

Vol II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES ALLEN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2013-001314

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (Dated June 3-4, 2013)	1
<u>JACKSON V. DENNO</u> HEARING.....	7
COMPETENCY HEARING.....	7
TESTIMONY	
DR. RICHARD FRIERSON	
Direct examination by Ms. Manigault.....	9
Cross-examination by Ms. Hodge	14
CARL MATHIAS	
Direct examination by Ms. Hodge.....	19
Cross-examination by Ms. Manigault	22
JENNINGS AUTREY	
Direct examination by Ms. Hodge.....	23
Cross-examination by Ms. Manigault	37
CHRISTOPHER MILLER	
Direct examination by Ms. Hodge.....	42
Cross-examination by Ms. Manigault	59
JAMES ALLEN JOHNSON	
Direct examination by Ms. Manigault.....	66
Cross-examination by Ms. Hodge	75
ALEX LEE JOHNSON	
Direct examination by Ms. Manigault.....	80
Cross-examination by Ms. Hodge	82
PRELIMINARY REMARKS BY THE COURT TO THE JURY	87
OPENING STATEMENT BY MS. HODGE	88
OPENING STATEMENT BY MS. MANIGAULT	95

TESTIMONY

RHONDA RENEE BUFORD	
Direct examination by Ms. Hodge.....	97
PHILLIP BRADLEY REYNOLDS	
Direct examination by Ms. Hodge.....	101
Cross-examination by Ms. Manigault	117
MATT HORNE	
Direct examination by Ms. Hodge.....	119
JOSEPH ALEXANDER KAY	
Direct examination by Ms. Hodge.....	128
Cross-examination by Ms. Manigault	142
JAMES P. CLARDY	
Direct examination by Ms. Hodge.....	144
CARL MATHIAS	
Direct examination by Ms. Hodge.....	154
KEVIN AZZARA	
Direct examination by Ms. Hodge.....	163
Cross-examination by Ms. Manigault	169
CRYSTAL MARIE INMAN	
Direct examination by Ms. Hodge.....	173
Cross-examination by Ms. Manigault	207
DOUGLAS SMITH	
Direct examination by Ms. Hodge.....	213
TINA ANN ROLLINS	
Direct examination by Ms. Hodge.....	220
GEORGIA ANN SPROUCE	
Direct examination by Ms. Hodge.....	246
Cross-examination by Ms. Manigault	284
Redirect examination by Ms. Hodge	305
MARY FRAN CROSWELL	
Direct examination by Ms. Hodge.....	314
Cross-examination by Ms. Manigault	337
Redirect examination by Ms. Hodge	338

JENNINGS AUTREY	
Direct examination by Ms. Hodge.....	340
Cross-examination by Ms. Manigault	373
Redirect examination by Ms. Hodge	383
CHRISTOPHER TODD MILLER	
Direct examination by Ms. Hodge.....	386
Cross-examination by Ms. Manigault	435
MICHAEL EUGENE WARD	
Direct examination by Ms. Hodge.....	447
MOTION FOR A DIRECTED VERDICT.....	471
TESTIMONY	
JAMES ALLEN JOHNSON	
Direct examination by Ms. Manigault.....	477
Cross-examination by Ms. Hodge	506
ALEX JOHNSON	
Direct examination by Ms. Manigault.....	541
Cross-examination by Ms. Hodge	543
MANDY BURNETTE	
Direct examination by Ms. Manigault.....	545
Cross-examination by Ms. Hodge	547
JIM WILSON	
Direct examination by Ms. Hodge.....	549
CLOSING ARGUMENT BY MS. MANIGAULT.....	563
CLOSING ARGUMENT BY MS.HODGE.....	566
CHARGE ON THE LAW	572
VERDICT	588
RENEWAL OF PRE-TRIAL MOTIONS	590
SENTENCING	595
INDICTMENT	597
STATE’S EXHIBIT# 41	599

COURT'S EXHIBIT# 1600

CERTIFICATE OF COUNSEL.....601

1 initials on there. So what is it that you're saying, you
2 just lied to them right then?

3 A. Yes, ma'am.

4 Q. Because you had actually taken Xanax and whatever else
5 that day. Had you smoked marijuana that day too?

6 A. Yes, ma'am.

7 Q. All right. Now, while you were talking to the
8 officers, did he give you an opportunity to go to the
9 restroom?

10 A. I have no clue. I really don't remember.

11 Q. You don't remember going to the bathroom?

12 A. I remember him -- what he said yesterday, that's what
13 I remember now. I don't remember nothing really from that
14 day. I remember everything the day that it happened,
15 because I was not on nothing that day at all.

16 Q. All right. Now, in this statement, there's the line
17 that has your initials by it that says, I don't deserve to
18 live. What's that about?

19 A. I have no clue.

20 Q. It says, I never should have picked up that toy that
21 day before. You remember telling him that?

22 A. (Negative nod.)

23 Q. It says, I don't know how those bruises got there.

24 A. I don't.

25 Q. You don't remember that either?

- 1 A. The only bruises that was on her is that one right
2 there and the little beaded one looking. The rest of them
3 bruises was not on her.
- 4 Q. Okay. So where did she get the beaded-looking bruises
5 from?
- 6 A. Got it from her sister with a beaded necklace.
- 7 Q. Okay. Minor 2 ?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And you said Minor 2 hit her with the beaded
10 necklace?
- 11 A. Yes, ma'am. They used to fight over toys all the
12 time.
- 13 Q. There was some testimony that Minor 2 hit Minor 1
14 with a little toy car or truck or something. Did you know
15 anything about that?
- 16 A. I don't remember that right there.
- 17 Q. Okay. On your statement it says she started
18 screaming. I was just trying to calm her down? What does
19 that mean?
- 20 A. Again, I don't remember that statement at all.
- 21 Q. All right. So you're saying that the part where you
22 said she kept crying. I hadn't been on my medication.
23 People are going to hurt me. Ann and her CO's. I don't
24 know what that means. You didn't say any of that? Do you
25 recall saying that?

1 A. I don't recall saying it, no, ma'am.

2 Q. Okay. It says I covered Minor1 mouth until she
3 quit crying.

4 A. No, ma'am, I don't remember.

5 Q. Ann was in the bed. You don't remember that?

6 A. (Negative nod.)

7 Q. Okay. So essentially the statement that you signed on
8 June the 2nd, you do not remember most of it. Is that what
9 you're telling us, the Court?

10 A. Yes, ma'am.

11 Q. And you don't recall whether you asked the
12 Investigator at that time for an attorney or not?

13 A. No, ma'am.

14 Q. Okay. All right. If you said these things, why would
15 you have said that? Why would you have said that?

16 A. Defending her.

17 Q. Defending her. Who's her?

18 A. Ann.

19 Q. Ann. Why would you feel it necessary to defend Ann?

20 A. Because she -- me and her was trying to get pregnant
21 and have another child. She wanted to have my baby, she
22 said. And she thought she might be pregnant. And I didn't
23 want her to go to jail with my young'un. I wanted her to
24 be able to be out there and take care of it.

25 Q. You didn't want her to go to jail with your young'un.

1 So why did you think she was pregnant?

2 A. Because she's ---

3 Q. Did she tell you she was pregnant?

4 A. She said she felt different, like she might be.

5 Q. She might be?

6 A. (Affirmative nod.)

7 Q. So when did she tell you that?

8 A. She told me that a couple of days before this
9 happened.

10 Q. A couple days before it happened. Did you mention
11 that to the investigator?

12 A. I have no clue.

13 Q. You don't remember? All right. Did you cause any of
14 the bruises that appear on Minor 1 forehead?

15 A. No, ma'am.

16 Q. All right. On State's Exhibit 28, it shows bruises on
17 Minor 1 -- between her eyes on the forehead, on the side
18 of her head. Did you cause any of those bruises?

19 A. No, ma'am.

20 Q. All right. It shows on State's Exhibit Number 30,
21 this is the right side of the body, it shows three imprints
22 of bruises. Did you cause those?

23 A. (Negative nod.)

24 Q. I think the testimony is on the left side of the body,
25 on one of the State's Exhibits, there are bruises there.

1 Did you cause those?

2 A. No, ma'am.

3 Q. All right. Did you cause any of the bruises that were
4 on her arm?

5 A. (Negative nod.)

6 Q. Any part of her body?

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

8 Q. Now, when the officer -- when Investigator Miller
9 finished with the statement, did he read the statement back
10 to you?

11 A. The first time he did. I don't know if he did the
12 second time. I don't remember.

13 Q. Okay. The first time was May the 25th. So you
14 remember that statement. You remember he read it back to
15 you?

16 A. Yes, ma'am.

17 Q. All right. The second statement you gave them was
18 June the 2nd, 2011. And you don't recall whether he read
19 that back to you or not?

20 A. No, ma'am, I don't.

21 Q. All right.

22 MS. MANIGAULT: No further questions, Your Honor.

23 THE COURT: You may cross-examine, Solicitor.

24 MS. HODGE: Thank you, Your Honor.

25 **CROSS-EXAMINATION**

1 BY MS. HODGE:

2 Q. In your statement, since we're talking about your
3 statements right now, the May 25th statement, the night
4 that this or the day this incident happened and you talked
5 to Investigator Miller at his office, y'all talked for a
6 good hour, hour and a half, two hours; is that right?

7 A. Yes, ma'am.

8 Q. Okay. I just need you to verbally say the answers for
9 the court reporter. And you gave a really, a really
10 detailed statement; is that right?

11 A. Yes, ma'am.

12 Q. And it was about how awesome you were with these kids;
13 is that right?

14 A. I loved them.

15 Q. How you would get up at six A.M. every morning with
16 these kids?

17 A. Yes, ma'am.

18 Q. And you would do all of the taking care of them,
19 feeding them, playing with them?

20 A. Yes, ma'am.

21 Q. You were the greatest in your statement. And this is
22 the statement you remember?

23 A. I remember it. Yes, ma'am.

24 Q. Okay. And in this statement you say you -- you never
25 say anything about Ann being mean to the kids. She wasn't

1 mean to them, was she?

2 A. No, not that I know of. One time she told me that
3 Minor2 y -- I mean, Minor1 had bitten Minor2 and she bit
4 her back just to let her know, and that's it. I didn't
5 think nothing of it because ---

6 Q. Okay. So that's -- and she old told you that. You
7 didn't see her do it?

8 A. No, ma'am.

9 Q. You never saw her grab up Minor1 and squeeze her real
10 tight by the rib cage?

11 A. No, ma'am.

12 Q. Okay. You never saw her punch her in the face?

13 A. (Negative nod.)

14 Q. You never saw her hit her with a beaded necklace on
15 the head?

16 A. No, ma'am.

17 Q. You never saw her throw toys at her?

18 A. No, ma'am.

19 Q. You never saw Ann do anything to her?

20 A. No, ma'am, I hadn't.

21 Q. All right. And had you seen that, you would have told
22 Investigator Miller that on May 25th, wouldn't you?

23 A. Yes, ma'am.

24 Q. Because that's pretty serious; right?

25 A. Yes, ma'am.

- 1 Q. And it's wrong to hit babies? It's wrong to throw
2 things at babies?
- 3 A. So wrong. They don't deserve that.
- 4 Q. No, they don't. They're innocent aren't they?
- 5 A. (Affirmative nod.)
- 6 Q. They're sweet. They're little.
- 7 A. Little angels.
- 8 Q. They're little angels. They look to you to take care
9 of them; don't they?
- 10 A. (Affirmative nod.)
- 11 Q. And for you to punch them in the face or to throw toys
12 at them, that would be bad; wouldn't it?
- 13 A. Yes, ma'am, it would.
- 14 Q. And anybody that would do that, that would probably be
15 a not very nice person?
- 16 A. I'd say they ain't got a soul.
- 17 Q. And you weren't about to tell Investigator Miller you
18 did that; right?
- 19 A. If I did it, if I did it and if I did something to
20 her, I would have owned up to it then. I would have been
21 honest.
- 22 Q. All right. Well, so that's what eventually happened,
23 though, isn't it. Your conscience eventually got the best
24 of you ---
- 25 A. I never ---

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
James Allen Johnson - Cross Examination by Ms Hodge

545

1 Q. --- back on June 2nd?

2 A. No. My conscience didn't get to me. I don't remember
3 that.

4 Q. Wait a minute. You don't remember? That's what
5 you're telling us?

6 A. I really don't. I'm being honest with you. I'm
7 telling the truth. I do not remember that day.

8 Q. And you don't remember that day because you were
9 taking some illegal drugs?

10 A. Yes, ma'am.

11 Q. You were taking Xanax, which you didn't have a
12 prescription for?

13 A. Yes, ma'am.

14 Q. And where did you get the Xanax?

15 A. A friend.

16 Q. What friend?

17 A. My buddy Josh's friend.

18 Q. What's his name?

19 A. I can't remember his name. I didn't know him that
20 well.

21 Q. How did you get the drugs?

22 A. Josh got them for me.

23 Q. And how did you pay Josh?

24 A. I had money. I had just got my check.

25 Q. So you used your disability check that you get from

- 1 the government and you bought ---
- 2 A. A little bit of it.
- 3 Q. --- and you bought pills?
- 4 A. I paid Josh and them rent too because I was kicked out
- 5 of Crystal's house. I didn't have nowhere to go.
- 6 Q. Okay. And you were kicked out of Crystals house that
- 7 night; right? May 25th?
- 8 A. Yes, ma'am.
- 9 Q. And she ceased having any communication with you?
- 10 A. They told me at the hospital not to come back up
- 11 there.
- 12 Q. All right. And Ann also ceased communication with you
- 13 May 25th?
- 14 A. Yes, ma'am.
- 15 Q. That was it, y'all were done?
- 16 A. Yes, ma'am.
- 17 Q. There was no talking about getting back together,
- 18 nothing like that?
- 19 A. No, ma'am.
- 20 Q. You weren't -- you didn't even come to Minor 1
- 21 funeral, did you?
- 22 A. Nobody told me that she died. My brother tried to
- 23 tell me and I didn't believe him. But that he heard, he
- 24 overheard them talking about it.
- 25 Q. Well, tell me this, did you ever pick up that phone

1 and call Ann and say, what happened to Minor1 ?

