitational acceleration (9.8 m/s^2) is calculated from:

$$F = ma \quad v^2 = 2as \quad v = at$$

where F = the sum of all forces acting on the body (newton), m = mass (kg), a = acceleration (m/s^2), v = velocity (m/s), s = distance (m), and t = time (s).

The angular motion of a rigid body about a fixed axis at a given point of the body under constant gravitational acceleration (9.8 m/s^2) is calculated from:

$$M = I\alpha \quad \omega = v/r \quad \alpha = a/r$$

where M = the applied moment about the COM or about the fixed point where the axis of rotation is located, I = the inertial moment about this same COM or fixed point, α = angular acceleration (rad/s^2), ω = angular velocity (rad/s), r = radius (m), v^t = tangential velocity (m/s), and a^t = tangential acceleration (m/s^2).

The angular velocity ω for a rigid body of length L rotating about a fixed point is calculated from:

$$\frac{1}{2}I_0\omega^2 = maL/2 \quad I_0 = (1/3)mL^2$$

where I_0 = the initial inertial moment, ω = angular velocity (rad/s), m = mass (kg), a = gravitational acceleration (9.8 m/s^2), and L = length.

REFERENCES

- Chadwick DL, Chin S, Salerno C, et al. Deaths from falls in children: how far is fatal? *J Trauma* 1991;31:1353-5.
- Williams RA. Injuries in infants and small children resulting from witnessed and corroborated free falls. *J Trauma* 1991;31:1350-2.
- Dubalme AC, Alario AJ, Lewander WJ, et al. Head injury in very young children: mechanisms, injury types, and ophthalmologic findings in 100 hospitalized patients younger than 2 years of age. *Pediatrics* 1992;90:179-85.
- Lyons TJ, Oates RK. Falling out of bed: a relatively benign occurrence. *Pediatrics* 1993;92:125-7.
- Swalwell C. Head injuries from short distance falls. *Am J Forensic Med Pathol* 1993;14:171-2.
- Sheridan F, Anthony RM, Rieber GD, et al. Head injuries from short distance falls. *Am J Forensic Med Pathol* 1993;14:172-3.
- Dubalme AC, Christian CW, Rorick LB, et al. Non-accidental head injury in infants: the "shaken baby syndrome." *N Engl J Med* 1998;338:1822-1829.
- Case ME, Graham MA, Corey Handy T, et al. Position paper on shaken baby. Adopted by the Board of Directors, United States National Association of Medical Examiners, San Francisco, October 30, 1998. St. Louis: The National Association of Medical Examiners.
- Showers J. Never shake a baby. The Second National Conference on Shaken Baby Syndrome. National Association of Children's Hospitals and Related Institutions, 1999. Available at: www.childrenshospitals.net/nachri/news/pr65Fsbts.html.
- Tullous M, Walker MD, Wright LC. Evaluation and treatment of head injuries in children. In Fuhrman BP, Zimmerman JJ, eds. *Pediatric critical care*. St. Louis: Mosby Year Book, 1992:1165-82.
- Willman KY, Bank DE, Senac M, Chadwick DL. Restricting the time of injury in fatal inflicted head injury. *Child Abuse Negl* 1997;21:929-40.
- Amaya M, Bechtel K, Blatt SD, et al. Shaken baby syndrome and the death of Matthew Eappen. (November 11, 1997). Available at: www.silcon.com/sahksimptave/shaken.htm.
- Jenny C, Hymel KP. Recognizing abusive head trauma in children. *JAMA* 1999;282:1421-2.
- Eisenbrey AB. Retinal hemorrhage in the battered child. *Childs Brain* 1979;5:40-4.
- Greenwald MJ, Weiss A, Oesterle CS, et al. Traumatic retinoschisis in battered babies. *Ophthalmology* 1986;93:618-24.
- Rao N, Smith RE, Choi JH, et al. Autopsy findings in the eyes of fourteen fatally abused children. *Forensic Sci Int* 1988;39:293-9.
- Elnor SG, Elnor VM, Amall M, Albert DM. Ocular and associated systemic findings in suspected child abuse: a necropsy study. *Arch Ophthalmol* 1990;108:1094-101.
- Williams DF, Swengel RM, Scharre DW. Posterior segment manifestations of ocular trauma. *Retina* 1990;10 (suppl):535-44.
- Rosenberg NM, Singer J, Bolte R, et al. Retinal hemorrhage. *Pediatr Emerg Care* 1994;10:303-5.
- Swenson J, Levitt C. Shaken baby syndrome: diagnosis and prevention. *Minn Med* 1997;80:41-4.
- Altman RL, Kutscher ML, Brand DA. The "shaken-baby syndrome." *N Engl J Med* 1998;339:1329-30.
- Hall JR, Reyes HM, Horvat M, et al. The mortality of childhood falls. *J Trauma* 1989;29:1273-5.
- Rieber GD. Fatal falls in childhood: how far must children fall to sustain fatal head injury: report of cases and review of the literature. *Am J Forensic Med Pathol* 1993;14:201-7.
- Root I. Head injuries from short distance falls. *Am J Forensic Med Pathol* 1992;13:85-7.
- Nashelsky MB, Dix JD. The time interval between lethal infant shaking and onset of symptoms: a review of the shaken baby syndrome literature. *Am J Forensic Med Pathol* 1995;16:154-7.
- Wilkins B. Head injury: abuse or accident? *Arch Dis Child* 1997;76:393-7.
- Shaken babies (editorial). *Lancet* 1998;352:335.
- Punkett J. Restricting the time of injury in fatal inflicted head injuries. *Child Abuse Negl* 1998;22:943-4.
- Sweeney TB. X-rated playgrounds? *Pediatrics* 1979;64:961.
- Tusz A, LeLong N, Crost M. Home accidents to children under 2 years of age. *Paediatr Perinatol Epidemiol* 1990;4:408-21.
- National Injury Information Clearinghouse. US Consumer Product Safety Commission (1997). Washington DC 20207. Available at: www.cpsc.gov/about/cirngchse.html.
- Consumer Product Safety Review 1999;4:2:3-7. Available at: www.cpsc.gov/cpscpub/pubs/cpsr.html.
- A description of the injury or potential injury incident data base (IPII). Division of Hazard and Injury Data Systems. US Consumer Product Safety Commission (1997). Washington DC 20207. Available at: www.cpsc.gov/about/guide.html#OIPA.
- A description of the indepth investigation database (INDP), fiscal year 1987-fiscal year 1991. Division of Hazard and Injury Data Systems. US Consumer Product Safety Commission (1992). Washington D.C. 20207. Available at: www.cpsc.gov/about/guide.html#OIPA.
- Ommaya AK, Gennarelli TA. Cerebral concussion and traumatic unconsciousness. *Brain* 1974;97:633-54.
- Ommaya AK. Head injury mechanisms and the concept of preventive management: a review and critical synthesis. *J Neurotrauma* 1995;12:527-46.
- Gurdjian ES, Hodgson VR, Thomas LM, Patrick LM. Significance of relative movements of scalp, skull and intracranial contents during impact injury of the head. *J Neurosurg* 1968;29:70-2.
- Ommaya AK, Grubb RL, Naumann RA. Coup and contra-coup injury: observations on the mechanics of visible brain injuries in the rhesus monkey. *J Neurosurg* 1971;35:503-16.
- Gurdjian ES. Recent advances in the study of the mechanism of impact injury of the head: a summary. *Clin Neurosurg* 1972;19:1-42.
- Gennarelli TA, Thibault LE, Adams JH, et al. Diffuse axonal injury and traumatic coma in the primate. *Ann Neurol* 1982;12:564-74.
- McElhaney JH, Roberts VL, Hillyard JF. Head injury tolerance and criteria. In *Handbook of human tolerance*. Yatabe-cho, Tukuba-gun, Ibaraki, Japan: Japan Automobile Research Institute, Inc., 1976:237-335.
- Gurdjian ES, Hodgson VR, Thomas LM, Patrick LM. Impact head injury: mechanism and prevention. In Brinkhous