2 A. I didn't have no phone number to call her. I kept
3 calling -- I called Minor2 y's daddy, because that number
4 was in my phone. And I called her step-daddy.

5 Q. Ann's step-daddy?

6 A. Her ex-step-daddy.

7 Q. And they didn't tell you that Minor1 had died?

8 A. No, they told me that she was better, and she was
9 breathing on her own and everything.

10 Q. So you just left it. That would have been before --
11 that would have been within the next two days?

12 A. Yes, ma'am.

13 Q. And you just left it at that? So you knew that you
14 and Ann weren't getting back together?

15 A. I had my mama call and check on her too because they
16 wouldn't tell me nothing. I figured they'd tell her
17 something. They wouldn't tell me nothing.

18 Q. Did you ever get somebody to get you a ride to go to
19 where Ann might be or where ---

20 A. I didn't know where she would be.

21 Q. What about -- you knew where Crystal still lived;
22 right?

23 A. Yeah.

24 Q. And did you ever think about calling Crystal's house
25 and asking or calling Crystal?

1 A. Everybody was blaming me for what happened. And
2 Crystal's friend, what's his name, tried to get me to get
3 my brother to drop me off over there, but not there
4 exactly. He wanted me to come up there by myself. And my
5 brother told me I don't need to go up there because it
6 sounds like they're trying to set me up or something.

7 Q. Okay. So that's why you didn't follow-up at all with
8 Minor1 , this child, this sweet little baby angel, that was
9 basically dead the last time you saw her, you didn't
10 follow-up with anybody on that?

11 A. She was not the last time I saw her in the hospital.
12 She was breathing on her own and everything. I mean, they
13 had her -- breathing tube ---

14 Q. In the hospital?

15 A. Yes. She looked normal again.

16 Q. All right. And that's it. That's the last time you
17 looked, checked, knew anything, and you just ---

18 A. I kept trying everyday. I kept trying to get them to
19 tell me what was going on with her. Nobody would tell me
20 nothing. They said they would let me know something if
21 they find out anything. Nobody ever let me know anything.

22 Q. Okay. All right.

23 A. I gave the investigator my phone number too.

24 Q. And he did come back to you, didn't he, on June 2nd
25 and tell you what happened?

1 A. Never called me or nothing, no.

2 Q. Well, they came and got you and asked you to come talk
3 to them. And so you were probably interested in what had
4 happened, weren't you?

5 A. I was interested in what was going on. I never knew
6 anything was wrong with her, though. I'm being honest.

7 Q. All right. So when you came back on June 2nd and he
8 said she ---

9 A. I thought she was okay, but I didn't know.

10 Q. But you found out on June 2nd, didn't you, that she
11 was not okay?

12 A. Yes, ma'am.

13 Q. She was dead and it wasn't an accident?

14 A. Yes, ma'am. I found that out.

15 Q. And you also found out that Ann has now gotten back
16 with Minor1 's dad, or appeared to be that she was back
17 with him?

18 A. Yes, ma'am.

19 Q. So that was it for y'all? It was done.

20 A. (Affirmative nod.)

21 Q. Now, you're saying that you took -- how many Xanax did
22 you take?

23 A. A lot. I was taking them actually -- I got started --
24 I bought them, a lot of them, I'd say about thirty of them
25 May 1st -- no, I mean, June 1st. I bought them that night.

1 That day I went out to eat and I took my nieces and nephews
2 out to eat, too. And I would keep trying to find out and
3 my brother was trying to find out, I couldn't even really
4 eat. I was worrying. I was just sitting there like,
5 what's wrong? What's wrong with her? Why won't anybody
6 tell me anything?

7 Q. So you started taking pills?

8 A. Yes, ma'am.

9 Q. While you're taking your niece and nephew out to eat
10 you're taking pills?

11 A. I wasn't driving or nothing.

12 Q. Okay. But you're supposed to be watching them or
13 what?

14 A. No, my brother was there..

15 Q. Oh, he was with you? Oh, okay. I'm sorry. I thought
16 you meant you took them by yourself?

17 A. No.

18 Q. And then you're smoking pot?

19 A. Yes, ma'am.

20 Q. In front of those kids?

21 A. No, I wasn't smoking pot then. I started smoking
22 later on that night.

23 Q. All right. And so what time do you think that was,
24 before you fell asleep or after you fell asleep and got
25 back up?

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
James Allen Johnson - Cross Examination by Ms Hodge

551

1 A. No, that was before I fell asleep I started smoking
2 weed and stuff.

3 Q. Okay. So then you fell asleep. You got some sleep in
4 there?

5 A. I fell asleep and then I woke up. I'm still feeling
6 -- worrying and stuff so I took a couple more to make me
7 feel a little bit better.

8 Q. Okay. How much do you weigh?

9 A. Then I didn't weigh much at all. I weigh a lot more
10 now. I weigh about a hundred and thirty-one pounds now.

11 Q. All right. And back then you were significantly less
12 than that?

13 A. Yes, ma'am.

14 Q. And you're taking eight, nine, ten Xanax?

15 A. I had a high tolerance. I've always -- I've took them
16 a long time over the years.

17 Q. Because you've been using illegal substances for a
18 long time?

19 A. Over the years, yes, ma'am.

20 Q. Over the years. All right. And you said the police
21 came to get you. And you had the wherewithal or you
22 understood you couldn't take the pot with you to the police
23 station? That would be dumb?

24 A. I mean, anybody should know that.

25 Q. Right. That's pretty dumb. So you had the mind

1 power, or the willpower, whatever, the knowledge to say,
2 excuse me, officer. And give that to Josh?

3 A. To Josh.

4 Q. Okay. And then you kept some pills in your pocket or
5 you didn't have any more pills?

6 A. I had a few of them in my pocket and the rest Josh
7 had.

8 Q. Okay. And so you didn't think you needed to take the
9 pills out of your pocket before going to the police
10 station?

11 A. I knew I could get rid of those.

12 Q. You could get away with that basically?

13 A. Yes, ma'am.

14 Q. All right. And your testimony is then you ride to the
15 police station, but you don't remember riding to the police
16 station?

17 A. I remember bits and pieces of it. I don't really
18 remember the whole night. I remember them telling me I had
19 to go with them. I looked over. I said my brother's right
20 there. My brother was out there in his yard.

21 Q. Hadn't your brother already told you to go away or get
22 gone or something, though?

23 A. Earlier that day, yeah. He told me that I was messed
24 up, I couldn't be around the kids.

25 Q. You couldn't be over there around the kids, right?

1 Okay. But now you're saying your brother was going to take
2 you down there, even though he already told you to get
3 away?

4 A. He would have took me down there, left the kids with
5 his wife.

6 Q. Okay. But you got in the car with the police instead.
7 And you went to the law enforcement center and met with
8 Investigator Miller who you already knew?

9 A. Yes, ma'am.

10 Q. You remember that?

11 A. I remember Investigator Miller. I remember his face
12 because of the first statement I made. I remember him
13 coming to get me and us riding in a dark -- or I guess a
14 blue colored car. I can't remember. It was dark.

15 Q. Right. An unmarked car. One that didn't have lights
16 on it or anything like that?

17 A. Yes, ma'am.

18 Q. Okay. But this day, on June 2nd, you get there and
19 you recognize this, this is the same man you had talked to.
20 I mean, it wasn't a stranger you were going in to talk to.
21 It was the same man?

22 A. The same man was there.

23 Q. Okay. And he was very nice to you, wasn't he?

24 A. I don't remember. I really don't remember. I'm being
25 honest. I really don't remember.

1 Q. All right. You remember starting off with your story
2 about being in the bathroom, though, don't you?

3 A. I remember bits and pieces of it. I know I had pills
4 in my pocket and I didn't have them no more. I didn't get
5 caught with them. So I must have ate them.

6 Q. Okay. Well, didn't you testify previously in another
7 hearing that you in fact went to the bathroom and took
8 those pills?

9 A. And took pills.

10 Q. You remember that?

11 A. Because I had the pills before I went to the bathroom
12 and I -- I'm being honest with you, ma'am. I had nothing
13 to do with what happened to Minor1 . I loved her. I loved
14 Minor2 . I wanted to be -- Ann even told me herself that
15 I treated them better than their own fathers did.

16 Q. Uh-huh (affirmative).

17 A. I loved them kids.

18 Q. Here's my question. You're telling the jury at one
19 point you don't know how these pills got out of your
20 pocket. And you previously testified that you knew exactly
21 how those pills got out of your pocket because you took
22 them in the bathroom, while Investigator Miller took you to
23 the bathroom; isn't that right?

24 A. Yeah, I took them. I took them in the bathroom, yes,
25 ma'am.

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
James Allen Johnson - Cross Examination by Ms Hodge

555

1 Q. So you remember that?

2 A. Yes, ma'am.

3 Q. But you're trying to get these people to believe that
4 you don't remember anything ---

5 A. I don't remember ---

6 Q. --- when you gave this incriminating statement?

7 A. I don't remember the statement. I'm being honest. I
8 don't remember it. I ain't got no reason to lie to these
9 people.

10 Q. You don't? You don't think it's pretty serious what's
11 going on here and if you got convicted it would be serious?

12 A. Yeah. It would be serious, but I did not do it.

13 Since day one ---

14 Q. Well, when would be a good time lie?

15 A. Since day one, everybody's been trying to put it on me
16 because I am the boyfriend.

17 Q. What does that have to do with anything?

18 A. It's got a lot to do with it.

19 Q. If you didn't do it, you didn't do it. It doesn't
20 matter if you're the boyfriend or the biological dad, does
21 it?

22 A. No, it don't. But everybody seems to think that.

23 Q. Because you did it. That's why they think that; isn't
24 that true.

25 A. No, I did not do it.

1 Q. Let's talk about the biological dad. You didn't like
2 Make Gore, did you?

3 A. No, because of the way he talked to me.

4 Q. Y'all had some words?

5 A. He talked to me on the phone like -- I paid for the
6 diapers that she had, Minor2 . I needed the diapers for
7 Minor2 , too. Because I'd been watching -- I was watching
8 them kids by myself.

9 Q. That's right. You had unlimited access to those
10 children alone; right?

11 A. Yes, ma'am.

12 Q. Okay. And so he wanted to get some diapers when he
13 came and got Minor1 and you didn't want him to; is that
14 right? Because you paid for them?

15 A. I paid for them and I needed them for Minor2 , too.

16 Q. Okay. And you didn't particularly care for him
17 popping in and out of Minor1 's life; is that right?

18 A. No, I didn't think that was right.

19 Q. You didn't think that was right. And at some point
20 you offered to, I think -- was it about the diapers? You
21 were going to kick his ass or something like that?

22 A. I told him if he come over there starting any trouble,
23 that we would have words. That's it. That's all I said.

24 Q. And he never did ---

25 A. I said, I hope you will still come and get her,

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
James Allen Johnson - Cross Examination by Ms Hodge

557

1 though, because she needs to be with her father.

2 Q. Isn't it true that really you didn't want him to come
3 and get her because you didn't like that he wasn't
4 consistent, that he was sporadic?

5 A. No, it ain't like that. I don't want nobody to not
6 see their own kid.

7 Q. Now, Ann would talk to him on the phone a fairly good
8 bit, wouldn't she?

9 A. Yeah.

10 Q. And when you got ---

11 A. She talked to Minor2 y's daddy, too, a lot.

12 Q. And Minor2 's dad. But he lived in North Carolina;
13 isn't that right?

14 A. Well, he had -- he called everyday to talk to her. He
15 said that he's going to come and get her several occasions
16 and didn't come.

17 Q. And didn't do it. And he really never came and got
18 Minor2 , did he?

19 A. No, he didn't.

20 Q. So he was not ---

21 A. He come and got her one that I know of, and she spent
22 a night with him and that's it.

23 Q. He was not really a threat to you and Ann's
24 relationship?

25 A. No, ma'am.

- 1 Q. Because he was not really ever around?
- 2 A. No, ma'am. I wasn't worried about him.
- 3 Q. But Mark Gore was a little bit different, ---
- 4 A. ' No, that's what I'm talking about ---
- 5 Q. --- a little jealousy.
- 6 A. --- I ain't worried about him. He was not -- see,
- 7 Minor2 's daddy, he called everyday to talk to Minor2 .
- 8 Q. Uh-huh (affirmative).
- 9 A. He never called to talk to Minor1 .
- 10 Q. But he would get Minor1 ?
- 11 A. No, he got her one time.
- 12 Q. So there's only one time -- your testimony is there
- 13 was only one time he came and got Minor1 ?
- 14 A. Yes, ma'am.
- 15 Q. All right. And you didn't like that?
- 16 A. I was happy he come and got her. I told Ann I was
- 17 happy that he came and got her.
- 18 Q. But they would talk on the phone, wouldn't they? Mark
- 19 Gore. Because Minor2 's dad's name is Mark also?
- 20 A. Yes, ma'am.
- 21 Q. Mark Gore would talk to Ann on the phone a lot?
- 22 A. Yes, ma'am.
- 23 Q. Okay. And ---
- 24 A. He never would want to talk a lot. He just wanted to
- 25 talk to her and not Minor1 .

1 Q. Okay. So he just wanted to talk to Ann and not
2 Minor1 . And I'm trying to see if it was -- didn't you
3 tell Investigator Miller that since y'all moved over to
4 Crystal's house that Ann just wasn't being as affectionate
5 towards you anymore; is that right?

6 A. May have.

7 Q. Was that accurate? Would that be a fair thing to say,
8 that she was not ---

9 A. She acted a little bit different. I mean, she was --
10 I guess she was -- I don't know, trying to be closer to
11 Crystal. I don't know. Because they hadn't been around
12 each other in so long.

13 Q. You didn't know the fact that she wasn't being as
14 affectionate to you anymore?

15 A. She wasn't being like she used to be.

16 Q. Like she used to be. All right. Okay. And ---

17 A. She used to get mad at me because I would move away
18 from her so I could sit by myself a little bit.

19 Q. So you pushed them away so you could be by yourself a
20 little bit; is that right?

21 A. No, Ann. I'm talking about Ann ---

22 Q. You would push Ann away?

23 A. No, that's what I'm trying to say. Is Ann used to get
24 mad at me if I would go sit on the love seat instead of
25 right beside her always. She wanted me always right there.

1 And she used to -- I would lay down on the couch, she'd
2 come in there and lay on my back and stuff.

3 Q. Okay. And things had changed close in time to when
4 this happened to Minor 1

5 A. It was -- it had been like that almost the time we
6 were there.

7 Q. You were at Crystal's. Which was a couple of weeks
8 while y'all were at Crystal's?

9 A. We was there about two months.

10 Q. Okay. Did you move in there the first of May, about?

11 A. No, it was -- I think it was, I think it was the end
12 of -- actually, it wasn't far in April. Because me and
13 that fellow got into it. I asked him to bring some cooking
14 oil at the apartment. And when he came, Ann and him's been
15 talking on the phone for a little while. I asked Ann to
16 ask him to bring me some cooking oil. Well, he brought me
17 some cooking oil, all right. He hit me in the face with a
18 Mason jar full of it.

19 Q. All right. I'm glad you brought that up. Let's talk
20 about that. On April the 28th, that's when the police were
21 called because you guys called the law when he attacked
22 you; right?

23 A. Yes, ma'am.

24 Q. Okay. And the reason he attacked you is because he
25 saw you abusing Minor 1 and that made him mad?

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
James Allen Johnson - Cross Examination by Ms Hodge

561

1 A. No, ma'am.

2 Q. And that's why he came up there and hit you in the
3 face with that Mason jar?

4 A. No, ma'am, I've never abused her.

5 Q. And he saw you hit her in the back with a closed fist
6 and an open fist?

7 A. No, ma'am.

8 Q. And, in fact, he told you, stop abusing the kids. And
9 that's why he beat you up?

10 A. No, ma'am.

11 Q. And that was on April the 28th of 2011. That was
12 Kenny Smith; right?

13 A. I can't remember his name.

14 Q. Did he go by Kenny?

15 A. I think so.

16 Q. Did y'all hang out together? Before that happened,
17 y'all used to hang out together some?

18 A. I think he kept talking about his girlfriend leaving
19 him.

20 Q. Well, you don't need to tell me what he said. I asked
21 you, did y'all hang out some beforehand?

22 A. A little bit, yeah.

23 Q. Okay. And he had a TV in his apartment and you wanted
24 to know if you could bring the girls over there to watch
25 the TV, because y'all didn't have one; is that right?

1 A. We had one but she went and pawned it.

2 Q. Went and pawned it. All right. So you were wanting
3 to bring the girls over to be able to watch the TV, to his
4 house; is that right?

5 A. (Affirmative nod.)

6 Q. And you would go over there with the girls?

7 A. Me, Ann and the girls.

8 Q. And that's when he saw you with the girls; right?

9 A. I have never hit them kids in their back at all. I
10 may have popped them on their hand and that's about it.
11 And it wasn't no violently smack on the hand either.

12 Q. You happened to be providing information to Ann and
13 other people that were asking about these injuries on Mino
14 s head. So you just happened to be around when all
15 these things happened to her by some other means?

16 A. The kids were always in there with me. She was in the
17 bed, always. And sometimes the kids would stay --
18 Crystal's little girl would stay in there with us while
19 Crystal went somewhere.

20 Q. So you were the one that would see exactly how these
21 injuries got there; right?

22 A. Yes, ma'am. Those -- several of those was not there
23 on her. Was not there.

24 Q. Do those look bad to you?

25 A. Yes, ma'am.

1 Q. That looks real bad, doesn't it?

2 A. Brings tears to my eyes.

3 Q. Okay. Now, the thing about -- going back to the
4 incident date, your testimony, which you have said earlier,
5 is that you were up with the kids, Minor2 and NMinor1 .

6 And your testimony is Ann was up. She was not sleeping?

7 A. No, she was not.

8 Q. It was not one of those days where she was real tired
9 and you wanted to treat her well and you wanted her to get
10 rest?

11 A. No, ma'am.

12 Q. Like you testified, on other days that you would let
13 her rest and you would take the girls? ,

14 A. Not that day. We was planning on going somewhere when
15 Crystal got back.

16 Q. You were planning on going somewhere?

17 A. We were. We were all planning on going somewhere.

18 Q. Okay.

19 A. In fact, we was going to go to Crystal's friend's
20 actually.

21 Q. All right. Did you ever tell anybody that?

22 A. Huh?

23 Q. Did you ever tell anybody ---

24 A. That we was going to go ---

25 Q. --- Investigator Miller that y'all were going to ---

1 A. We was going to go ---

2 Q. Ann was up because y'all were going somewhere. Did
3 you ever tell anybody that?

4 A. Not as I know of.

5 Q. And so your testimony is Minor1 i's fine. She has none
6 of that stuff on her, happy and playing?

7 A. She had a few bruises, but she didn't have real big
8 bruises; she didn't have those. She had the little beaded
9 one and the one right there.

10 Q. And that's it?

11 A. That's all I saw when I saw her.

12 Q. And you heard the testimony that she had over twenty-
13 five bruises, and you're telling us ---

14 A. Yes, ma'am.

15 Q. --- you saw two that you knew of and you could
16 explain?

17 A. Yes, ma'am.

18 Q. All right. And so your testimony is that you go to
19 the bathroom, she's fine but two bruises; is that correct?

20 A. Yes, ma'am.

21 Q. All right. And in you're in the bathroom for how
22 long?

23 A. Two or three minutes.

24 Q. Two or three minutes. What are you doing in the
25 bathroom?

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
James Allen Johnson - Cross Examination by Ms Hodge

565

1 A. Using the bathroom, taking a dump.

2 Q. A number two?

3 A. Yes, ma'am.

4 Q. Whatever you want to call it? All right. And then
5 you come out to hearing somebody yelling?

6 A. Ann. I heard Ann yelling. She was saying, she's not
7 breathing. The baby's not breathing. And so I run in
8 there with my cell phone. I was the only one that had a
9 cell phone.

10 Q. You're the only one that had a phone. Ann didn't have
11 a phone; right?

12 A. Ann did have a phone, but her phone got cut off.

13 Q. So she didn't have a working phone?

14 A. No, ma'am.

15 Q. You're the only one ---

16 A. She could use my phone anytime she wanted to. I let
17 her use it anytime.

18 Q. Did you have it in the bathroom with you?

19 A. She used it several times calling Mark.

20 Q. Did you have it in the bathroom with you?

21 A. Yes, ma'am, I did because I was using it. I had been
22 using it.

23 Q. Okay. Were you talking to somebody?

24 A. Before I went in there, I was.

25 Q. Who was that?

1 A. My buddy?

2 Q. What buddy?

3 A. I was talking to Josh again.

4 Q. Oh, okay. Were you setting something up to buy
5 something from Josh?

6 A. No, ma'am. I was just talking to him. He's my
7 friend.

8 Q. Okay. So did you ever tell anybody you were talking
9 on the phone when all this happened?

10 A. No, ma'am.

11 Q. All right. And you come out to Ann saying, she's not
12 breathing. And you say, let's call 9-1-1?

13 A. Yes, ma'am.

14 Q. So that's your testimony. And there's some discussion
15 about getting rid of the pot because y'all had been smoking
16 pot that day?

17 A. Yes, ma'am.

18 Q. And isn't it true that Crystal would have kept -- or
19 you or whoever was at the house smoking pot would have kept
20 it in the living room area, where this incident occurred,
21 in something -- some kind of either drawer -- State's
22 Number 3 -- some kind of drawer, end table, something?
23 Where would it normally be kept?

24 A. Right there.

25 Q. Right there where the cups are on that table, in that

1 drawer?

2 A. Yes, ma'am.

3 Q. All right. And were there any just like roaches left
4 in the ashtrays or anything like that?

5 A. Yes, ma'am.

6 Q. Okay. And so you go and you get those things cleared
7 up?

8 A. I don't. She does.

9 Q. All right. But you don't know how to do CPR; right?

10 A. I was trying.

11 Q. But she knew how to do CPR?

12 A. Yes, ma'am.

13 Q. And y'all thought the best thing was for her to clean
14 up the pot and you to do CPR?

15 A. I didn't care about the stuff, the weed or nothing. I
16 said, well, let's just call 9-1-1. I didn't care. I went
17 ahead and called 9-1-1. I was calling 9-1-1 while she was
18 hiding the stuff. And they was trying to tell me how to do
19 it, too.

20 Q. Right. Later in the 9-1-1 call that we hear. They're
21 giving instructions, right?

22 A. (Affirmative nod.)

23 Q. Okay. But isn't it true that, in fact, actually you
24 took that pipe and you put it here in Crystal's bedroom,
25 into that drawer right there?

1 A. No, ma'am, I didn't.

2 Q. And that's what you were doing while Ann was doing
3 CPR; isn't that right?

4 A. No, I did not do that.

5 MS. HODGE: May I have that marked, please?

6 (WHEREUPON, State Exhibit Number 55 was marked for
7 identification.)

8 Q. Is that picture of Crystal's bedroom?

9 A. Yes, ma'am.

10 Q. And that pipe normally wouldn't be in that drawer;
11 would it?

12 A. No, ma'am, it wouldn't.

13 Q. It would be in the table that you're talking about in
14 the living room?

15 A. (No verbal response.)

16 Q. So is that an accurate picture of Crystal's bedroom on
17 that day?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. HODGE: We'd move to admit State's Number 55.

21 THE COURT: Any objection?

22 MS. MANIGAULT: No objection, Your Honor.

23 THE COURT: Without objection it may be admitted
24 and published.

25 (WHEREUPON, State Exhibit Number 55 was admitted into

1 evidence.)

2 MS. HODGE: Okay. I'm not even going to turn on
3 the projector. I'm just going to pass that through here.

4 Q. Okay. So the pot's being taken care of and Minor 1 is
5 laying there purple, purple-lipped?

6 A. Purple-lipped, yes, ma'am.

7 Q. All right. And did she have clothes on earlier in the
8 day?

9 A. She had clothes on then.

10 Q. She had these little clothes on?

11 A. And we took them off of her.

12 Q. Who took them off?

13 A. Me and Ann did.

14 Q. You and Ann did?

15 A. Yeah, because she had this stuff all over it.

16 Q. What was on it?

17 A. Something that looked like throw up or tea or
18 something. It looked like tea mostly.

19 Q. All right. And did you see her throw that up?

20 A. She -- when we was doing CPR and stuff, we turned her
21 over on her side a little bit and that's when it come up.

22 Q. Okay. Was this before y'all decide to make the call
23 to 9-1-1?

24 A. I think so, yes, ma'am.

25 Q. Because you did hear the 9-1-1 call and there's no

- 1 talking about taking her clothes off ---
- 2 A. No, ma'am.
- 3 Q. --- or cleaning up throw up? So y'all got her cleaned
4 up or somebody got her cleaned up and clothes off?
- 5 A. Yes, ma'am.
- 6 Q. All right. And so when the EMS people and the firemen
7 get there, she doesn't have the clothes on. She's got a
8 diaper on?
- 9 A. Yes, ma'am.
- 10 Q. And she doesn't have any throw-up on her anywhere?
- 11 A. No, ma'am.
- 12 Q. And she really never got to breathing again; did she?
- 13 A. Not there. I think the paramedics got her back,
14 though.
- 15 Q. Right. But when you were there at the house ---
- 16 A. We were breathing into her the whole time until they
17 got there.
- 18 Q. You were able to get air going in?
- 19 A. We was blowing air in and it was filling up, but it
20 looked like her belly was just ---
- 21 Q. Going up and down?
- 22 A. Blowing up, and that's it.
- 23 Q. Okay. So there wasn't anything like sticking in there
24 when you tried to blow?
- 25 A. If you saw her belly, it looked like it was just --

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
James Allen Johnson - Cross Examination by Ms Hodge

571

1 like her belly was swelling. I don't know why. You'd do
2 like that and she would go (witness making hissing sound),
3 it would sound like.

4 Q. She'd make a noise?

5 A. Yeah. A noise.

6 Q. Like a gurgling type or a noise like that?

7 A. Just a noise. I've never heard that noise before.

8 Q. Right. Yeah. People that are alive and breathing
9 don't make that noise; right?

10 A. Yes, ma'am.

11 Q. Now, this statement that you gave that you say you
12 don't remember, you continued to talk to the officer as
13 you're going out of the police department; aren't you?

14 A. I don't know.

15 Q. You don't remember that either?

16 A. No, ma'am, I don't. I don't remember. I don't even
17 remember them taking this picture.

18 Q. You got a bracelet on, you mean?

19 A. Yeah.

20 Q. Okay. So your testimony is from the point where
21 things started looking bad for you and you're confessing,
22 you don't remember?

23 A. I don't remember, ma'am. I'm being honest.

24 Q. And you don't remember making those comments about,
25 yeah, how somebody that would do that would probably --

1 people wouldn't like that person; would they?

2 A. They would not. I would not like somebody that had
3 done that. I love, I love kids. Those ain't the only two
4 kids I've ever -- I've babysit in my life. I've helped my
5 sister take care of her kids ever since they were babies,
6 since they couldn't even hold their heads up. And I've
7 watched my other friends' kids too. Nothing's ever
8 happened to them. Them kids love me to death. All of
9 them. They'd never fear of me.