- KM (ed), *Accident pathology. Proceedings of an International Conference*; June 6-8, 1968; Washington DC (US). USDT, FHA, NHTSB #FH 11-6595, 1968:140-143.
43. Aoki N, Masuzawa H. Infantile acute subdural hematoma. *J Neurosurg* 1984;61:272-80.
 44. Greenes DS, Schutzman SA. Occult intracranial injury in infants. *Ann Emerg Med* 1998;32:680-6.
 45. Berger SA, Goldsmith W, Lewis ER, eds. *Introduction to bioengineering*. New York: Oxford University Press, 1996.
 46. Ewing, CL, Thomas DJ, Patrick LM, et al. Living human dynamic response to Gx impact acceleration. II. Accelerations measured on the head and neck. Proceedings, Thirteenth Stapp Car Crash Conference, 1969, December 2-4, Boston, MA. New York: Society of Automotive Engineers, Inc., 1969:400-15.
 47. Ommaya AK, Yarnell P. Subdural haematoma after whiplash injury. *Lancet* 1969;294:237-9.
 48. Gurdjian ES, Lissner HR, Patrick LM. Protection of the head and neck in sports. *JAMA* 1962;182:509-12.
 49. Gurdjian ES, Roberts UL, Thomas LM. Tolerance curves of acceleration and intracranial pressure and protective index in experimental head injury. *J Trauma* 1966;6:600-4.
 50. Mahajan BM, Beins WB. Impact attenuation performance of surfaces installed under playground equipment: report to the Consumer Product Safety Commission. US Department of Commerce, National Bureau of Standards, Washington, DC: Feb 1979. Publication No. NBSIR 79-1707.
 51. Reichelderfer TE, Overbach A, Greensher J. X-rated playgrounds? *Pediatrics* 1979;64:962-3.
 52. Collantes M. Playground surfaces and head injury: evaluation of the importance of using the Head Injury Criterion (HIC) to estimate the likelihood of head impact injury as a result of a fall onto playground surface materials. US Consumer Product Safety Commission (1990). Washington D.C. 20207. Available at: www.cpsc.gov/cpscpub/pubs/3005.html.
 53. Weber W. Experimental studies of skull fractures in infants. *Z Rechtsmed* 1984;92:87-94.
 54. Weber W. Biomechanical fragility of the infant skull. *Z Rechtsmed* 1985;94:93-101.
 55. Irwin A, Mertz HJ. Biomechanical basis for the CRABI and Hybrid III child dummies. New York: Society of Automotive Engineers, Inc., Document #973317, 1997:261-72.
 56. *Handbook for public playground safety*. Washington, DC: US Consumer Product Safety Commission, Pub No. 325, 1997. Available at: www.cpsc.gov/cpscpub/325.html.
 57. Goldsmith W. Current controversies in the stipulation of head injury criteria. *J Biomech* 1981;12:883-4.
 58. Goldsmith W. Meaningful concepts of head injury criteria. In Proceedings of IRCOBI Conference; 1989 Sept 13-15; Stockholm, Sweden. France: Bron, IRCOBI Secretariat; 1989:1-11.
 59. Gurdjian ES. The mechanism of skull fracture. *J Neurosurg* 1950;7:106-14.
 60. Evans FO, Lissner HR, Lebow M. The relation of energy, velocity, and acceleration to skull deformation and fracture. *Surg Gynecol Obstet* 1958;106:593-601.
 61. Gennarelli TA, Thibault LE. Biomechanics of acute subdural hematoma. *J Trauma* 1982;22:680-6.
 62. Duhaime AC, Gennarelli TA, Thibault LE, et al. The shaken baby syndrome: a clinical, pathological and biomechanical study. *J Neurosurg* 1987;66:409-15.
 63. Cory CZ. Assessing the severity of child head impacts onto various domestic surface mixtures. MPhil Thesis, School of Engineering, Cardiff University, Wales (UK). May 1998. Available at: <http://library.cf.ac.uk/>
 64. Howard MA, Bell BA, Uttley D. The pathophysiology of infant subdural haematomas. *Br J Neurosurg* 1993;7:355-65.
 65. Zimmerman RA, Bilaniuk LT, Bruce D, et al. Computed tomography of craniocerebral injury in the abused child. *Radiology* 1979;130:687-90.