10 Q. Do you have a temper at all?

11 A. No, ma'am, not towards no kids.

12 Q. Do you have a temper in general?

13 A. Not really. I don't just jump on nobody?

14 Q. Do you have an impulsive type thing? If somebody --
15 let's say somebody's getting in your business or
16 something's not good ---

17 A. If somebody attacks me or something.

18 Q. --- or says something that you don't like or irritates
19 you?

20 A. I don't attack on something like that, no. I never
21 put my hands on nobody unless they put their hands on me.

22 Q. You never put your hands on anybody?

23 A. Unless they put their hands on me.

24 Q. But you have laid hands on people before?

25 A. Yes, ma'am.

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
James Allen Johnson - Cross Examination by Ms. Hodge

573

1 Q. Even family members?

2 A. Defending myself.

3 Q. Yes. That would be a yes to that, even family
4 members?

5 A. Yes, ma'am.

6 Q. Now, I see you've got a few tattoos right here?

7 A. Yes, ma'am.

8 Q. You have a tattoo right here under this piece of
9 tissue; don't you?

10 A. Yeah. My daddy was -- I was told my daddy was
11 murdered.

12 Q. So why are you covering that up for court?

13 A. Huh?

14 Q. Why are you covering that up for Court?

15 A. Well, I've got a scratch there, too, where I was
16 shaving.

17 Q. You've got a scratch near your eye where you have a
18 teardrop tattoo, that you now have a -- you have a band-aid
19 over it?

20 A. Right here, I was -- I've been shaving right here.
21 I'm being honest.

22 Q. Uh-huh (affirmative). But you're covering it up?

23 A. My daddy was, my daddy was -- well, I was told my
24 daddy was murdered December the 25th of this year. And
25 that's when I got it.

1 Q. Okay. Well, why would feel the need to cover that up?

2 A. Because I don't want people to think bad of me because

3 I got tattoos.

4 Q. So you're trying to put a little something that's not
5 you in front of the jury, because you do have a tattoo, but

6 you're trying to cover that up; make yourself look better?

7 A. Everybody's got tattoos.

8 Q. Well, then what's the big deal?

9 A. I see the jury with tattoos. I mean, I love tattoos.

10 I draw a lot. I like doing tattoos. I do tattoos on

11 people. I don't see nothing wrong with tattoos.

12 Q. Well, here's my point. Why cover it up? Why cover it

13 up? It's not a big deal, because you're trying, you're

14 trying ---

15 A. People told me I should cover it up.

16 Q. A coverup. You're covering it up. You're covering up

17 the fact that you, in fact, are the one who threw a toy or

18 probably more like punched this child in the face?

19 A. A inmate told me I should cover it up.

20 Q. But you covered it up. You made a choice; is that

21 correct? You are the grownup here. Is that correct?

22 A. Yes, ma'am.

23 Q. All right. You've covered it up?

24 A. I've never been in trouble before and had to see a

25 jury. I don't know what I'm supposed to do.

1 Q. It's not true that you haven't been in trouble before.

2 You've just never seen a jury?

3 A. No, I ain't never seen no jury. The only thing I've
4 had besides that assault is simple possession.

5 Q. Assault?

6 A. Simple possession.

7 Q. And assault and battery?

8 A. No, I ain't never had assault and battery. I had
9 assault.

10 Q. Assault?

11 A. Yeah.

12 Q. So we're back to -- the truth is you're not being
13 completely truthful about yourself and what happened here?

14 A. I'm being honest with you. I've never put my hands on
15 any kids. I've never whooped a kid, but pop them on their
16 hand when they was wrong.

17 Q. But you did ---

18 A. Just to let them know.

19 Q. You did hit Minor1 ?

20 A. No, I did not.

21 Q. And you did cover her mouth and suffocate her?

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

23 Q. And she did struggle against you, because she was not
24 going to go down that like that. She was going to

25 struggle.

1 A. No, ma'am, I did not do that.

2 Q. And you did freak out?

3 A. No, I didn't.

4 Q. And you did make up that story about taking a sip of
5 tea because you didn't know what else to do?

6 A. No, ma'am, I didn't.

7 Q. And right now, you're trying to cover that up to this
8 jury, just like you're covering up that tattoo?

9 A. No, ma'am, I am not.

10 MS. HODGE: That's all I have.

11 THE COURT: Any redirect?

12 MS. MANIGAULT: None, Your Honor.

13 THE COURT: All right. Thank you, sir. You may
14 step down.

15 MS. MANIGAULT: Your Honor, we call Alex Johnson.

16 THE COURT: Sir, if you'll come around and be
17 sworn.

18 THE CLERK: Do you solemnly swear or affirm to
19 tell the truth, the whole truth and nothing but the truth,
20 so help you God?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Please have a seat. Please state
23 your name for the record.

24 THE WITNESS: Alex Johnson.

25 **ALEX JOHNSON,**

1 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. MANIGAULT:**

4 Q. All right. Mr. Johnson, how old are you?

5 A. Thirty.

6 Q. And do you know James Allen Johnson here?

7 A. Yes.

8 Q. And how do you know him?

9 A. He's my younger brother.

10 Q. He's your younger brother?

11 A. Yes.

12 Q. On June the 2nd were you around the police -- two
13 deputies came to pick him up?

14 A. Yes. I was around earlier that day.

15 Q. Okay. You have a habit of mumbling. Please keep your
16 voice up?

17 A. All right.

18 Q. And do you know what time of day or evening that was?

19 A. It was right around six, five or six, somewhere around
20 in there.

21 Q. And had you seen your brother earlier that day before
22 the police came?

23 A. Yes.

24 Q. What kind of condition was he in?

25 A. He was staggering around and drunk. He was staggering

1 around, messed up, drunk like. I told him he couldn't come
2 into my house because I don't allow him around my kids
3 while he's on -- under the influence.

4 Q. Okay. He was staggering around, drunk, messed up?

5 A. Yes.

6 Q. All right. Did he try to come over to your house?

7 A. Yes.

8 Q. Where was he when he was trying to get to your house?

9 A. At the neighbor's house with Josh.

10 Q. Is Josh right next door to you?

11 A. Yes.

12 Q. All right. And how long was it before the police came
13 and when you told him go back, don't come to your house?

14 A. They came later on that evening.

15 Q. Okay.

16 A. I left and went to the store.

17 Q. Did you know what James, your brother, was taking?

18 What was he high on?

19 A. No. I figured he was high on marijuana and drinking
20 or something. I didn't know exactly.

21 Q. Have you known him to take Xanax or he buys pills off
22 of the street?

23 A. Yes.

24 Q. And have you known him to take anything other than

25 Xanax or pills that he doesn't have a prescription for?

1 A. Yes. I've known him to do any kind of drug he can get
2 his hands on.

3 Q. So you've known him to do any kind of drug he can get
4 his hands on?

5 A. Yep.

6 Q. And so you're saying on June the 2nd he was -- was he
7 just a little bit messed up?

8 A. He was pretty messed up.

9 Q. Pretty messed up. Did he stumble, did he fall down in
10 your yard?

11 A. He fell off my porch.

12 Q. He fell off of your porch?

13 A. Yes.

14 Q. All right. And when the police picked him up, you
15 were there to see him leave or you had already gone?

16 A. I had already gone. I didn't -- I wasn't there when
17 they picked him up.

18 Q. Okay. All right. Thank you.

19

CROSS-EXAMINATION

20 **BY MS. HODGE:**

21 Q. Mr. Johnson, so you're saying you saw him around five
22 or six P.M. That's your best estimate?

23 A. Yes.

24 Q. Okay. And you don't know what exactly he had done?

25 A. Yeah.

1 Q. You're just making assumptions?

2 A. I just figured it was marijuana and stuff because he's
3 always -- I've known him to always do that.

4 Q. He's always done that?

5 A. Yes.

6 Q. All right. And when the police were there, you
7 weren't -- or when the police came to pick him up, you
8 weren't even there; right?

9 A. No, I wasn't there.

10 Q. Okay. So you weren't able to say, hey, I'll take him,
11 because you weren't even there?

12 A. No, I was at the store.

13 Q. Okay. Thank you.

14 THE COURT: Any redirect?

15 MS. MANIGAULT: None, Your Honor.

16 THE COURT: All right. Thank you, sir. You may
17 step down.

18 MS. MANIGAULT: Your Honor, we'd call Mandy
19 Burnette.

20 THE CLERK: Come forward and put your left hand
21 on the bible and raise your right.

22 Do you solemnly swear or affirm to tell the truth, the
23 whole truth and nothing but the truth, so help you God?

24 THE WITNESS: Yes.

25 THE CLERK: Please have a seat. Please state

1 your name for the record.

2 THE WITNESS: Mandy Marie Burnette.

3 MANDY BURNETTE,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. MANIGAULT:

7 Q. Ms. Burnette, you'll have to keep your voice up. How
8 old are you?

9 A. I'm thirty.

10 Q. Okay. And where do you live?

11 A. I live in Travelers Rest.

12 Q. All right. And do you know James Allen Johnson?

13 A. Yes, ma'am.

14 Q. And how long have you known him?

15 A. About five or six years.

16 Q. And do you have children?

17 A. I do.

18 Q. And how many children do you have?

19 A. I have two.

20 Q. Two?

21 A. Uh-huh (affirmative).

22 Q. All right. Has James Johnson ever babysat for you?

23 A. Yes, ma'am.

24 Q. And how older were you children when he did that for
25 you?

1 A. Starting around age three or four for my youngest, and
2 my oldest would have been nine or ten.

3 Q. I didn't hear you.

4 A. My oldest would have been nine or ten at the time.

5 Q. And has he ever lived in your home with you?

6 A. Yes, ma'am.

7 Q. How long did he live in your home with you?

8 A. Eight months or so; six, eight months.

9 Q. So did he do the babysitting while he was living in
10 your home?

11 A. Yes, ma'am.

12 Q. And did you ever ask him to babysit after he left your
13 home?

14 A. Yes, ma'am.

15 Q. All right. And did you ever have any problems with
16 him hitting your children?

17 A. No, ma'am.

18 Q. All right. Did you ever notice any bruises on your
19 children?

20 A. No, ma'am.

21 Q. And how long a period would you say that he did some
22 babysitting for you, the eight months that he was in your
23 home?

24 A. Well, pretty much the whole time he was living in the
25 home.

1 Q. Right.

2 A. And then the other times would be just if I needed a
3 babysitter or wanted to go out and do something.

4 Q. Okay. So it would have been over a year or two
5 period?

6 A. Yeah. At least, yeah.

7 Q. All right. Thank you.

8 **CROSS-EXAMINATION**

9 **BY MS. HODGE:**

10 Q. Ms. Ward or is it -- do you have a ---

11 A. It's Burnette now.

12 Q. Burnette now?

13 A. Yeah.

14 Q. Okay. It's Burnette. What year are we talking that
15 he would have babysitted?

16 A. Well, he's been gone for two. I mean, he watched them
17 like the week before he was arrested.

18 Q. Okay. So close in time before this happened?

19 A. Oh, yeah. Yeah.

20 Q. So he was watching your children at the same time he
21 was watching these other children?

22 A. Well, he had watched them -- after all of that had
23 happened he came to my house before he was arrested, like
24 over the -- through that week or whatever, between it
25 happened?

1 Q. During that week?

2 A. And he watched them then for a couple of hours.

3 Q. Was he messed up on pot and pills when he was watching
4 your kids?

5 A. Not at my house, no.

6 Q. Okay. Did you know that he did that?

7 A. Yeah. He did it. But, I mean, he knows that we don't
8 allow that at my house.

9 Q. So he was able to -- during that week's time he was
10 able to watch your kids, not do any drugs and be clean and
11 sober?

12 A. Yes, ma'am.

13 Q. Okay. And your youngest was like three or four, able
14 to talk?

15 A. Oh, yes.

16 Q. Okay.

17 A. I mean, we have a hard time even making him put them
18 in the corner, you know, if they were bad, you know. So I
19 never had any problems.

20 Q. Okay. So he was awesome during that week ---

21 A. Yes, ma'am.

22 Q. --- before he got arrested?

23 A. Yeah.

24 Q. Okay. Thank you.

25 THE COURT: Any redirect?

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Jim Wilson - Direct Examination by Ms Hodge

585

1 MS. MANIGAULT: None, Your Honor.

2 THE COURT: Thank you, ma'am. You may step down.

3 You may call your next witness.

4 MS. MANIGAULT: Defense rest, Your Honor.

5 THE COURT: Anything in reply from the State?

6 MS. MANIGAULT: Yes, one witness, Your Honor,
7 briefly. Deputy Wilson.

8 THE COURT: Come around and be sworn, please,
9 sir.

10 THE CLERK: Do you solemnly swear or affirm to
11 tell the truth, the whole truth and nothing but the truth,
12 so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please have a seat. Please state
15 your name for the record.

16 THE WITNESS: Jim Wilson.

17 **JIM WILSON,**

18 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

19 **DIRECT EXAMINATION**

20 **BY MS. HODGE:**

21 Q. Deputy Wilson, you work for the sheriff's office
22 currently?

23 A. I do.

24 Q. And did you retired from Greenville City Police?

25 A. I did.

1 Q. How long were you with them?

2 A. I was with Greenville City Police for a little over
3 twenty-five years and I've been with the sheriff's office
4 for a little over two now.

5 Q. And on June the 2nd of 2011, were you assisting
6 Investigator Miller in a little bit of the investigation in
7 this homicide by child abuse case?

8 A. I was.

9 Q. And did he ask you to assist him in locating the
10 Defendant, Mr. Johnson, that day?

11 A. I did. Myself and Investigator Campbell went to a
12 couple of locations where we might could find him.

13 Q. Okay. And if you will speak into that mike just a
14 little bit. Everybody's having a hard time speaking up
15 loudly in here.

16 A. Is that better?

17 Q. Okay. And when did you go or where did you go and
18 when did you go looking for Mr. Johnson? Do you have a
19 time frame and what locations you went to?

20 A. We actually located him in a mobile home off of, I
21 believe it was Pine Log Ford Road. I think that was the
22 name of the road. And ...

23 Q. Okay. Do you have any idea what time of day it might
24 have been?

25 A. Not right off. I don't really recall right off-the-

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Jim Wilson - Direct Examination by Ms Hodge

587

1 bat. It was daytime. I don't remember. It wasn't early
2 morning, wasn't late, late afternoon either, that I
3 remember.