 66. Merten DF, Osborne DRS. Craniocerebral trauma in the child abuse syndrome. *Pediatr Ann* 1983;12:882-7.
 67. Merten DF, Osborne DRS, Radkowski MA, Leonidas JC. Craniocerebral trauma in the child abuse syndrome: radiologic observations. *Pediatr Radiol* 1984;14:272-7.
 68. Kleinman PD. Head trauma. In Kleinman PK (ed), *Diagnostic imaging of child abuse*. Baltimore: Williams & Wilkins, 1987:159-99.
 69. Magoun HW. *The waking brain*. Springfield, IL: Thomas, 1958.
 70. Plum F, Posner JB. *The diagnosis of stupor and coma*. Philadelphia: Davis; 1966.
 71. Blumberg PC, Jones NR, North JB. Diffuse axonal injury in head trauma. *J Neurol Neurosurg Psychiatry* 1989;52:838-41.
 72. Oppenheimer DR. Microscopic lesions in the brain following head injury. *J Neurol Neurosurg Psychiatry* 1968;31:299-306.
 73. Johnson DL, Boal D, Baule R. Role of apnea in non-accidental head injury. *Pediatr Neurosurg* 1995;23:305-10.
 74. Atkinson JLD. The neglected pre-hospital phase of head injury: apnea and catecholamine surge. *Mayo Clin Proc* 2000;75:37-47.
 75. Teasdale E, Cardoso E, Galbraith S, Teasdale G. CT scans in severe diffuse head injury: physiopathology and clinical correlations. *J Neurol Neurosurg Psychiatry* 1984;47:600-3.
 76. Levin HS, Mendelsohn D, Lilly MA, et al. Magnetic resonance imaging in relation to functional outcome of pediatric closed head injury: a test of the Ommaya-Gennarelli model. *Neurosurgery* 1997;40:432-41.
 77. Bruce DA, Alavi A, Bilaniuk L, et al. Diffuse cerebral swelling following head injuries in children: the syndrome of "malignant brain edema." *J Neurosurg* 1981;54:170-8.
 78. Rockswold GL, Leonard RF, Nagib MG. Analysis of management in thirty-three closed head injury patients who "talked and deteriorated." *Neurosurgery* 1987;21:51-5.
 79. Snook JW, Mindershoud JM, Wilmink JT. Delayed deterioration following mild head injury in children. *Brain* 1984;107:15-36.
 80. Christian CW, Taylor AA, Hertle RW, Duhaime AC. Retinal hemorrhage caused by accidental household trauma. *J Pediatr* 1999;135:125-7.
 81. Smith DC, Kearns TP, Sayre GP. Pre-retinal and optic nerve sheath hemorrhage: pathologic and experimental aspects in subarachnoid hemorrhage. *Trans Am Acad Ophthalmol Otolaryngol* 1957;61:201-11.
 82. Lehman RAW, Krupin T, Podos SM. Experimental effect of intracranial hypertension upon intraocular pressure. *J Neurosurg* 1972;36:60-6.
 83. Vanderlinden RG, Chisholm LD. Vitreous hemorrhages and sudden increased intracranial pressure. *J Neurosurg* 1974;41:167-76.
 84. Kirschner RH, Stein RJ. The mistaken diagnosis of child abuse: a form of medical abuse? *Am J Dis Child* 1985;139:873-5.
 85. Weedn VW, Mansour AM, Nichols MM. Retinal hemorrhage in an infant after cardiopulmonary resuscitation. *Am J Forensic Med Pathol* 1990;11:79-82.
 86. David DB, Mears T, Quinlan MP. Ocular complications associated with bungee jumping. *Br J Ophthalmol* 1994;78:234-5.
 87. Jain BK, Talbot EM. Bungee jumping and intraocular hemorrhage. *Br J Ophthalmol* 1994;78:236-7.
 88. Edlow JA, Caplan LR. Avoiding pitfalls in the diagnosis of subarachnoid hemorrhage. *N Engl J Med* 2000;342:29-36.
 89. Becker H, Gupta BK. Recognizing abusive head trauma in children. *JAMA* 1999;282:1421.
 90. Hall JG, Levin J, Kuhn JP, et al. Thrombocytopenia with absent radius (TAR). *Medicine (Baltimore)* 1969;48:411-39.
 91. Pozzati E, Giuliani G, Poppi M, Faenza A. Blunt traumatic carotid dissection with delayed symptoms. *Stroke* 1989;20:412-6.
 92. Martin PJ, Enevoldson TP, Humphrey PRD. Causes of ischaemic stroke in the young. *Postgrad Med J* 1997;73:8-16.