4 Q. All right. And did you take him someplace? Where did
5 you take him?

6 A. We did. We brought him to the law enforcement center.

7 Q. And was he able to tell you guys, no, he didn't want
8 to go with you when y'all showed up to ask him to come?

9 A. Sure. When we found him, we asked him if he was -- we
10 actually informed him that we were interviewing everybody
11 that was associated with the case. And we asked him if he
12 would come to the law enforcement center. He actually
13 stated that he would, but he didn't have a ride. We told
14 him he could ride with us. And then he said, he didn't
15 have a ride back home. We said, you can ride with us.
16 We'll bring you back home or you can get a ride to come to
17 the law enforcement center, either way. And he volunteered
18 to ride with us.

19 Q. And you weren't there to arrest him or take him into
20 custody or anything like that?

21 A. No.

22 Q. You just were telling him they wanted to talk him and
23 offered a ride if he needed it?

24 A. Correct.

25 Q. And was it in a marked patrol car?

1 A. No. It was an unmarked car.

2 Q. And so did you handcuff him or do anything like that
3 when you put him in the car?

4 A. No.

5 Q. And did you take him straightaway to the LEC, to the
6 law enforcement center?

7 A. Correct, yes.

8 Q. And when you met up with him or asking him to come
9 with y'all, or asking him to come down to the LEC, were you
10 able to communicate with him?

11 A. Yes.

12 Q. Could you talk to him and understand him?

13 A. Yes.

14 Q. Did he appear to understand what you were saying to
15 him?

16 A. Yes.

17 Q. In your twenty-five plus years now of law enforcement,
18 have you dealt with people that have been under the
19 influence of alcohol?

20 A. Yes.

21 Q. Have you dealt with people under the influence of
22 marijuana?

23 A. Yes.

24 Q. Have you dealt with people under the influence of
25 Xanax or other prescription pills?

1 A. Yes.

2 Q. People under the influence of meth?

3 A. Yes.

4 Q. Did this Defendant, at that time, exhibit symptoms of
5 any illegal substances when you were talking to him?

6 A. No.

7 Q. All right. Did he understand that he was going to go
8 down for questioning about this case?

9 A. Yes.

10 Q. And he agreed?

11 A. Yes, ma'am.

12 Q. All right. So when you take him, how long a drive is
13 it down to the LEC?

14 A. From there, I would have said probably twenty, twenty
15 to thirty minutes.

16 Q. Did he stay awake in the car?

17 A. Yes.

18 Q. Did anybody talk to him? Was there like small talk
19 going on in the car?

20 A. I don't remember a whole lot being said. And I
21 wouldn't remember exactly what was said. But, you know, I
22 mean, it might have been some casual conversation, but I
23 wouldn't know exactly what.

24 Q. All right. You wouldn't have attempted to talk to him
25 about the case. You might have just tried to make some

1 kind of basic conversation?

2 A. I don't recall that I did. Investigator Campbell may
3 have. I really don't remember anything being talked about
4 in the car.

5 Q. Okay. And when you got to the law enforcement center,
6 did you have to wake him up or get him out of the car?

7 A. No.

8 Q. Did he get out of the car on his own?

9 A. Yes, ma'am.

10 Q. And walk into the offices where Investigator Miller
11 was going to be?

12 A. That's correct.

13 Q. And did he understand where y'all were and we're at
14 the law enforcement center?

15 A. That's correct.

16 Q. Okay. And was he able to walk fine on his own?

17 A. Yes, ma'am.

18 Q. All right. Did you stay with him until Investigator
19 Miller got there?

20 A. I did.

21 Q. And did you actually stay and sit in on the interview
22 that Investigator Miller conducted?

23 A. I did.

24 Q. Did you hear the Defendant telling Investigator Miller
25 basically what happened in this case? Two phases? I

1 guess, two phases? Did you hear him give a statement?

2 A. Yeah. I heard both phases.

3 Q. Okay. Initial talking about what he was saying
4 happened in the case? And then was there a bathroom break?

5 A. There was.

6 Q. And then did the Defendant come back from the bathroom
7 and continue talking to Investigator Miller?

8 A. That's correct.

9 Q. And was he able to speak clearly and understandably?

10 A. That's correct.

11 Q. And at that point, did he begin making some
12 confessions?

13 A. He did. I don't remember word-for-word what he said,
14 but I do remember him saying he really needs to tell the
15 truth and get this off his heart. You know, something
16 along that line. He wanted to tell the truth.

17 Q. And he was not falling out of his chair ---

18 A. No.

19 Q. --- or appearing to be doped up on ten Xanax and some
20 reefer?

21 A. No.

22 Q. He had his wits about him and understood what was
23 going on?

24 A. That's correct.

25 Q. Okay. And did he become appropriately upset once he

1 did tell the truth or what happened?

2 A. Yes.

3 Q. Were you a part of the process of having him taken
4 over to the detention center?

5 A. No, ma'am.

6 Q. Okay. So once they left the -- Investigator Miller's
7 offices, was that the end of your involvement?

8 A. That was the end of my ...

9 Q. All right. Thank you. Please answer any of Ms.
10 Manigault's questions.

11 MS. MANIGAULT: I don't have any questions, Your
12 Honor.

13 THE COURT: All right. Thank you, Officer
14 Wilson. You may step down.

15 MS. HODGE: Thank you, Your Honor. That would be
16 the State's reply.

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 you've heard all the testimony. I need to instruct you on
19 the law. And the attorneys are going to address you in a
20 closing statement. Before we take care of those matters,
21 I'm going to ask you to go back briefly to your jury room.
22 There's a matter of law we need to take care of as far as
23 the verdict form and so forth for you to have with you.
24 While you're back there, I'm going to let the bailiff's get
25 you some menus to order your lunch. We'll hopefully be

1 ready to start back in about ten or fifteen minutes with
2 the closing statements. And hopefully, your lunch will be
3 here about the time we finish with the closing statements
4 and the charge on the law. So if you'll do that, we'll
5 take about a ten or fifteen minute break and be ready to
6 call you back out then. Don't discuss the case.

7 (WHEREUPON, the jury exited the open court at
8 approximately 11:53 A.M.)

9 THE COURT: All right. I've proposed a verdict
10 charge -- I mean, a verdict form. Let me let y'all each
11 look at that and see if it's in the -- if that's in proper
12 order, if it's typed right. Any other matters that we need
13 to address?

14 MS. MANIGAULT: Judge, I would ask the Court to
15 consider a charge on involuntary manslaughter. I don't
16 know if it was -- under homicide by child abuse since there
17 was some reference by the officers that my client said,
18 accidents happen. So we would ask the Court to consider
19 that.

20 MS. HODGE: Your Honor, I don't believe that's a
21 lesser -- it's not a lesser included and I don't believe
22 that we could present both of those charges. It's one or
23 it's the other and he's charged under homicide by child
24 abuse and it's not a lesser included. We actually don't
25 have to prove specific intent, just extreme indifference to

1 human life.

2 THE COURT: All right. I'll study that briefly.
3 I'm not inclined to believe that would be a lesser
4 included.

5 Any other requests for charge from either of you?
6 I'll basically give my standard charge about intoxication.
7 I'll charge that, intoxications, relating to intoxication.
8 There's enough evidence related to that. The statement,
9 I'll let the jury know that they have the ultimate decision
10 about the value of the statement that was given. I'll
11 obviously charge reasonable doubt, burden of proof,
12 credibility, those kind of things in the statute that he's
13 charged under (A) (1), or is that part of the statute?

14 MS. HODGE: Yes, sir. (A) (1). Yes, sir.

15 THE COURT: If there's anything else you think of
16 while we're taking our break let me know. We'll give the
17 jury time to get their order made and be ready to start
18 back at ten after twelve. All right.

19 (WHEREUPON, the court stood at recess for a short
20 break.)

21 THE COURT: All right. Ms. Manigault, I
22 researched the involuntary manslaughter. I believe the
23 *McKnight* case would prevent that charge or that lesser
24 included offense be charged on the particular case we're
25 here on today. I'll deny your motion.

1 Are there any matters we need to take care of before
2 the jury comes in?

3 MS. MANIGAULT: Yes, sir. Your Honor, at this
4 point, I would ask the Court if the Court would consider
5 charging the same section, statute 16-385(A)(2), which
6 reads knowingly aids and abets another person to commit
7 child abuse or neglect and the child abuse or neglect
8 results in the death of a child under the age of eleven.
9 And, Your Honor, we would offer for support that there was
10 testimony of prior bruising on the child by the State's
11 witness, Ms. Ann Sprouce, that she did nothing about, which
12 would fall under the neglect section of the statute. The
13 time lapse before the parties call 9-1-1, we don't know
14 what that was. Time lapse before they entered into trying
15 to assist the child, the lateness of the time lapse there.
16 So we'd ask the Court if you would consider the aiding and
17 abetting section.

18 THE COURT: Solicitor, I'll be glad to hear from
19 you on that.

20 MS. HODGE: Thank you, Your Honor. The State
21 does not believe that subsection applies in this case. The
22 evidence that's been presented is that the co-defendant,
23 Ms. Sprouce, denied causing any of the harm to the child.
24 The Defendant's, in fact, testimony initially or statements
25 initially were that he was in the bathroom, he didn't know

1 how the child got that way. There's no direct evidence
2 linking it to Ann. And, therefore, having him either be an
3 aid or abetter or witness to it -- he's basically stated
4 that Ann's never did anything to these kids and the only
5 injury that he could attribute to her was a possible bite
6 mark. And then he stated in his testimony in Court that
7 that child did not have any of those injuries when he went
8 to the bathroom. In fact, she just had the two that he
9 gave the excuses for falling down and being hit by the
10 sister. So there's no evidence in the record of him
11 witnessing Ann commit any child abuse on these kids and
12 then him aiding and abetting her. The only evidence in the
13 case is basically Ann's testimony that he, in fact, was the
14 person that committed these injuries. Therefore, we don't
15 believe that subsection (2) would apply.

16 THE COURT: Well, I've tried to keep notes and
17 review my notes and we've gone along, and particularly in
18 light of the motion made, Ms. Manigault, I've tried to
19 reflect on all the evidence that I've heard and even
20 circumstantial evidence or reasonable inference from any
21 circumstantial evidence. I can't find anything to show
22 that that statute would be applicable. I'm not unmindful
23 of the case that came less than a month ago, *State v.*
24 *Lewis*. I've read that more than once. I just don't
25 believe the facts would warrant that and respectfully deny

1 your motion.

2 MS. MANIGAULT: Thank you, Your Honor.

3 THE COURT: Therefore, I don't believe the facts
4 and the evidence would warrant that.

5 All right. Any other matters before we have our jury
6 come back?

7 MS. HODGE: Nothing from the State, Your Honor.

8 MS. MANIGAULT: Nothing from the Defense, Your
9 Honor.

10 THE COURT: All right. If they're ready, you can
11 have them come in.

12 (WHEREUPON, the jury entered the open court at
13 approximately 12:38 P.M.)

14 THE COURT: Ladies and gentlemen, I believe the
15 Defendant and his attorney need to talk a little while
16 longer. I'm sorry we brought you in a little early. If
17 you'll just step back to your jury room, just briefly.
18 Again, don't discuss the case. We'll be ready for our
19 closing statements in just a moment.

20 (WHEREUPON, the jury exited the open court at
21 approximately 12:39 P.M.)

22 THE COURT: All right. We'll just be at ease for
23 a moment until the Defendant and attorney are back.

24 (WHEREUPON, the court stood at recess in the case.)

25 THE COURT: All right. Are we ready to proceed?

1 MS. MANIGAULT: Yes, sir.

2 THE COURT: All right. I just sent the jury back
3 out as soon as you left. If you need more time, we'll
4 certainly allow more time for you to talk with your client.
5 If everybody's ready to proceed, we'll have our jury come
6 in.

7 MS. MANIGAULT: Yes, air.

8 THE COURT: All right. Have our jury come in.
9 (WHEREUPON, the jury entered the open court at
10 approximately 12:41 P.M.)

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 the attorneys are going to address you in their closing
13 statements now. I told you when we began the trial they --
14 we started out pretty much with opening statements by the
15 attorneys. And what they said to you then, what they say
16 to you now, is not evidence. You've heard all the
17 evidence. While this is not evidence, I urge you to listen
18 carefully as they address you. I'm confident that each of
19 these attorneys can give you some insights to help you in
20 your evaluation of the evidence, the principals that you
21 need to apply in doing so. After each has addressed you,
22 I'll instruct you on the law. The case will be then yours
23 to decide. Ms. Manigault you may address the jury in your
24 closing.

25 MS. MANIGAULT: Thank you, Your Honor. May it

1 please the Court. Ms. Hodge.

2

CLOSING ARGUMENT

3 **BY MS. MANIGAULT:**

4 Ladies and gentlemen, we thank you for your attention
5 to the case and the evidence and facts that have been
6 presented to you. In the opening of the case, Your Honor
7 explained to you the procedure and process, that he is the
8 Judge, he rules on the law. You are the trier of the
9 facts. We have the Prosecutor, Defense attorney. You've
10 heard the evidence. He's going to charge you the law and
11 you're going to take everything back to the jury room and
12 then you're going to make a decision.

13 Now, there are principals of law that Your Honor will
14 tell you when he does his charge that deals with the
15 credibility and the believability of witnesses. He will
16 tell you that you can believe any witness that you choose
17 to believe, whether they're expert, police officers, civil,
18 lay people, doesn't matter. It is your decision who you
19 believe. You can believe a portion of a testimony or you
20 can believe all the testimony or you can believe none of
21 the testimony. That is totally your decision and it is in
22 your purview. He has instructed and he will instruct you
23 again, that even with an expert witness you still decide
24 what the expert has said. And then you apply it to the
25 facts that you've heard and the evidence that has been

1 presented by the State to you.

2 And so he will talk about the presumption of
3 innocence, the reasonable doubt and all of that as premise
4 of law. When you get all the evidence back and start your
5 deliberation and come to a conclusion, that is the verdict
6 and that verdict must be unanimous, twelve people decide,
7 yea or nay, guilty or not guilty.