Addendum

This death was reported to and investigated by the CPSC after submission of the manuscript.

Case 19. A 7 year old boy was playing at a school playground, hanging by his hands from the gymnastic rings of a wooden play structure with his feet approximately 30 inches above the ground. Another child grabbed him by the legs, forcing him to let go, and he fell face-first onto 7 inches of wood mulch, which had been placed on the playground surface the day before. The fall was witnessed by several other children and adults. He seemed uninjured and continued playing. However, 10-15 minutes later he complained of a headache and went to the school nurse's office to lay down. He had a seizure and lost consciousness while in the office, was transported to a local hospital, then transferred to a tertiary care children's hospital. A CT scan indicated acute occipito-parietal subdural hemorrhage, extending along the tentorium and posterior interhemispheric fissure. The hematoma was emergently evacuated, but he had a cardiopulmonary arrest in the operating room and could not be resuscitated. A postmortem examination indicated residual subdural hemorrhage at the base of the skull. He had no impact injury in his scalp, consistent with the history of a face-first fall, and had no identifiable facial lacerations or abrasions. The neck and cervical spinal cord examination were normal. The eyes were not examined.

John Plunkett, M.D.
September 12, 2000

Subj: Re: Melvin Daniel case (victim was Deon Aiken from May 2004)
Date: 7/10/2006 8:36:01 PM Eastern Standard Time
From: andrew_d_grimes@yahoo.com
To: mconnse@musc.edu
Sent from the Internet (Details)

Dr. Presnell,

No problem with the delayed response. I am starting another trial tomorrow morning, and it does not sound like the State will call Mr. Daniel's case this term of court.

I will fax the article over tomorrow, probably during the lunch break.

I hope that you had a good weekend.

Andrew

S Erin Presnell <mconnse@musc.edu> wrote:

Sorry for the delayed response. Dr. Plunkett's article has some applicability issues. Yes the AJFMP is a recognized, peer reviewed journal in my field of medicine.

I haven't seen the article from the Journal of Trauma - would it be possible to fax it to me? 843 792 3537.

I haven't received a subpoena for this case yet and have been subpoenaed for a death penalty case in Beaufort the week of July 17th and a Bamberg case the week of July 10. Also, I'll be attending a pathology meeting July 12 - 16.

Let me know how things are progressing, Erin Presnell

>>> Andrew Grimes 07/03/06 09:55AM >>>

Good morning Dr. Presnell,

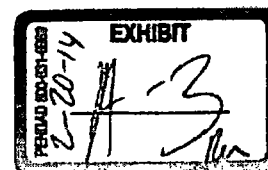
I am with the Colleton County Public Defender's office, and I represent Melvin Daniel in a case of homicide by child abuse. I believe that we met and discussed the case about a year and a half ago. The solicitor's office has put this case on the trial roster for the weeks of July 10th and July 17th.

In preparing for the trial, I have read several articles about childhood falls. One article was one that you gave me, and it was by Dr. Plunkett. It is "Fatal Pediatric Head Injuries Caused by Short Distance Falls," published in The American Journal of Forensic Medicine and Pathology, 22(1) 1-12 (2001). It is my recollection that you stated that Dr. Plunkett's opinion/study is a minority view. But nonetheless, I wanted to know if you recognized The American Journal of Forensic Medicine and Pathology as a reliable authority in the subject of medicine?

I also came across an article in The Journal of Trauma called "The Mortality of Childhood Falls," Vol. 29, No.9 at 1273-1275 (1989). The authors were John R. Hall, Hernon M. Reyes, Maria Horvat, Janet Meller, and Robert Stein. I wanted to know if you were familiar with this article which found that 18 children died from "minor" falls sustained while running or from falls from furniture less than 3 feet. And I also wanted to know whether you recognized The Journal of Trauma as a reliable authority in the subject of medicine?

I thank you in advance for your attention to this matter, and please do not hesitate to call or e-mail me if you have any questions.

Andrew Grimes
Colleton County Public Defender
115 Benson Street
Walterboro, SC 29488
(843) 549-1633



Walterboro Police Department
VOLUNTARY STATEMENT



04-624

DATE 5-10-04 PLACE MUSC TIME STARTED 1720 P.M.
 I The undersigned Melvin Daniels II, am 21 years of age, having been born
 on 3-30-83 at Bellflower CA
 I now live at 201 Dorsey St Apt. F6
 I have been duly warned and advised by Sgt Cites, a person who has identified himself as
a Walterboro Police officer.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

Between the hours of 8:30 AM - 10:15 AM
 myself and Dean was playing. I fixed Dean and myself
 something to eat. He ~~had~~ had eaten everything I
 had gave him. He went back into his sister's room
 and started playing again. I went back to the computer
 doing what I was doing on the computer. I went to
 check on him a couple of times he was fine.
 When I returned back to the computer to turn it
 off then I started playing with him. The both of
 us were running around the house when
 he tripped over the cable wire between
 the hallway and his sister room. I picked
 him up and put some ice on him. He cried
 a little bit and it was over. He laid down
 on the couch and watched cartoons.
 Nothing seemed wrong with him so I didn't
 bother him. I took a shower and return
 to the living room and found him asleep.
 I tried to wake him up but just make
 sure he was OK. He was moving his arms
 and legs but no reaction like he was
 fine. So I kept trying to wake him up. no
 reaction so I put him in a cold bath to
 try to wake him up, still nothing. So I called
 my sister to come help me. When my sister
 came the same thing I had got from him

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any,
 bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 1750 P.M. on the 10 day of May, 2004.

Witness [Signature]

Witness _____

[Signature]
 Signature of Person Giving Voluntary Statement

04-624

Walterboro Police Department
VOLUNTARY STATEMENT

2/2

DATE 5-10-04 PLACE Cent TIME STARTED _____ .M.

I The undersigned _____, am _____ years of age, having been born on _____, at _____.

I now live at _____.

I have been duly warned and advised by _____, a person who has identified himself as _____.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

We did, so we called Heather and she
came home. We couldn't wake him so she
called 911.

END

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 1750 P .m. on the 10 day of May 2004

Witness [Signature]
Witness _____

[Signature]
Signature of Person Giving Voluntary Statement

AFFIDAVIT

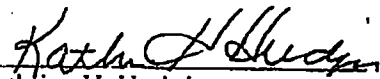
I, Kathrine H. Hudgins, work for the South Carolina Commission on Indigent Defense as an Appellate Defender. I have been with Division of Appellate Defense for almost eight years. Prior to working for Appellate Defense, I worked in private practice as a sole practitioner and in private practice with John Delgado. My work in private practice was almost exclusively criminal defense. I also worked as a Richland County Public Defender and as an Assistant Solicitor in the Second Judicial Circuit.