8 Now, you've heard the testimony. I'm only going to
9 deal with the testimony of the Defendant. You've heard the
10 testimony of James Allen Johnson. You will have in your
11 jury room the two statements that you can read over if you
12 want to or you don't have to read it. But you'll have the
13 two statements, one made on May 25th, 2011, one made on
14 June 2nd, 2011. Your Honor will tell you that voluntary
15 intoxication is not a defense to a crime. It's not a
16 defense. What you heard Mr. Johnson testify to from this
17 witness stand is that, yes, he gave two statements. Yes,
18 he remembers the May 25th statement. But, no, he doesn't
19 remember most of the June 2nd statement. Yes, these are
20 his initials on the statements. Yes, these are his
21 signature. You heard him testify that these are his
22 initials and this is his signature.

23 My question to him was, why would you say, why would
24 you say something like that? Why would you tell the
25 officers? There was indication the officer told him what

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Closing Argument by Ms Manigault

601

1 to say. So that's all the questions you have to consider.
2 There is no question that this young baby, precious life,
3 died. The death is not a question. There is no question
4 that there are multiple bruises on this young child. That
5 is right here for you to see. It has been testified to by
6 the doctors, by the medical examiner, by the officers who
7 observed.

8 The question is, who put it there? How did it get
9 there? Ms. Hodge told you in her opening that it's called
10 shifting the blame. Well, the decision you have to make is
11 who put it there. My client never said -- he said that he
12 didn't do it. So why did you say in your statement that
13 you did it? He was trying to protect somebody that he
14 thought was pregnant and going to have a baby for him. A
15 stupid, dumb, whatever. He was told that she was going to
16 have a baby two days before.

17 The reason, that's for you to decide. Believable,
18 that's for you to decide. Whether he did it, that's for
19 you to decide. Did Crystal do it? Did Ann do it? So the
20 bruises are there; the baby is dead. I am sorry that the
21 baby has died. None of us would have wanted that for our
22 child or any child that we know, this kind of circumstance.

23 You noticed during the trial there were objections or
24 periods where we had a side bar to the bench or where the
25 Solicitor was showing me -- that's all process and

1 procedure. So don't hold any of that against us as
2 lawyers. That's what we have to do to ensure that the
3 evidence is presented properly. If I objected too many
4 times, don't hold that against my client. That is a
5 process. The Judge has to make a decision. So all I'm
6 asking you to do is, when you go back and review the
7 evidence, that you come back with a verdict that will suit
8 the evidence that you've reviewed. Thank you.

9 THE COURT: Solicitor, you may address the jury.

10 MS. HODGE: Thank you, Your Honor. May it please
11 the Court, Ms. Manigault.

12 **CLOSING ARGUMENT**

13 **BY MS. HODGE:**

14 I told you, ladies and gentlemen, that this was a case
15 about death and about guilt. And I think we have
16 unfortunately seen the ugly, violent, sad death of Minor 1 .
17 This death was not an accident. This death was not choking
18 on tea. There is indisputable evidence that this child was
19 murdered. This was violent and this was intentional. It
20 was an intentional act, a guilty act of the Defendant and
21 the Defendant alone. He placed the injuries on the child.
22 And did girlfriend, Ann, give him that ability?
23 Absolutely. She was more worried about her and she took
24 herself out of the picture. She wanted to nap and she
25 didn't care what happened to these kids. So is anybody

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Closing Argument by Ms Hodge

603

1 trying to say Ann is squeaky clean in this or she didn't
2 have anything to do with it? Well, she did. She gave,
3 basically a stranger from the get-go, care and custody of
4 her two little babies, baby girls. And the evidence that
5 the State has presented is the Defendant is the person that
6 has administered all of the blows to this child. Even by
7 his own testimony he had sole custody and care practically
8 all the time of this little girl, Minor 1 . Minor 2 was
9 there too, but we're talking about Minor 1 . How do we
10 know then, through the evidence in this case, that the
11 Defendant is the one that did these acts. Well, I've got a
12 couple pieces of evidence I want you to take back to the
13 jury room and look at and listen in your deliberations.
14 The 9-1-1 call. It might have been a little hard to hear
15 in here initially, but you'll be able to listen to it as
16 many times as you want. But what I want you to listen to
17 is the very first two to three seconds before the operators
18 pick up the phone. You'll recall Ms. Buford, our first
19 witness who worked at the 9-1-1 recording area, says when a
20 call comes in, before the operator answers, they're
21 recording what's being said. So it's fairly faint, but I
22 want you guys to listen to it and you decide if you hear
23 what I heard. And what I heard was Ann asking the
24 Defendant, what do I say? Because ladies and gentlemen,
25 she wasn't in there and she didn't know how the child got

1 in this condition. And she's looking to him to tell her,
2 what do I say? So I'd like for you to listen to that
3 yourself.' Obviously, you can listen to that, see if that's
4 what you hear.

5 The other interesting thing about Ann and her
6 statement versus the Defendant's statements, is it makes no
7 sense if you are going to smother your baby, you're going
8 to beat your baby, then you're going to smother your baby
9 and hold it down and suffocate it until it basically passes
10 out, dies. Are you going to put yourself there? Are you
11 going to say, oh, yeah. It was me and just me. No.
12 You're going to say, I was nowhere around. It was him.
13 That's what you would say initially. You initially, if
14 something so horrible happened, would not place yourself in
15 the middle of it. You would do like the Defendant,
16 separate. You would be in the bathroom. And that's
17 exactly how these stories went. They took the opposite
18 path of the truth. The person who had nothing to do with
19 it and had no idea it was going on said, oh, yeah, okay, I
20 was right there. I was there. It was good. Because if
21 she had known what had gone on, if she had seen that act, I
22 have a feeling she'd try to separate herself too. I don't
23 know. We were both taking a nap. We woke up and that's
24 how the child was.

25 But she places herself there in the beginning because

1 she's scared, like she said. She's scared that if she's
2 not with her child, DSS is going to come and they're going
3 to take that child, they're going to take Minor2 . So she
4 puts herself there not knowing this heinous act has
5 actually happened. And the person that did know it
6 happened, he's in the bathroom. But the truth has a way of
7 coming out.

8 And after enough time and after being presented enough
9 times with inconsistent evidence, they converge back to
10 what really happened. Ann really wasn't there. She really
11 knew in her heart of hearts, this is what he was doing to
12 her kid. She knew that. And unfortunately, she was more
13 interested in doing drugs, hanging out, not being bothered.
14 You know, kids that age, if you don't have children, maybe
15 you've babysat or you work in a school or something,
16 they're very, very needed. Or maybe you have little
17 brothers and sisters, you remember. They're on you. They
18 don't give you that break. You don't get to take naps with
19 a two and a half year old and an eighteen month old. They
20 need something to drink, they need their diaper changed,
21 they want to play, they need attention. When they get
22 bitten by ants, they might be a tiny bit whiney. They get
23 punched in the face, they might cry. They're not just
24 going to sit there and let you take a nap. Ann didn't want
25 to hear that. Ann wanted to take a nap. She was high.

1 The Defendant had to sit there with the whining, the
2 fussing, the neediness. And quite frankly, again, the
3 truth came back around. He got irritated. And he did
4 exactly what he said in his statement -- or I submit to
5 you, he did fairly close to what he put in his confession.

6 And I submit, ladies and gentlemen, that he hit this
7 child. Now, that's for you to decide. He says in his
8 statement he threw a toy. I want you to go back and look
9 at State's Number 20. There's also State's 3 and 4.
10 Pictures that show the actual living room area where this
11 occurred. I want you to find a toy that he would have
12 thrown to hit her in the head. There isn't one, unless he
13 picked up this baby wheel barrow, but I don't think it was
14 that big. I submit to you he hit her and she cried. And
15 he didn't want to hear the crying and he didn't want Ann to
16 get mad at him, so he did exactly what the medical examiner
17 said. And he suffocated her. And he did it long enough
18 for the child to be completely brain dead.

19 And then I submit he panicked. Because when Ann said
20 she came in the room, these clothes, they were not on the
21 child. These clothes that have the blood-tinged sputum,
22 not on the child. He did some panicking and he did some
23 figuring out what he needed to do to cover this up. Tea,
24 okay, we'll go with that. This stuff she threw up, he's
25 not a medical person. He doesn't know that that is blood-

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Closing Argument by Ms Hodge

607

1 tinged sputum. It looks like tea. And, in fact, there may
2 be a kernel of truth in that she grabbed his tea. And
3 maybe that got him mad. I don't know. Maybe she took a
4 sip of that tea. Maybe that's when she got hit. We don't
5 know exactly. There are a few things that we don't know
6 because we don't have the evidence. Only the Defendant
7 knows and only Minor 1 knows.

8 Now, Minor 2 was in the room. Minor 2 was two and
9 half. She cannot come and testify. So we have to go with
10 the evidence that comes from Minor 1. She is speaking
11 today to y'all. And the evidence the Defendant gives us.
12 And his information does match up with her information.

13 I submit to you that in the end when he had his guilty
14 conscience starting to clear, he started telling some of
15 the truth. Of course, again, shifting and downplaying, not
16 wanting to say he actually beat the child. He just threw a
17 toy. That sounds better. But coming clean. Finally
18 coming clean with the truth.

19 Why would he say that if it wasn't true? Because he
20 clearly knows and we all know, you admit to something like
21 this, you are looked at as a pretty bad person. Now, it's
22 only for God to judge as far as a bad person. But our
23 society says, you don't do that. And we all know that that
24 is one of the most heinous crimes there is, crimes against
25 children.

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

609

1 the indictment was issued, that's not evidence in the case.
2 It doesn't prove any guilt, can't be any inference of guilt
3 on your part. The indictment is merely the document by
4 which the case is brought before this Court for
5 disposition.

6 Now, the Defendant has entered a plea of not guilty to
7 the charge and that plea places the burden on the State of
8 South Carolina to prove his guilt. A person charged with
9 committing a criminal offense in South Carolina is never
10 required to prove himself innocent. That's an important
11 rule of law. In a criminal trial, no matter how serious
12 the charge may be, that one charge, the Defendant will
13 always be presumed innocent of the crime for which that
14 indictment was issued, unless guilt has been proven by
15 evidence satisfying you of that guilt beyond a reasonable
16 doubt.

17 Presumption of innocence doesn't end when you begin
18 your deliberations, but it continues throughout the trial,
19 and stays with the Defendant until you've reached a
20 verdict, based on the evidence convincing you, satisfying
21 you of guilt beyond a reasonable doubt. Often presumption
22 of innocence has been described as a robe of righteousness
23 that's placed about the shoulders of a Defendant, remains
24 with that Defendant until it's been stripped from him by
25 evidence that satisfies that jury of the Defendant's guilt

1 beyond a reasonable doubt. Presumption of innocence,
2 ladies and gentlemen, isn't a mere legal theory. It's not
3 a legal phrase that's tossed about. It is a substantial
4 right to which every Defendant is entitled, unless you, the
5 jury, are satisfied from the evidence of the Defendant's
6 guilt beyond a reasonable doubt.

7 Now, you may ask yourself, what is a reasonable doubt
8 in the law? A reasonable doubt is the kind of doubt that
9 would cause a reasonable person to hesitate to act. Some
10 of you in the past may have had an opportunity to serve as
11 a juror in a trial. And it would have been in a civil case
12 and the Judge told you that it was only necessary to prove
13 a fact by what was the greater weight of the evidence or
14 the preponderance of the evidence. In criminal cases the
15 State's proof is more powerful than that. It must be
16 beyond a reasonable doubt. And that would be proof that
17 leaves you firmly convinced of the Defendant's guilt. In
18 this life, there are very few things that we can know with
19 absolute certainty. And in criminal cases, the law doesn't
20 require proof that overcomes every possible doubt. If,
21 based upon your consideration of the evidence you're firmly
22 convinced the Defendant is guilty of the crime charged,
23 then you must find the Defendant guilty. If, on the other
24 hand, you think there's a real possibility that the
25 Defendant is not guilty, then you must give the Defendant

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

611

1 the benefit of that doubt and find him not guilty.

2 Now, ladies and gentlemen, I remind you that during

3 this trial you and I have had certain duties to perform.

4 As the Trial Judge, it's been my responsibility to preside

5 over the trial of the case, to rule on the admissibility of

6 evidence that's been offered during the trial. You're to

7 consider only the competent evidence that is before you.

8 Any objection that was made and sustained to any evidence

9 then, of course, you would disregard that testimony!

10 You're to consider only the testimony that's been presented

11 from the witness stand, the exhibits that have been made a

12 part of the record and that alone. I also have the

13 additional duty to charge you the law that's applicable to

14 this case.

15 Now, as the Presiding Judge, I'm the sole, exclusive

16 Judge of the law. It's your duty as jurors to accept the

17 law and apply the law just as I state it to you. Some of

18 you may have an idea of what the law is or even a notion of

19 what the law ought to be in a case such as this, and if you

20 have such an idea and it's in conflict with what I now tell

21 you the law is, then you must abandon such an idea.

22 Because under your oath, you've sworn to accept the law and

23 apply the law just as I state it to you.

24 Every case that's tried in this courtroom before a

25 jury, that jury becomes the sole, exclusive judge of the

1 facts in the case. A Trial Judge can't intimate or state
2 or comment on or make any statement whatsoever to a trial
3 jury about the facts in a case. Since you, ladies and
4 gentlemen, are the sole judges of the facts in this case,
5 you're not to infer from anything I've said during the
6 progress of the trial, any rulings I've made on the
7 admissibility of evidence or otherwise, anything I say to
8 you now in the course of this instruction to you, that I
9 have an opinion about the facts in the case. I don't have
10 an opinion about the facts of the case. The Constitution
11 of South Carolina prohibits a Trial Judge from having an
12 opinion about the facts in the case. That's exclusively up
13 to you and you alone to determine what the facts are. You
14 must make that determination as to the effect, the value,
15 the weight and the truth of the evidence that has been
16 presented during the trial.