I was appointed to represent Mr. Melvin Daniel in the direct appeal from his conviction for homicide by child abuse. On January 27, 2009, I submitted a brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). The issue presented in the brief was whether the trial judge erred in refusing to direct a verdict of acquittal when the State failed to present sufficient evidence to sustain the conviction. PCR counsel contacted me in reference to my representation of Mr. Daniel. I have pulled my file from archives and reviewed Mr. Daniel's file. Based on my review of the case, after reviewing the transcript I filed an Anders brief and raised the directed verdict issue because there were no other objections made by trial counsel that would have provided a basis for appeal. My notes specifically indicate there was no objection made to photos admitted by the State and no objection to Dr. Sarah Shuh testifying as an expert in child abuse. I also note that the defense did not call an expert to challenge the findings made by the State's expert witness.

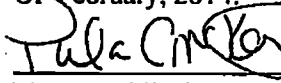
~~I have not submitted a brief in cases such as this one on the question of homicide by child abuse. It is suggested that the State should have called an expert to challenge the findings made by the State's expert witness.~~

Stricken




Kathrine H. Hudgins
Appellate Defender
E-Mail: khudgins@sccid.sc.gov
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

SWORN TO BEFORE ME this 19th day
Of February, 2014.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
	)	
MELVIN DANIEL, II #323062,	)	CASE NUMBER: 2010-CP-15-805
	)	
APPLICANT,	)	
	)	
VS.	)	ORDER
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	
	)	

PATRICIA C. GRANT
 COLLETON COUNTY
 COMMON PLEAS
 2014 APR -2 PM 2:51

DATE OF HEARING:	FEBRUARY 20, 2014
PRESIDING JUDGE:	JAMES R. BARBER, III
ATTORNEY FOR APPLICANT:	GERALD A. MAREE
ATTORNEY FOR RESPONDENT:	ASHLEIGH R. WILSON
COURT REPORTER:	RUTH MOTT

This case is before the Court pursuant to an Application for Post Conviction Relief (PCR) originally filed by Melvin Daniel, II (hereinafter referred to as the Applicant) on August 2, 2010. The Applicant was tried and convicted for the charge of Homicide by Child Abuse by a Colleton County jury on July 18, 2007. He received a sentence of twenty years imprisonment. His Application alleges ineffective assistance by his trial counsel, Harris Beach. His Application was modified by his PCR counsel pursuant to the filing of two subsequent Supplemental Applications filed August 2, 2013 and February 18, 2014, respectively. Present at the hearing were the Applicant along with his attorney Gerald A. Maree of the Colleton County Bar; Applicant's witnesses Andrew Grimes, Esquire, Dr. Mark Shuman, a Forensic Pathologist from Miami, Florida and Applicant's former trial counsel, Harris Beach, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Attorney General's Office appeared on

behalf of the Respondent.

During the presentation of his case, counsel for the Applicant voluntarily withdrew several of the enumerated grounds alleged in his PCR application. The grounds that were actually presented to the Court for consideration were as follows:

1. Defense trial counsel erroneously stipulated to the admission of prejudicial photographs of the deceased child into evidence.
2. Defense trial counsel failed to procure expert testimony to benefit the Applicant, and/or failed to properly cross-examine the state's expert witnesses with medical literature.
3. Defense trial counsel failed to request a lower/shorter sentence for the Applicant during sentencing, and further failed to file a Post Trial Motion for Reconsideration of Sentencing.

I find that Applicant's ground concerning the admission of photographs of the deceased child into evidence lacks merit. I further find that the Applicant failed to establish how his trial counsel's stipulation to a portion of the state's proposed photographic evidence was prejudicial to his defense.

I find that Applicant's ground concerning the failure of trial counsel to request a lower/shorter sentence for the Applicant or to file a Post Trial Motion for Reconsideration of Sentencing is without merit. I further find that the Applicant failed to establish how his trial counsel's failure to request a shorter sentence or to file a post trial motion concerning same was prejudicial to his defense or his sentencing.

I find that the Applicant's ground concerning the failure of trial counsel to procure

or retain expert testimony favorable to the Applicant during his criminal trial convincing and with merit. Trial counsel for the Applicant testified that his only attempt to procure the services of an expert consisted of him having a conversation with his personal physician about the case. He testified during examination by Applicant's PCR counsel that he was aware of an Order Authorizing Funds For Expert Services that was issued by the Honorable Daniel F. Pieper on December 14, 2004. Although the Order authorized up to Fifteen Thousand Dollars (\$15,000) for obtaining the services of a medical expert, he indicated that he did not utilize any of the funds towards the defense of the Applicant's case. He was later recalled as a witness by the State after the Applicant had concluded its case. During direct and cross examinations, Mr. Beach admitted that the testimony given by the Applicant's expert would have been beneficial to the Applicant's criminal trial. He agreed that having an expert at the Applicant's criminal trial would have assisted in the preparation of cross-examining the State's experts. He further agreed that having an expert testify at trial would have assisted him in attempting to mitigate the testimony of the State's experts.

Dr. Mark Shuman, a board certified forensic pathologist, rendered expert testimony in the field of forensic pathology that was favorable to the Applicant. Dr. Shuman testified that in preparation of his testimony he reviewed the autopsy and coroner's reports; examined forensic slides pertaining to the autopsy; examined post mortem photographs of the deceased; examined autopsy photographs; reviewed the voluntary statement given by the Applicant prior to arrest; and reviewed portions of the trial transcript. He testified that there were several medical studies in existence prior to

the Applicant's criminal trial in July, 2007 that demonstrated children could have fatal accidental falls from short distances. He testified that according to these studies several children who suffered accidental fatal short distance falls sustained very similar head injuries as the child in this case. He further testified that the Applicant's statement given to law enforcement was consistent with the nature of the injuries sustained by the child. He testified to a reasonable degree of medical certainty that accidental head trauma, not abusive head trauma, was the cause of death of the child in this case. He stated that he was court certified as an expert in forensic pathology at the time Applicant was tried in 2007, and that the testimony he gave at this hearing would have been substantially the same if he had been retained as an expert during Applicant's criminal trial.

THEREFORE, I CONCLUDE AS FOLLOWS:

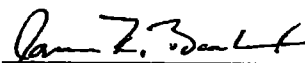
1. Trial counsel's performance was deficient and this deficiency prejudiced the Applicant's defense resulting in the Applicant receiving ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 688, 104 S. Ct 2052, 80 L.Ed.2d 674 (1984). Specifically, I conclude that trial counsel's failure to retain an expert or experts to testify for the Applicant at trial constituted deficient performance. I further conclude that this deficiency prejudiced the Applicant's defense in the following particulars:

- A. Trial counsel testified that the testimony given by Dr. Mark Shuman would have assisted the defense in preparation of the testimony of the State's medical experts at trial;
- B. Trial counsel testified that the testimony given by Dr. Mark

Shuman would have assisted the defense in mitigating the testimony of the State's medical experts at trial.

2. I hereby grant the Applicant's application for Post Conviction Relief, and further order the Applicant's conviction for Homicide by Child Abuse (Case No. 04-GS-15-0400) vacated and the case remanded to the county of its origin, Colleton County, for further disposition including rearraignment, retrial, custody, bail, or discharge.

IT IS SO ORDERED.



James R. Barber, III
Circuit Court Judge

31st day of March, 2014
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

The Honorable James R. Barber, III, Circuit Court Judge

Case No. 2010-CP-15-0805

Melvin Daniel,.....Respondent,

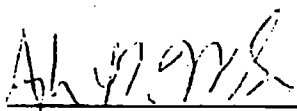
v.

State of South Carolina.....Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the order of the Honorable James R. Barber, III dated March 31, 2014 and filed April 2, 2014 granting Post-Conviction Relief in the above referenced matter. The Petitioner received written notice of entry of this order on April 9, 2014.

April 22, 2014


Ashleigh R. Wilson
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-4037
SC Bar #100269
Attorney for the Petitioner

Other Counsel of Record:
Gerald A. Maree, Esquire
P.O. Box 1202
Walterboro, SC 29488
Attorney for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
	)	
MELVIN DANIEL, II #323062,	)	CASE NUMBER: 2010-CP-15-805
	)	
APPLICANT,	)	
	)	
VS.	)	ORDER
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2014 APR -2 PM 2:51

DATE OF HEARING:	FEBRUARY 20, 2014
PRESIDING JUDGE:	JAMES R. BARBER, III
ATTORNEY FOR APPLICANT:	GERALD A. MAREE
ATTORNEY FOR RESPONDENT:	ASHLEIGH R. WILSON
COURT REPORTER:	RUTH MOTT

This case is before the Court pursuant to an Application for Post Conviction Relief (PCR) originally filed by Melvin Daniel, II (hereinafter referred to as the Applicant) on August 2, 2010. The Applicant was tried and convicted for the charge of Homicide by Child Abuse by a Colleton County jury on July 18, 2007. He received a sentence of twenty years imprisonment. His Application alleges ineffective assistance by his trial counsel, Harris Beach. His Application was modified by his PCR counsel pursuant to the filing of two subsequent Supplemental Applications filed August 2, 2013 and February 18, 2014, respectively. Present at the hearing were the Applicant along with his attorney Gerald A. Maree of the Colleton County Bar; Applicant's witnesses Andrew Grimes, Esquire, Dr. Mark Shuman, a Forensic Pathologist from Miami, Florida and Applicant's former trial counsel, Harris Beach, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Attorney General's Office appeared on

behalf of the Respondent.

During the presentation of his case, counsel for the Applicant voluntarily withdrew several of the enumerated grounds alleged in his PCR application. The grounds that were actually presented to the Court for consideration were as follows:

1. Defense trial counsel erroneously stipulated to the admission of prejudicial photographs of the deceased child into evidence.
2. Defense trial counsel failed to procure expert testimony to benefit the Applicant, and/or failed to properly cross-examine the state's expert witnesses with medical literature.
3. Defense trial counsel failed to request a lower/shorter sentence for the Applicant during sentencing, and further failed to file a Post Trial Motion for Reconsideration of Sentencing.

I find that Applicant's ground concerning the admission of photographs of the deceased child into evidence lacks merit. I further find that the Applicant failed to establish how his trial counsel's stipulation to a portion of the state's proposed photographic evidence was prejudicial to his defense.

I find that Applicant's ground concerning the failure of trial counsel to request a lower/shorter sentence for the Applicant or to file a Post Trial Motion for Reconsideration of Sentencing is without merit. I further find that the Applicant failed to establish how his trial counsel's failure to request a shorter sentence or to file a post trial motion concerning same was prejudicial to his defense or his sentencing.

I find that the Applicant's ground concerning the failure of trial counsel to procure

or retain expert testimony favorable to the Applicant during his criminal trial convincing and with merit. Trial counsel for the Applicant testified that his only attempt to procure the services of an expert consisted of him having a conversation with his personal physician about the case. He testified during examination by Applicant's PCR counsel that he was aware of an Order Authorizing Funds For Expert Services that was issued by the Honorable Daniel F. Pieper on December 14, 2004. Although the Order authorized up to Fifteen Thousand Dollars (\$15,000) for obtaining the services of a medical expert, he indicated that he did not utilize any of the funds towards the defense of the Applicant's case. He was later recalled as a witness by the State after the Applicant had concluded its case. During direct and cross examinations, Mr. Beach admitted that the testimony given by the Applicant's expert would have been beneficial to the Applicant's criminal trial. He agreed that having an expert at the Applicant's criminal trial would have assisted in the preparation of cross-examining the State's experts. He further agreed that having an expert testify at trial would have assisted him in attempting to mitigate the testimony of the State's experts.

Dr. Mark Shuman, a board certified forensic pathologist, rendered expert testimony in the field of forensic pathology that was favorable to the Applicant. Dr. Shuman testified that in preparation of his testimony he reviewed the autopsy and coroner's reports; examined forensic slides pertaining to the autopsy; examined post mortem photographs of the deceased; examined autopsy photographs; reviewed the voluntary statement given by the Applicant prior to arrest; and reviewed portions of the trial transcript. He testified that there were several medical studies in existence prior to

the Applicant's criminal trial in July, 2007 that demonstrated children could have fatal accidental falls from short distances. He testified that according to these studies several children who suffered accidental fatal short distance falls sustained very similar head injuries as the child in this case. He further testified that the Applicant's statement given to law enforcement was consistent with the nature of the injuries sustained by the child. He testified to a reasonable degree of medical certainty that accidental head trauma, not abusive head trauma, was the cause of death of the child in this case. He stated that he was court certified as an expert in forensic pathology at the time Applicant was tried in 2007, and that the testimony he gave at this hearing would have been substantially the same if he had been retained as an expert during Applicant's criminal trial.

THEREFORE, I CONCLUDE AS FOLLOWS:

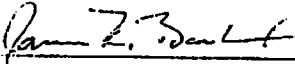
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IT IS SO ORDERED.



James R. Barber, III
Circuit Court Judge

31st day of March, 2014
Columbia, SC

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Colleton County
The Honorable James R. Barber, III, Circuit Court Judge

MELVIN DANIEL

Respondent,

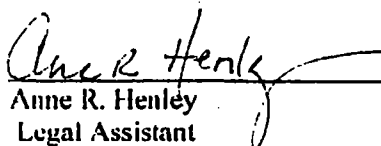
v.

STATE OF SOUTH CAROLINA,

Petitioner.

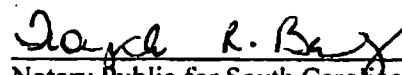
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petitioner's Notice of Appeal has been served upon opposing counsel, Gerald A. Maree, this 22nd day of April 2014.



Anne R. Henley
Legal Assistant

SWORN to before me this
22nd day of April, 2014.

 (L.S.)
Notary Public for South Carolina.
My Commission Expires: 7/22/2022