17 Ordinarily in a trial there's two types of evidence.
18 There's what's called direct evidence and circumstantial
19 evidence. Direct evidence is the testimony of a person who
20 claims to have actual knowledge of a fact, such as an
21 eyewitness. It's evidence which immediately establishes
22 the main fact to be proved. Circumstantial evidence is
23 proof of a chain of facts and circumstances that would
24 indicate the existence of a fact. It's evidence which
25 immediately establishes collateral facts from which the

1 main fact may be inferred. In other words, circumstantial
2 evidence is based on inference and not upon personal
3 knowledge or observation. The law makes absolutely no
4 distinction between the weight or the value to be given
5 either direct evidence or circumstantial evidence. Nor is
6 a greater degree of certainty required for circumstantial
7 evidence than of direct evidence. You should weigh all the
8 evidence in the case. And after weighing the evidence if
9 you're not convinced of the guilt of the Defendant beyond a
10 reasonable doubt, then you must find the Defendant not
11 guilty.

12 Necessarily, you must determine credibility of
13 witnesses who've testified in the case. Credibility simply
14 means believability. It becomes your duty as the jury to
15 analyze and evaluate the evidence, determine which evidence
16 convinces you of its truth. In determining the
17 believability of witnesses who've testified, you can
18 believe one witness over several witnesses. You can
19 believe several witnesses over one witness. You can
20 believe part of the testimony of a witness and reject the
21 remaining part of the testimony of that very same witness.
22 In your discretion, you can believe the testimony of a
23 witness in its entirety. You can reject the testimony of a
24 witness in its entirety. You can consider whether any
25 witnesses exhibited to you any interest or bias or

1 prejudice or other motive in the case. You can consider
2 the appearance of the witness while on the witness stand,
3 the demeanor of that witness. Was the witness
4 straightforward or hesitant in answering? Was the
5 testimony of the witness consistent or inconsistent or how
6 did the witness come to know the testimony to which that
7 witness offered? The statements, was the testimony of one
8 witness strengthened or weakened by other evidence in the
9 case? It's totally your prerogative, ladies and gentlemen,
10 to determine the credibility of witnesses who have
11 testified.

12 Now, ordinarily the rules of evidence would not permit
13 a witness to testify to opinions or conclusions, but there
14 is an exception to this rule for what we call expert
15 witnesses. A witness who, by education and experience, has
16 become an expert in some art or science or profession or
17 other field or calling, may give an opinion as to the
18 relevant material matter to which that witness claims to be
19 an expert and can state the reasons for that opinion. Now,
20 you should consider any expert opinion received into
21 evidence in this case, and like other evidence, give it the
22 weight that you think it deserves. If you decided that the
23 opinion of an expert is not based on sufficient education
24 and experience, or if you conclude the reasons given by the
25 expert in support of that opinion are not sound, or the

1 opinion is outweighed by other evidence, you can disregard
2 the opinion entirely. An expert witness testimony is to be
3 given no greater weight than that of any other witness
4 simply because that witness is an expert. Furthermore,
5 you're not required to accept an expert's opinion, even
6 though it may be uncontradicted.

7 In order to establish criminal liability, criminal
8 intent is required and must be proven by the State beyond a
9 reasonable doubt. Criminal intent is always a matter that
10 must be determined by a jury from the circumstances
11 surrounding the situation. There's no way that we can
12 prove intent to mathematical certainty. So the law says
13 that criminal intent may be inferred from the circumstances
14 shown to have existed. It's not necessary to establish
15 intent by direct and positive evidence. But intent may be
16 established by inference in the same way as any other fact,
17 taking into consideration the acts of the parties, all the
18 facts and circumstances of the case. Criminal intent is a
19 mental state. It's a conscious wrongdoing. It's up to you
20 to determine what the Defendant intended to do based upon
21 the circumstances shown to have existed.

22 Now, there's been evidence presented that witnesses
23 have made prior statements, which are not consistent with
24 the witness's present testimony. You may use this evidence
25 to decide whether to believe a witness. You may also use

1 evidence of the earlier contradictory statements to
2 determine the truth of those statements. It's up to you to
3 decide whether to believe the earlier statements or the
4 testimony given at trial. If a witness is known to have
5 knowingly testified untruthfully concerning any material
6 matter, you may consider this in determining whether to
7 trust the witness's testimony as to other matters. You may
8 reject all testimony of a witness or give all or part of
9 the testimony the weight you think it deserves as I've
10 explained to you earlier.

11 Now, in this case the statement alleged to have been
12 made by the Defendant has been admitted into evidence. And
13 while the Court has determined that the statement is
14 admissible, I instruct you, you make the ultimate decision
15 of whether or not the Defendant made the statement. If the
16 Defendant did make the statement, you must determine
17 whether the statement was made by the Defendant voluntarily
18 and of his own free will. This means the statement was not
19 caused by pressure or force or fear, threats, coercion or
20 intimidation or by hope or promise of leniency or reward of
21 any kind. In determining whether the statement was
22 voluntarily made, you should consider both the
23 characteristics of the Defendant and the details of the
24 questioning. Some of the factors that you may consider,
25 should consider, are the age of the Defendant, the

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

617

1 Defendant's education or lack of education, the mental
2 ability and capacity of the Defendant, the background and
3 the environment of the Defendant, the place, the length of
4 the detention, the nature of the questioning and the advice
5 or lack thereof to the Defendant of his Constitutional
6 rights, including but not limited to the right to remain
7 silent, that any statement could be used against him in a
8 court of law, the right to have a lawyer present and if he
9 could not afford a lawyer, a lawyer would be appointed to
10 represent him without any cost. And that he could stop
11 making a statement at any time. You must carefully
12 consider all the surrounding circumstances before you give
13 any weight to an alleged statement. The State has the
14 burden of proving beyond a reasonable doubt that the
15 alleged statement was voluntary. If you determine it was,
16 you may give the statement any further consideration that
17 you deem proper. You must decide what weight, if any,
18 should be given to the alleged statement. If you determine
19 the alleged statement was not the free and voluntary
20 statement of the Defendant, you should not consider that
21 statement at all.

22 Now, a person who voluntarily becomes intoxicated is
23 just as responsible for acts committed while intoxicated as
24 when the person was not intoxicated.

25 In this case, ladies and gentlemen, the Defendant is

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

618

1 charged with homicide by child abuse. The State must prove
2 beyond a reasonable doubt that the Defendant caused the
3 death of a child under the age of eleven, while committing
4 child abuse or neglect. Child abuse or neglect is an act
5 or a failure to act which causes harm to the child's
6 physical health or welfare. Harm to the child's physical
7 health or welfare means that the Defendant either: one,
8 inflicted or allowed to be inflicted on the child physical
9 injury; two, failed to supply the child with adequate food,
10 clothing, shelter or health care, and that this failure
11 caused a physical injury or condition which caused death;
12 or three, abandoned the child causing the child's death.
13 The State must also prove beyond a reasonable doubt that
14 death occurred under circumstances showing an extreme
15 indifference to human life.

16 Now, Mr. Foreman, I've prepared a verdict form. I
17 believe it'll be self-explanatory. The verdict form merely
18 says that the jury unanimously finds the Defendant guilty or
19 not guilty of the charge alleged. That being homicide by
20 child abuse. There's no significance in the order in which
21 the choices are made. One simply has to be listed before
22 the other. Your verdict must be unanimous. All twelve of
23 you must agree upon that verdict. Your verdict cannot be
24 based upon sympathy or passion or prejudice or emotion or
25 any other consideration not in evidence. When you have

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

619

1 reached that unanimous verdict, I ask that, Mr. Foreman,
2 you merely check the appropriate block, sign your name as
3 foreperson, date it, and we'll receive your verdict back
4 here in the courtroom.

5 At this time, I'm going to ask you to go back to your
6 jury room. Don't start your deliberations just yet.
7 There's a final matter of law I need to take care of with
8 the attorneys, after which, hopefully, we'll have the
9 verdict form and the exhibits and other matters back for
10 you to begin your deliberations. But for right now, don't
11 start your deliberations. I'll instruct you when you are
12 to. You may retire to your jury room at this time.
13 Everyone else, please remain seated.

14 (WHEREUPON, the jury exited the open court at
15 approximately 1:15 P.M.)

16 THE COURT: Any exceptions to the charge, from
17 the State?

18 MS. HODGE: None from the State, Your Honor.

19 THE COURT: From the Defense?

20 MS. MANIGAULT: None from the Defense, Your
21 Honor.

22 THE COURT: All right. If y'all will make sure
23 all the exhibits are in order, we'll get them back with the
24 verdict form to the jury.

25 Could I see the lawyers here just for a minute?

1 (WHEREUPON, Ms. Hodge and Ms. Manigault approached the
2 bar.)

3 THE COURT: Just leave that there and ask Ms.
4 Wilson to come out for a minute, okay?

5 (WHEREUPON, Juror number 184, Amanda E. Wilson,
6 entered the courtroom at approximately 1:21 P.M.)

7 THE COURT: Ms. Wilson, you have exams this
8 week; right?

9 THE JUROR: Well, I talked to my professors.

10 THE COURT: I wanted to verify with you, you're
11 okay today?

12 THE JUROR: Yes.

13 THE COURT: You don't have any tests today?

14 THE JUROR: No, I have until tomorrow.

15 THE COURT: So you're good?

16 THE JUROR: Yes.

17 THE COURT: Thank you very much.

18 THE JUROR: Thank you.

19 THE COURT: You can return back.

20 (WHEREUPON, Juror number 184, Amanda E. Wilson, left
21 the courtroom and returned to the jury room.)

22 THE COURT: All right. You can take that back
23 and then have the two alternates come out. Then you can
24 tell them they can begin deliberating.

25 THE BAILIFF: The food is here, Judge.

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

621

1 THE COURT: The food is here? Ask them if they
2 would -- ask the jury if they'd rather eat first with all
3 fourteen of them, but they can't talk about the case, or
4 either if they're ready to start deliberating, I need the
5 alternates. Any objection to that if they want to eat
6 first? They've got food here for the alternates, but not
7 discussing it. Or either if they want to deliberate while
8 they eat, then we'll send it back, but not with the
9 alternates.

10 THE BAILIFF: They're going to eat and deliberate
11 at the same time.

12 THE COURT: They want to eat and deliberate at
13 the same time?

14 THE BAILIFF: Yeah.

15 THE COURT: Okay. If you'll tell them to start
16 their deliberations, then bring the alternates in here for
17 me, okay?

18 (WHEREUPON, the verdict form and exhibits were
19 delivered to the jury and deliberations began at
20 approximately 1:22 P.M.)

21 (WHEREUPON, the two alternate jurors entered the
22 courtroom.)

23 THE COURT: Hey. Your fellow jurors have
24 survived so you're not going to be needed on this case. I
25 understand they have lunch for you. Ms. Olsen tells me

1 that she may need you on the panel that's going to be here
2 in fifteen minutes. So if you could go back to the
3 assembly room after you get your lunch. If you want to eat
4 back there or want to go elsewhere, but if you'll be back
5 in the assembly room. We're going to be selecting a jury
6 in about twenty minutes or thirty minutes or so. And so if
7 you would, report back down there. Thank you for your
8 service on this case.

9 THE JURORS: Okay.

10 THE COURT: Thank you very much.

11 All right. We'll be at ease until we hear from our
12 jury.

13 (WHEREUPON, court stood at recess awaiting a verdict
14 from the jury.)

15 THE COURT: All right. Are there any matters we
16 need to take care of before we hear from our jury? I
17 understand that the jury has reached a verdict. Anything
18 from the State?

19 MS. HODGE: Nothing from the State, Your Honor.

20 THE COURT: Anything from the Defense?

21 MS. MANIGAULT: Nothing from the Defense, Your
22 Honor.

23 THE COURT: I understand that a case of this
24 nature has a lot of emotion involved and can create a lot
25 of emotion for family and friends, the parties, the

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

623

1 lawyers, the Defendant. And I don't know what the jury
2 verdict is. I know they listened carefully. They've
3 deliberated now. If there's any person in the courtroom
4 that believes that their emotion would not allow them to
5 have no outburst, whatever the verdict may be, this would
6 be the time to excuse yourself. We're going to receive the
7 verdict. We're going to listen to the verdict as it's
8 read. If anyone believes they're just going to be
9 compelled to give an outburst of elation or sadness, this
10 is not the time to do that. I'm not trying to hamper
11 anyone in anyway, but I want to make sure that the jury,
12 that we have the proper decorum when we hear the jury
13 verdict. If anyone feels they can't contain themselves,
14 obviously, you can come right back in after we get the
15 verdict and be subject to all the procedures then. But
16 this is the time to excuse yourself if you feel like you
17 just can't hold yourself emotionally. Otherwise, I will
18 expect everyone in the audience to have the proper decorum
19 as we hear the verdict.

20 All right. Everyone's staying. All right. If the
21 jury's ready, you can have them come in.

22 (WHEREUPON, the jury entered the open court at
23 approximately 3:24 P.M.)

24 THE COURT: Mr. Foreman, I understand the jury
25 has reached a verdict; is that correct?

1 THE JUROR: We have, Your Honor.

2 THE COURT: Is it a unanimous verdict?

3 THE JUROR: It is.

4 THE COURT: If you would, please, hand the
5 verdict form to the bailiff.

6 Madam Clerk, you may publish the verdict.

7 THE CLERK: The State of South Carolina versus
8 James Johnson, indictment number 2011-GS-23-7262. We, the
9 jury, find the Defendant, James Johnson, as to the charge
10 of homicide by child abuse, guilty.

11 THE COURT: Is this your verdict and still your
12 verdict? If so, would you please indicate by raising your
13 right hand?

14 (WHEREUPON, all jurors' right hands were raised.)

15 THE COURT: Thank you. Let the record reflect
16 that all jurors have raised their hand.

17 Any other matters we need to take care of with the
18 jury in this case, from the State?

19 MS. HODGE: Nothing from the State, Your Honor.

20 THE COURT: From the Defense?

21 MS. MANIGAULT: Nothing from the Defense.

22 THE COURT: Mr. Foreman, ladies and gentlemen,
23 thank you very much for your service to us this week.
24 You've been a conscientious group. You've been reflective
25 as you listened. I noticed your demeanor as you listened

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

625

1 to the case. You paid attention and I appreciate that so
2 much. You've been a treat for me to work with. You've
3 been good judges of the facts and I appreciate so much your
4 willingness to serve this week. We have another trial now
5 in progress so we've already selected twelve people with an
6 alternate to serve on that jury. I don't know what we may
7 have for the rest of the week, but just out of a world of
8 precaution, I'm going to ask you, if you would, to call
9 back tonight after six o'clock. There'll be an instruction
10 for you on the answering machine as to whether you need to
11 call back or to come back later this week. Thank you for
12 your service again. I hope that when you get the next
13 summons for jury service -- you may remember from Monday
14 that I told you every three years you don't have to serve.
15 You'll get an exemption. I hope you'll waive that
16 exemption and serve again. I'm confident if you ever find
17 yourself not sitting in a jury box, but sitting at one of
18 those tables for whatever civil action or a criminal charge
19 against you, you'll want good, solid, sound, conscientious
20 jurors such as yourself to serve in that jury box for you.
21 You're excused at this time. If you would, call back
22 tonight after six o'clock. You can go with the bailiff
23 now. You're certainly welcome to stay if you wish.

24 Mr. Foreman, I would ask if you would wait in the
25 hallway just a moment. There's one additional paper I need

1 for you to sign for the clerk. The rest of you are
2 excused. Thank you very much for your service today.

3 (WHEREUPON, the jury exited the open court at
4 approximately 3:26 P.M.)

5 THE COURT: All right. We'll wait just a moment
6 until the clerk comes back.

7 All right. Any matters we need to take care of before
8 sentence is imposed in this case?

9 MS. MANIGAULT: Yes, sir. Your Honor, the
10 Defense would renew all of its pertinent motions made
11 during the trial, including the motion for a directed
12 verdict. And we additionally make a motion for a new
13 trial.

14 THE COURT: Well, I believe the evidence was
15 sufficient for the jury to make their factual determination
16 and I respectfully deny your motions, Ms. Manigault.

17 Is the sentencing sheet prepared?

18 Ms. Manigault, if you would come forward with your
19 client.

20 (WHEREUPON, Ms. Hodge, Ms. Manigault and the Defendant
21 approached the bar.)

22 THE COURT: Anything from the State before I hear
23 from Ms. Manigault. And I'll be glad to hear from Mr.
24 Johnson.

25 MS. HODGE: Yes, Your Honor. The State --

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
Charge

627

1 obviously you've been here through the whole trial. You
2 see what a horrific, sad, senseless case this is. She was
3 really just a baby and, Your Honor, the evidence showed,
4 the State believes, the Defendant brutally abused this
5 child and killed this child, and clearly showed no
6 acceptance of responsibility by forcing the case to trial,
7 which I know we're not asking you to punish him for going
8 to trial. But there was overwhelming evidence of his
9 guilt. He refused to accept that responsibility and
10 acknowledge that guilt. I don't think he should be given a
11 benefit for non-acceptance. The State originally offered
12 thirty-five years on the case. He declined that plea
13 offer.

14 And I know that the family would like to address the
15 Court. He does not have a significant prior record, but he
16 does have a prior record going back to juvenile charges in
17 2001. And then some magistrate level charges of disorderly
18 conduct and drug paraphernalia in 2005. And I believe Tina
19 Marie would like to speak on behalf of Minor 1 . This is
20 Minor 1 's aunt.

21 THE COURT: Yes, ma'am. If you would state your
22 name for the record, I'll be glad to hear from you.

23 MS. CULBERTSON: I'm Tina Marie Culbertson.

24 THE COURT: Excuse me?

25 MS. CULBERTSON: Tina Marie Culbertson.

1 THE COURT: All right, Ms. Culbertson.

2 MS. CULBERTSON: Your Honor, our family
3 understands that no matter what we say or do today, we will
4 not be able to bring Minor 1 back. Our family would like
5 to see James Allen Johnson serve life in prison without
6 parole. Knowing Minor 1 cannot be here to live her life
7 and be free, why should James Allen Johnson, who took her
8 life, be able to live freely.

9 THE COURT: Thank you, Ms. Culbertson.

10 MS. HODGE: Thank you.

11 THE COURT: Anything else from the State?

12 MS. HODGE: No, Your Honor. I'm sorry. I do
13 need to say that the child's biological father, Mr. Gore,
14 he was present for the first day of Court. He was here
15 during the first day of trial. He was emotionally overcome
16 during that day. He said he could not come back. He could
17 not hear this anymore. He wanted you to know that he was
18 here and he obviously was concerned and he stated that he
19 would also ask for life. He would ask the Court for you to
20 impose a life sentence. He just could not bring himself to
21 come back. He also knew that photographs were going to be
22 admitted and some more detailed testimony was coming out.
23 He is very, very concerned and those were his wishes.

24 THE COURT: All right. Ms. Manigault, I'll be
25 glad to hear from you, your client or anyone else who would

1 like to address me.

2 MS. MANIGAULT: Please the Court, Your Honor. My
3 client's been in jail since June 2nd of 2011. He did not
4 make bond. We did receive an offer. The last offer we
5 received from the solicitor's office was an offer of thirty
6 years. My client refused that offer. The account that the
7 Court heard during his testimony is the account that he has
8 given me from day one of our interview back in June of
9 2011. The Court has heard all the evidence and
10 testimonies. You've heard that his background, education
11 is limited. You heard Dr. Frierson testify that he has a
12 very low IQ of sixty-seven, that he has mild intellectual
13 deficiency, which in the past was called mental
14 retardation. Dr. Frierson also testified that he could not
15 hold a job and he would need to be supervised in certain
16 areas of his life, daily activities, especially financial.

17 I understand that the Court also has heard and my
18 client has admitted that he had freely used illegal
19 substance drugs, marijuana, Xanax, pills and whatever. Of
20 course, we realize that that is not an excuse for anything.
21 So we ask the Court for mercy in this case. I don't have
22 any other information to present on his background history.
23 He did just go to the eleventh grade. His mother has been
24 here in Court with him. His sister has been here. His
25 brother has been here with him. Friends of the family has

1 been here, trying to support -- show support for him. So
2 we would ask the Court for your mercy and consideration in
3 sentencing.

4 THE COURT: Thank you, Ms. Manigault.

5 Mr. Johnson, anything else you want to say?

6 THE DEFENDANT: I loved them. I loved that whole
7 family, Minor2 and Minor1 . I wish this wouldn't have
8 happened to her. I wanted to be her daddy. That's all I
9 can say.

10 THE COURT: All right. Thank you, sir.

11 MS. MANIGAULT: Your Honor, I'd like to state
12 this for the record.

13 THE COURT: Yes, ma'am.

14 MS. MANIGAULT: We had numerous opportunities to
15 review all of the evidence and the discovery presented to
16 us by the State starting back in October the 4th of 2011.
17 And we've had ample opportunity to continue to review the
18 case with our client, including all the photographs that
19 were presented here this week, except for maybe one. But
20 we had an opportunity to show those photographs to him
21 before the case continued. So we had ample opportunity for
22 him to review all the evidence in the case.

23 THE COURT: Some of the photos, I believe, were
24 not admitted. Does the State still wish to make those
25 Court Exhibits?

Charge

1 MS. HODGE: Yes, Your Honor.

2 THE COURT: Okay. I think they're up here. I'll
3 make sure those are marked as Court Exhibits before we
4 conclude.

5 Sir, as I understand the statute, it requires me to
6 consider aggravating, particularly mitigating,
7 circumstances. I've certainly tried to do that. I've read
8 and re-read Dr. Frierson's report. So I want, particularly
9 the defense, to know that I've considered all the factors
10 and his testimony that we had earlier in the case, and his
11 findings from a psychological standpoint.

12 Mr. Johnson, it's unfortunate for you that you've not
13 just been in jail for two years, but you, yourself, made a
14 jail because of your drug addiction for most of your life,
15 I'm sure. You've really not been a free man since you've
16 been addicted and under that control. My job is to put you
17 behind other bars that society demands. I hope that you
18 can find some peace there. I certainly hope the family for
19 this tragic, tragic event that occurred can find peace as
20 well. I don't know what that young child could have been
21 had she lived. We don't know the impact she could have had
22 on society.

23 This is case 2011-GS-23-7262. The sentence of the
24 Court is Defendant be committed to the State Department of
25 Corrections for a period of sixty-two years. I wish you

1 the best.

2 MS. HODGE: Thank you, Your Honor.

3 THE COURT: We'll take a short break and we'll be
4 ready to start back with our other trial.

5 (WHEREUPON, Court Exhibit Numbers 3, 4 and 5 were
6 marked for identification.)

7

8 [END OF REQUESTED TRANSCRIPT OF RECORD]

9

WITNESSES

DOCKET NO. 2011-GS-23-
KBF

007262

The State of South Carolina

C. T. Miller

Paul
County of Greenville

Greenville County Sheriffs Office

6/2/2011

COURT OF GENERAL SESSIONS
September

TERM 2011

CM

THE STATE

vs.

ARREST WARRANT NUMBER
1433991

JAMES ALLEN JOHNSON

ACTION OF GRAND JURY

TRUE BILL

Bobby L. Daum
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

manit, aut
Indictment for
2356

HOMICIDE BY CHILD ABUSE

VIOLATION § 16-03-0085(A)(1)

Guilty

[Signature]
Foreperson of Petit Jury

Date: JUNE 5, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on

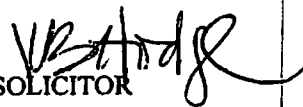
SEP 13 2011

the Grand Jurors of Greenville

County present upon their oath:

That JAMES ALLEN JOHNSON did in Greenville County, on or about the 25th day of May, 2011,
cause the death of N. D. S., a child under the age of eleven, while committing child abuse or neglect, and the
death occurred under circumstances manifesting an extreme indifference to human life. This is in violation of
§16-03-0085(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

2011-074615

I, James Allen Johnson do hereby give freely and voluntarily this statement to
Inv. C.T Miller and Inv J. Autrey

who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement

I am 26 years old, and I reside at: Rd. Travelers Rest, SC 29690

I have a 12th grade education, and I can read and write.

X JAJ Additional particulars on statement: My date of birth is _____, SS# _____, I understand all of the questions that Investigator Miller has asked me and I am giving this statement free and voluntarily and am giving Inv J. Autrey permission to type my statement for me. I am not under the influence of any drugs or alcohol. JAJ

X JAJ I swear that I never beat them. I played with them all the time. There is something that I haven't been truthful about. I picked her up and I saw that she was not breathing. I thought she was just asleep I thought she was asleep. I was trying to get her back. I just wanted to be with her, the baby. The rest could leave if they would just let me have her. I've been there for her if I knew what I was doing JAJ

X JAJ I was in the bathroom, but.. I tried to be a daddy I tried to correct them when they wrong so they wouldn't turn out like my sorry family. I tried to take care of her. No matter what happens I'm going to be the bad one then she can have her daughter back. JAJ

X JAJ Accidents happen. I hadn't been on medication in a while, at all. I wish she hadn't ever went away I threw a toy across the room and it hit her. It hit her in the forehead where there are all of the bruises. It was that day. If I didn't know she didn't have a chance, I never would have thrown that toy That's what happened JAJ

X I never would hurt a kid I've helped raised them. JAJ

X JAJ I don't deserve to live I never should have picked up that toy. That was the day before I don't know how those bruises got there. JAJ

X JAJ She started screaming. I was just trying to calm her down. I kissed on her at first and held her She kept crying and screaming I hadn't been on my medication. People are going to hurt me. Ann and "CO's " I covered Minor's mouth until she quit crying. Ann was in the bed when this happened I then went and told Ann that Minor was not breathing. JAJ

X JAJ Ann came in the living room and I told her that there was a glass of tea there and I guess Minor 1 drank it I told Ann about the tea because I was scared JAJ

X JAJ I love them and I always will I'm sorry for the problems I'm sorry for God creating me I'm sorry for all this. I've never been this kind of person before Please forgive me in time JAJ



I have read the above statement of 1/1 pages and it is true and correct as best I recall.

WITNESS:
C.T Miller
J. Autrey 11/27/11

X James Johnson
I HAVE RECEIVED A COPY OF THIS STATEMENT
X James Johnson

Sworn before me this _____ day of _____ 20 _____ NOTARY PUBLIC FOR SOUTH CAROLINA

12 53

600

Case Number 1111000076115

74615

James Allen Johnson

YOUR RIGHTS

DOB
SSA

Sheriffs Office

Greenville, S.C.

Date 06/02/2011

Time 2202

- X ^{JAJ} Before we ask you any questions, you must understand your rights.
- X ^{JAJ} You have the right to remain silent.
- X ^{JAJ} Anything you say can be used against you in court.
- X ^{JAJ} You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
- X ^{JAJ} If you have no money to pay a lawyer's fee, the court will appoint one to represent you without cost if you wish.
- X ^{JAJ} If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

X ^{JAJ} I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed JAMES JOHNSON

Witness CJ Wells

Witness J. [unclear] *1028/643

Time 2212

COURT'S
 EXHIBIT NO. 1
 IDENTIFICATION/EVIDENCE
 DKT.# 11-7262
 DATE: 6-3-11

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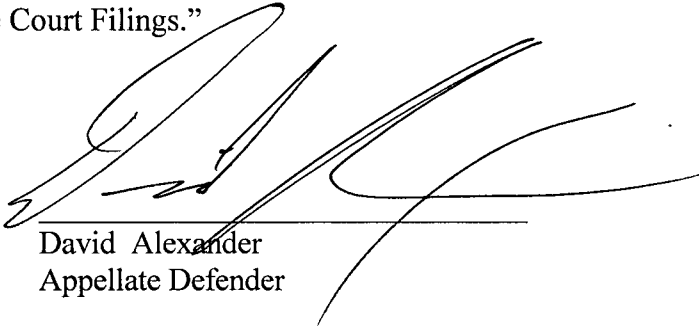
OF

-7 ... 12 53

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 18th, 2014



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT