

ORIGINAL

VOL I of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

D. Garrison Hill, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DONNA LYNN PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2012-212663

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

COURT OF GENERAL SESSIONS

2008-GS-39-02053

2008-GS-39-02052

2009-GS-39-01568

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

VOLUME I

JAMIE EDWARD MORRIS,)

DONNA LYNN PHILLIPS,)

LATASHA DIANE HONEYCUTT,)

DEFENDANTS.)

July 23rd, 24th, and 25th, 2012
Pickens, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

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Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for
Pickens County.

1 to convict my client. So why shouldn't I have it?

2 THE COURT: Okay. Well, I understand your position.
3 I don't find that there's anything in the late disclosure
4 or the requests that would justify continuing the case. I
5 just simply don't think there's anything specific enough
6 to constitute good cause for any delay.

7 What's the next motion?

8 MR. HARBIN: Judge, may it please the Court.

9 My motion -- at least, my first motion is a motion
10 for severance. We discussed this in chambers. But if I
11 could put a little bit on the record.

12 This child died in March of 2008.

13 Somebody correct me if I'm wrong.

14 The indictments were handed down on the grandmother
15 and the father in December of 2008. Almost a year after
16 that, an indictment was handed down on my client,
17 Ms. Honeycutt, in November of 2009.

18 Judge, they're not in a hurry to try this case. I
19 kind of want to highlight that. It was four years ago.
20 Judge, it's come to my attention through conversations
21 with Mr. O'Connell that his client wishes to testify, and
22 not only to testify, she wishes to bring up specific facts
23 about DSS involvement in the lives of Jamie and Latasha.
24 That's Mr. Morris and Ms. Honeycutt. And I assume that's
25 hers [phonetic] as well. And she's not alone, if the

1 Court can note that, for the record.

2 Judge, it would be my -- and it is my motion along
3 with this, and I can make it just anew after this motion
4 entirely, that the Solicitor's Office and the testimony be
5 limited so as to exclude any mention of DSS involvement.
6 In my estimation, the State is required to show in this
7 case that the child died -- and I think their theory at
8 this point is of a hydrocodone overdose. And their
9 theory, as best I can tell, Judge, is that Ms. Honeycutt
10 would be guilty of not rushing him to the hospital in
11 time.

12 And if that's incorrect, I welcome the Solicitor's
13 Office to correct me.

14 But for them to bring up DSS involvement -- and we
15 touched on this in chambers. It doesn't go to the heart
16 of the matter, whether or not the kid was administered
17 drugs and whether or not the kid received care. It's --
18 I don't see any way for DSS mentioning to pass a 403
19 analysis in any way.

20 And even if the Solicitor's Office would abide by a
21 ruling that Your Honor would make, I'm going to be
22 prejudiced by the Defendant making the same statements.
23 And I'm not sure that there's anything the Solicitor's
24 Office or I can do to prevent that because of her right to
25 testify as she pleases.

1 Now, Judge, I'm relying --

2 THE COURT: Well, there's not a right to testify as
3 you please. There's a right to testify to admissible
4 evidence. If something is ruled inadmissible and not to
5 be testified to, then there's no right for anyone to speak
6 about it.

7 MR. HARBIN: And that would, certainly, satisfy my
8 client, Judge.

9 THE COURT: And I don't know if -- I'm just saying
10 generally. I don't know anything about the specifics of
11 what you're talking about.

12 MR. HARBIN: And that's what I worry about, you know,
13 that she -- I understand that, of course, the Court is
14 going to appreciate her right to present her own version
15 of her defense. And, at this point, I understand her
16 version of her defense includes DSS conspiracies, for lack
17 of a better word.

18 Judge, it is my understanding that the Court has
19 discretion in this matter. It's not a mandatory one way
20 or the other. You're not mandated to try the cases
21 together. You're not mandated to grant my motion at all.
22 I would say that it's not going to prejudice the State at
23 all. They've got these witnesses here once, they can get
24 them here again. I'm, certainly, not trying to delay,
25 because this is four years later.

1 Judge, I think all things being equal, the Judge --
2 the Court has already kind of hinted that it would be
3 willing to try to work out what's admissible, what's not,
4 and what should be mentioned, and what should not. And if
5 it's not something we're able to guarantee a fair trial
6 for my client -- and by that I mean not be able to
7 guarantee that DSS is not improperly brought up by
8 Mr. O'Connell's client, then I think the easiest solution,
9 the fair solution, and the non-prejudice solution is to
10 simply grant my client a separate trial.

11 THE COURT: Thank you, sir.

12 MR. HARBIN: Yes, sir.

13 MR. RICHARDSON: Your Honor, regarding the severance,
14 I think that under State v. Jones -- that's 325 S.C.
15 310 -- that lays out the four things that are applicable
16 as to whether there can be a severance at trial. One
17 being, did this arise out of a single chain of
18 circumstances? I can read all four of them. I think the
19 one that Mr. Harbin is referring to would be number four.
20 And what that case says is that if there's no real right
21 of the Defendant, that's prejudice.

22 Well, I don't think Mr. Harbin has brought forth to
23 this Court a real right of the Defendant that would be
24 prejudiced by this -- by there being separate trials.
25 This all arose out of the same circumstances, the same

1 chain of events. And, Your Honor, that's the position of
2 the State as far as severance is concerned.

3 Another thing I would like to state, for the
4 record -- and this goes back -- just back to
5 Mr. O'Connell's motion. And this is just for the record.
6 I understand Your Honor has already ruled on it. But we,
7 in fact, gave up lab reports -- the AIT lab reports that
8 were mentioned, and, also, the toxicology -- the SLED
9 toxicology reports. Those were all sent to him on
10 February 10th of 2009. And that's for the record, and any
11 possible further actions that come from there.

12 THE COURT: All right.

13 MR. RICHARDSON: I think I addressed everything.

14 THE COURT: Okay. Yes, sir.

15 MR. HARBIN: Judge --

16 MR. RICHARDSON: The DSS part. I'm sorry.

17 MR. HARBIN: Yes.

18 MR. RICHARDSON: The Department of Social Services --
19 basically, that's the whole res gestae of this whole case.
20 The child was in DSS custody. He was, actually, in a home
21 with foster parents for a matter of about 10 months. And
22 then, in this particular case, he was being sent back to
23 them. He was, actually, being sent back to their custody
24 at this point in time. So that's why DSS would even be
25 involved in this.

1 And he -- certain statements were made to them. And
2 we have foster parents. I'm not sure how we explain
3 things that happened from the foster parents connecting
4 into this without it being known that he was, in fact, in
5 DSS custody. Why he was in there, I don't think is
6 relevant to the case at all. And we would leave that
7 aspect out of it. But we would have DSS workers. We'll
8 have guardians testifying. We would, also, have the
9 foster parents.

10 MR. HARBIN: Judge, in response. I don't know what
11 the probative nature of the evidence is that any DSS
12 participant would offer. The res gestae of the case is
13 the administration of narcotics to the point that the
14 child overdoses, and whether or not care was given in an
15 appropriate manner. What happens prior to Wednesday when
16 they get the child back -- and, of course, Friday, he
17 spends the weekend with mom and -- I'm sorry, the father
18 and grandmother, and what happens Sunday night, that's the
19 res gestae of the case.

20 The rest of it is just getting into things that are
21 entirely unnecessary. I know that the Solicitor's Office
22 had mentioned prior that they feel they have a burden to
23 show that the child was in good health. I can solve that
24 with a stipulation that as of Wednesday, the child was not
25 overdosed with hydrocodone.

1 Now, I don't know. I can't speak for Mr. O'Connell
2 and Mr. DeJong. But it doesn't seem that there's any
3 probative value to telling the jury that the child was
4 formerly in foster care or formerly involved in DSS. I
5 don't see how that helps the jury get to any closer of a
6 decision as to whether or not hydrocodone was
7 administered, and whether care was given.

8 As to the -- working in reverse. As to the motion
9 for severance, I would say, Judge, that Doug is right,
10 that he has a right to bring these charges together. And
11 I understand that. But if our goal here, as participants
12 in this courtroom procedure, is to ensure a fair trial,
13 then we know the easiest way to do that is to simply give
14 her a separate trial. I'm not sure that that's not the
15 best argument for discretion of the Court.

16 And, Judge, I'm, specifically, relying on State v.
17 Dennis, 337 S.C. 275. I think this language was in other
18 cases as well. But motions for severance and separate
19 trials are just to the discretion of the Court.

20 And, in this case, I would say, Judge, that if you
21 did choose to provide a separate trial for my client,
22 there's no prejudice to the State. It's not a time
23 sensitive issue. And so if there's no prejudice to the
24 State, then I would encourage you to use that discretion.
25 The specific right that she is going to have abridged is

1 her right to have a -- I know it's a specific -- her right
2 to have evidence presented that is limited in an
3 appropriate fashion.

4 And, Judge, I understand that the Solicitor's Office,
5 as well as the Court, may be willing to try to limit that.
6 I'm just worried that, at some point, Ms. Phillips right
7 to present a defense is going to overlap with my client's
8 right to have certain evidence excluded, Judge.

9 THE COURT: Okay. I understand your motion.

10 What is the State's response to --

11 MR. DEJONG: Your Honor, if I may.

12 THE COURT: Oh, I'm sorry.

13 MR. DEJONG: I apologize for interrupting.

14 THE COURT: Yes. Go ahead, Mr. DeJong.

15 MR. DEJONG: So the record is clear, I am joining in
16 Mr. Harbin's motion with regard to any DSS testimony that
17 occurred prior to March the 12th of 2008. March the 12th
18 being, I believe, the date the child was returned home.

19 I, like Mr. Harbin -- and I would argue -- and I'm
20 not going to reargue it. But I don't see the relevance.
21 I don't see the probative value of anything that any of
22 DSS' involvement prior to March the 12th of 2008 -- how
23 DSS got involved is totally unrelated to the factual
24 issues before the Court in this case. I think it is
25 merely a ruse on the part of the State to prejudice my

1 client, who I represent, but to some degree all of the
2 Defendants in this matter to try to show somehow bad
3 parenting, involvement by DSS, or whatever that has
4 nothing to do with the factual allegations in this case.
5 And, therefore, I join in the motion with Mr. Harbin.

6 MR. HARBIN: Judge, I can correct myself and limit my
7 motion a little bit for the Solicitor's Office that
8 Mr. DeJong and I have spoken about. And he outlined this
9 more clearly than I did.

10 If a DSS worker would like to testify to a statement
11 they heard after this event, I think that's fair. I do
12 think that they should be instructed not to say there was
13 an open case prior, if we kind of get our half of it
14 there. Because it's perfectly legitimate to understand
15 that DSS might investigate a suspicious death, so.

16 MR. DEJONG: Just so the record is clear, I don't
17 agree with that, Your Honor.

18 MR. HARBIN: Okay. I'm sorry, Judge.

19 MR. DEJONG: That's all right.

20 But the thrust of his initial motion -- anything that
21 happened prior to March the 12th, I move to not be allowed
22 in, basically, under 403.

23 MS. BARWICK: Judge, we have no problem with that,
24 with only bringing up DSS involvement after the incident
25 took place. And we are fine with that.

1 The only thing that we want to clarify -- and we
2 don't want to back door DSS involvement. The foster care
3 mother, Dionne Scotti, she had 10 years [sic] of
4 experience with this child. She provided a routine of
5 this child's schedule to the mother, Latasha Honeycutt.
6 If we could just say that this other woman had Child for
7 10 months, and not say DSS, and not say foster. She had
8 the child for 10 months and gave a routine over.

9 Because, Your Honor, what that routine will show is
10 that the child normally got up at 7:30. And, Your Honor,
11 the 911 call was not made until 11:15. And the mother,
12 through all of her statements, said over and over again
13 between 10:00 and 10:30 is when I found him unresponsive.
14 That shows neglect, that she wasn't worrying while that
15 child wasn't awake at 7:30, and waited until 10:30.

16 So we would just ask that Ms. Dionne Scotti is able
17 to say, I had this child for 10 months. He stayed with me
18 at my house. When he was returned to his mother's house,
19 I gave this routine over.

20 THE COURT: Okay.

21 MR. HARBIN: Judge, the routine -- and as much as I
22 really want to really be cooperative here, and kind of
23 come to some kind of mutual agreement so that something
24 can be presented to the Court. The routine is something
25 that is either documented or suggested by a layperson.

1 It's just another mother figure. And then when brought
2 home, he has his own mother figure.

3 What the child did prior -- you know, my kid gets up
4 at 9:00, and goes to sleep at 9:00. And I don't know what
5 other kids do. My kid happens to be the same age as
6 Child. Sometimes, she goes to bed at 10:00 and gets up
7 at 10:00. It's -- you know, it's really just about what
8 my wife has her to do. It has nothing to do with what's
9 appropriate for the child. It's not -- she's not a
10 medically-trained professional, as I understand it. She's
11 simply somebody that had a preference.

12 We would be -- to use that argument, we would be
13 objecting to the introduction of that timeline anyway.
14 And I'll point out as well that the child was received
15 Wednesday at 9:00 p.m. from DSS custody. So they're
16 breaking their own schedule already.

17 And by way of background a little bit. Remember, the
18 child is allegedly suffering from a cold, and had missed a
19 nap, and was tired. So, you know, the sleeping late is
20 easily explainable. But that's a jury argument. I just
21 want to make it clear that we're going to object to the
22 introduction of that timeline. And, thus, I think if that
23 objection was sustained, then we wouldn't have a problem
24 with the foster care mother.

25 Again, I can stipulate, at least, on behalf of my

1 client that there was no outward appearance of
2 hydrocodone, or whatever they want to say, you know. The
3 child was healthy, you know, as far as you could tell from
4 looking at the child, which is all they could do anyway.
5 And by "they," I mean the foster parents. They have said
6 he looked healthy and appeared to be healthy.

7 MR. DEJONG: I join in that argument, too.

8 And I would simply add that whether or not the State
9 wants to call this a foster parent or whatever, I think it
10 leads to a lot of speculation on the part of the jury of
11 why this child was being cared for by this person.
12 Because I don't think the State can bring out any blood
13 relationship, or anything else. So, now, we're opening up
14 the door for the jury to speculate as to why the child was
15 in that custody. And jurors aren't stupid. They live in
16 the same world the rest of us live in.

17 So I think you're just opening up that door, maybe
18 even exacerbating it somewhat by allowing them to
19 introduce this -- I don't know what she's going to be.
20 She's not going to be a foster mother. She's not going to
21 be a surrogate mother. I guess she's going to be some
22 10-month interim caretaker. I don't know what she's going
23 to be.

24 But I, certainly, think it opens the door for
25 speculation. And I would join in with Mr. Harbin on that

1 argument, Your Honor.

2 THE COURT: Mr. O'Connell.

3 MR. O'CONNELL: Your Honor, my client has instructed
4 me to say that she believes all this evidence ought to
5 come in. The child had a flu shot prior to being
6 delivered to -- I thought it was that afternoon on
7 Wednesday. It could have been in the morning. So we're
8 only talking about a five-day period of time.

9 The child had a flu shot, and had suffered from a
10 brain injury that occurred about a year before -- two
11 brain injuries. And this is all relevant information as
12 to what could have happened to this child, what could have
13 happened if maybe these toxicologists knew this and knew
14 that this child had some kind of brain injury, maybe --
15 just maybe that might have made them say, wait, that
16 changes the whole scale there.

17 THE COURT: Was there any medical evidence to back
18 that up?

19 MR. O'CONNELL: Back what up?

20 THE COURT: Sir?

21 MR. O'CONNELL: I'm asking maybe -- maybe the
22 toxicologist, if he had some questions -- if you knew this
23 child had two brain injuries, would your testimony be
24 changed any? I'm just saying I don't want my client
25 blamed for any reason because she wants to tell what has

1 been happening since this child was a young kid.

2 DEFENDANT PHILLIPS: I just want all the cards laid
3 out on the table.

4 THE COURT: Okay. Ma'am, I want you to let your
5 lawyer speak for you. And I really don't believe it's
6 going to be beneficial to anyone for you to continue
7 talking out loud while we're having this proceeding.

8 All right, ma'am. Do you understand what I'm saying?

9 DEFENDANT PHILLIPS: Yes, sir.

10 THE COURT: Is there anything unclear about that?

11 DEFENDANT PHILLIPS: No, sir.

12 MR. O'CONNELL: So, Your Honor, again, whatever
13 they're talking about, whatever motion is made, whatever
14 severance, or whatever, it limits my client from her
15 testimony and her defense. And her defense is that she
16 never did anything. But things could have happened
17 before. Events could have happened before. And events
18 happened, certainly, after delivery of the child on Sunday
19 evening that she and Jamie Morris had no control over.

20 So if you're going to limit it, you might as well
21 just say, let's kick out all of the DSS people that were
22 going to come here. Because sooner or later, somebody is
23 going to say, well, we had this child in custody -- or
24 whatever they do -- for a period of time. And the child
25 was delivered back by court order. Somebody is going to

1 say it. So I think we ought to just go forward, Your
2 Honor.

3 THE COURT: Well, again, what, specifically, is it
4 that your client is trying to demonstrate from admitting
5 into evidence that the child was in DSS custody at one
6 point, and had a foster parent -- or parents?

7 I mean, how does that advance the truth seeking
8 function of the jury for them to know that, specifically?

9 I mean, the relevant and underlying issue is whether
10 there was child abuse or neglect that caused the death of
11 the child. So, as I understand it, the State's theory is
12 isolated to the administration of the medicine.

13 And how would what happened before March 14th, 2008,
14 bear on that?

15 I understand what you're telling me about the head
16 injuries. And if you can just clarify or elaborate how
17 that would, specifically, eliminate any issue in this
18 trial, it would help me in deciding the motion.

19 MR. O'CONNELL: Well, Your Honor, it's very difficult
20 for me in this case. Because somebody wants to say or
21 tell everything. And I keep trying to tell them that
22 evidence is -- evidence is relevant -- relevant evidence
23 and things that should be just brought up during the
24 hearing, and so on and so forth.

25 The problem in this case is that somebody wants to be

1 severed from the case because my client may say some
2 things that might go against her, because DSS was
3 involved. Other client's don't want evidence out there
4 because DSS was involved in this case.

5 And my position is they ought to hear the whole
6 thing. Everything -- this is a 21-month-old child, I
7 believe. And they ought to just know everything that
8 happened in this child's life, and see what was going on
9 in this child's life. Being relevant, I believe that's
10 fine, if you want to say it -- that's a jury question. I
11 think the jury should know everything that happened to
12 this young child in its life. And then they will have
13 more evidence to go by than just us trying to -- well, you
14 can't mention DSS. But then after a certain day, you can
15 mention DSS, and so on and so forth.

16 THE COURT: Okay. My ruling -- and, again, it is
17 made at the threshold of the trial in limine -- is that,
18 first of all, the evidence about prior care of the child
19 in the custody of DSS or the foster parents is not
20 admissible. Specifically, I find that whatever relevance
21 that historical fact may have is vastly outweighed by the
22 danger of unfair prejudice, or confusion of the issues,
23 and other considerations of Rule 403.

24 I find the issues, again, in this matter are the
25 determination by the jury of the facts of whether child

1 abuse or neglect occurred, and whether it proximately
2 caused the death of the child, Child

3 I find that the events that occurred before the dates
4 of the indictments, as has been explained to me so far,
5 would not have relevance to those issues. And even if it
6 did, the relevance is minimal compared to the overwhelming
7 prejudice it would cause to the Defendants, and confusion
8 it would sew with the jury. And it could inject improper
9 considerations into their deliberations, and with the risk
10 that they would decide the case on something other than
11 the facts, and be prejudiced by the history of the child's
12 care as bearing on the Defendants.

13 As to the motion for severance, I find that --

14 MR. HARBIN: Judge, with your ruling, I can withdraw
15 that motion. I think you solved exactly what I asked for.

16 THE COURT: Okay. Now, I anticipate that all the
17 lawyers are going to instruct their client's not to
18 discuss about DSS, foster parents. And if anyone has a
19 witness, either the State or the Defense, or any party
20 doesn't believe they can comply with that ruling, they
21 just need to let me know about that. Because I'll,
22 certainly, remedy that situation.

23 But, otherwise, everyone is on notice that no one is
24 to testify directly or indirectly about DSS involvement in
25 the case before March 14th. No one is to discuss the

1 foster parents and -- is there anyone who finds that to be
2 unclear or needs clarification on that ruling as to the
3 proper scope of the testimony, and my ruling on the
4 admissibility of the DSS evidence, and foster parent
5 evidence?

6 MR. O'CONNELL: Your Honor, may it please the Court.

7 I have prior gone over this with my client. I've
8 told her again what you've just said. She can't bring up
9 anything in her testimony prior to the receiving of the
10 child on that -- we received the child on that Friday. So
11 anything that happened prior to that date, she's not
12 supposed to bring up at the hearing. She has said, no,
13 she won't do that.

14 Is that correct?

15 DEFENDANT PHILLIPS: Yes. I --

16 MR. O'CONNELL: So she says she wants to testify as
17 to what occurred prior to them receiving the child.

18 THE COURT: Okay. So --

19 MR. O'CONNELL: Is that right?

20 DEFENDANT PHILLIPS: Yes. All scenarios.

21 THE COURT: I'm sorry, ma'am.

22 DEFENDANT PHILLIPS: All scenarios laid all out on
23 the table --

24 THE COURT: Okay. Well, you simply won't be allowed
25 to testify at all.

1 a break before that, let me or one of the bailiffs know
2 and we'll, certainly, accommodate you. And the same goes
3 for any of the lawyers or the parties. But keep keen
4 attention throughout the trial.

5 And remember that the lawyers in this case are
6 advocates for their clients. They're going to zealously
7 represent them to the best of their ability. You and I,
8 ladies and gentlemen, are not advocates. Our job is to be
9 neutral, and fair, and impartial. And your job is to
10 determine the facts of the case, and determine whether the
11 State has met its burden of proof.

12 So, with that, we'll have the opening statement from
13 the State.

14 MS. BARWICK: Thank you, Your Honor.

15 THE COURT: Ms. Barwick.

16 OPENINGS STATEMENTS

17 MS. BARWICK: Good afternoon.

18 I've already introduced myself once. My name is
19 Jenny Barwick. Seated at the table with me is my
20 co-counsel, Doug Richardson, and Detective Rita Burgess.

21 Myself and Mr. Richardson, we represent the State of
22 South Carolina in its prosecution of criminals. That's
23 what we do. In some states, they call us DA's. In some
24 states, they call us prosecutors. In South Carolina, we
25 just happen to be called solicitors.

1 There are three Defendants in this case. They're all
2 seated over at that table. We have Latasha Honeycutt,
3 Jamie Morris, and Donna Phillips. They have all been
4 indicted by our Grand Jury of homicide by child abuse.

5 What is homicide by child abuse? The State must
6 prove four elements for you to be able to find these
7 individuals guilty of homicide by child abuse. Element
8 number one is that they caused the death of a child under
9 the age of 11 by committing abuse or neglect under
10 circumstances that are an extreme indifference to human
11 life. One can, also, be found guilty of homicide by child
12 abuse if they aid, abet, support, or encourage the action
13 or inaction. I know that was a lot of words. And it
14 sounded kind of wordy.

15 But what it boils down to is this. If by someone's
16 actions or inactions, they caused the death of a child, or
17 they helped somebody through their actions or inactions to
18 cause the death of that child under circumstances where
19 they're indifferent to human life, then they are guilty of
20 homicide by child abuse.

21 The Judge has already told you this. The State has
22 the burden of proof. We must prove each Defendant guilty
23 beyond a reasonable doubt in order for you to find each
24 Defendant guilty of this crime. What does beyond a
25 reasonable doubt mean? It's not beyond all doubt. It's

1 beyond a reasonable doubt. It's the kind of doubt that
2 would cause a person to hesitate to act in the most
3 important of their own affairs.

4 Now, when I say hesitate to act, I'm not saying
5 you're sitting there and you hear one witness, but not the
6 rest and you decide. I'm saying when you've heard all the
7 evidence and you go back into that jury room and you
8 discuss amongst yourselves, 12 minds are better than one,
9 and then you still feel like there's a reasonable doubt in
10 your mind, then you must let them go home. You must say
11 not guilty.

12 This crime is a little different. This crime is a
13 crime where you will never hear the victim's story.
14 Little Child is the victim in this crime. He was
15 21 months old when this happened. He has a story to tell,
16 but you will not hear it. Because Child is no
17 longer with us. You will have to listen to his story
18 through the evidence that is provided on this stand.

19 We have things called circumstantial evidence. And
20 we have things called direct evidence. They have to be
21 weighed the same. Direct evidence, say, there's a
22 convenience store robbery. Direct evidence would be a
23 witness saying, I saw John Smith rob that store.

24 This is what circumstantial evidence is. When you
25 put a witness on the stand and the witness says, I know

1 John Smith has the same kind of mask and the same kind of
2 gun that were used in that robbery. And I know he doesn't
3 have a job. And he just got a flat screen TV and paid for
4 it with cash. That's circumstantial evidence. They're to
5 be weighed the same.

6 Unfortunately, you will have nobody -- you will hear
7 from nobody who comes up on the stand and says, I gave
8 Child that lethal dose of an opiate. You will not
9 hear anybody say that. They will not admit to that. You
10 will not hear anybody take the stand and say, I saw who
11 gave Child that lethal dose of opiates. You won't
12 hear that either.

13 These kind of crimes are closed door crimes. People
14 do not abuse their children, for the most part, thank
15 goodness, out in public. And they do not neglect their
16 children in public. That's why you have to weed through
17 the evidence. You have to weed through all the various
18 statements. Each of these three people, you will hear
19 testimony to what statements they gave. And they gave
20 multiple statements. You will have to weed through those
21 statements. You will have to weed through the excuses to
22 figure out what Child would tell you, if he was
23 able to tell you himself.

24 I have to look at this, because I want to always
25 remember to apologize in these kinds of cases. I

1 apologize about what you're going to hear. Sometimes, in
2 my line of work and Mr. Richardson's line of work, it's
3 hard to forget that what we discuss pretty much on a daily
4 basis in our world is something that is unheard of and
5 most often -- thankfully, unheard of in most circles.

6 You're going to hear all kinds of evidence. And it's
7 going to be difficult to hear it. It is hard to wrap our
8 minds around the fact that people are able to do this to
9 children. It is hard for us to wrap our mind around the
10 fact that mothers, fathers, and grandmothers are able to
11 do this to our innocence. But it happens every day. So
12 keep your minds open. And don't shut down just because
13 it's hard to hear about it.

14 The evidence will show the following. March 14th was
15 a Friday. Child was given over to his father's
16 care for the weekend. They come up to Latasha Honeycutt's
17 house, the child's mother. That was Friday, the 14th of
18 March, 2008. There will be testimony conflicting with
19 each other a little bit about when this child, actually,
20 started showing some symptoms of being ill.

21 On Sunday, the father and the grandmother knew that
22 something was wrong with the victim. The evidence will
23 show that instead of taking the child to the doctor, they
24 took the child back to mom's house and told her to take
25 the child to the doctor. The evidence will show that the

1 mother did not take the child to the doctor, despite the
2 child having difficulty breathing.

3 The evidence will show that on Monday, after putting
4 the child to bed around 8:00 or 9:00 that evening, that
5 Monday, the child wasn't awake at 8:00. The mother
6 changed his diaper and went back to bed and set her alarm
7 clock for 10:00. Somewhere between 10:00 and 10:30 that
8 morning, the evidence will show that Child became
9 unresponsive, and that a 911 call was placed at 11:15 that
10 he was not breathing.

11 The evidence will, also, show that by the time EMS
12 arrived, he, also, did not have a heart beat. The
13 evidence will show that that Tuesday, the 19th of March,
14 2008, Child was pronounced brain dead. And he was
15 later taken off life support.

16 What I ask you to do and what I urge you to do is to
17 put the pieces together, read between the lines, and find
18 out the story that Child would tell you today, if he was
19 still alive.

20 Thank you for your time.

21 THE COURT: Mr. DeJong.

22 MR. DEJONG: Thank you, Your Honor.

23 May it please the Court.

24 Ladies and gentlemen of the jury, it's not up to you
25 to read between the lines. The burden of proof is here.

1 It's not for you to read between the lines. That's
2 speculation. That's conjecture. And that is not what
3 your verdict is to be based on.

4 I have the pleasure today of representing the
5 innocent Jamie Morris. And the thought could immediately
6 come to mind, are you kidding me? He's innocent? Yes, he
7 is, absolutely 100 percent. And I say it without
8 reservation. But he was indicted. He was. And His Honor
9 shared that with you.

10 But, more importantly, than that, ladies and
11 gentlemen, is a fundamental right that every citizen of
12 this country is guaranteed that is charged with a criminal
13 offense is what His Honor has already shared with you, and
14 that is the presumption of innocence. And there are no
15 facts in this case right now, none, zero, zilch. You are
16 the fact finders. You determine the facts. You decide
17 the 12 -- for the moment, the 14 of you, you decide what
18 those facts are.

19 Mr. Morris is charged with aiding and abetting.
20 We'll talk about that more at the back end of the case.
21 And I know the hour is getting late. I don't want to do a
22 disservice to my client. But, by the same token, I don't
23 want to keep us here any longer than we have to be this
24 evening.

25 But, as we go through this trial, I'm going to ask

1 you to pay particular note and to remember three things --
2 well, let's make it four. Number one is the presumption
3 of innocence. I ask you to keep that at the very top of
4 your mind throughout this case. And, as Ms. Barwick
5 shared with you, don't close your mind because of the
6 parties involved, that is, mother, father, and
7 grandmother. By the same token, ladies and gentlemen,
8 don't close your mind by the very nature of the charges.
9 I think that could be equally dangerous..

10 So I ask you just to keep an open mind, the
11 presumption of innocence, burden of proof. Yours is not
12 to speculate on what the State is trying to prove. The
13 burden of proof is on them. They've got the burden of
14 proof. I'm not asking you -- and I think what you're
15 going to find in this case is that's exactly what the
16 State is asking you to do. They're asking you to do their
17 job for them because they don't know. And they can't
18 prove it. So the presumption of innocence, open mind,
19 burden of proof.

20 The things I'm going to ask you to look at in this
21 case and to remember is the timeline. The timeline is,
22 basically -- well, it's not, basically. It's going to
23 stay the same, and to stay the same that this child died
24 of an overdose of opiates. The timeline that you're going
25 to hear I believe is -- and you take it from the witness

1 stand, not from me.

2 Let's just jump right up to March the 16th of 2008.
3 March the 16th of 2008, which was on a Sunday, the child
4 is returned to the mother, cranky, fussy, temper tantrums,
5 all of those things. Now, it is not until sometime -- and
6 there may be a little variance, but some -- anywhere from
7 12 to 16 hours later, the child becomes unresponsive.

8 Now, His Honor shared with you, you don't leave your
9 common sense out here. When you took the oath, you became
10 jurors. But think about a drug overdose taking 12 to 16
11 hours to kick in. You're probably going to hear all sorts
12 of things about the levels of hydrocodone, and all of
13 those things. But, again, think about 12 to 16 hours for
14 somebody to overdose. I suggest to you now, and I will
15 suggest to you at the end of the case that that is not
16 rational. That is not reasonable. It is not logical. So
17 that's the fourth thing I ask you to take into
18 consideration.

19 Now, please, remember, I only represent Mr. Jamie
20 Morris in this case. All three of these Defendants, you
21 will have to decide each one individually, although there
22 may be some overlap between the positions on them. I only
23 represent Jamie Morris on aiding and abetting homicide by
24 child abuse.

25 The hour is late. I want to thank you. I thank you

1 on behalf of Mr. Morris for being here. Hopefully, the
2 hour won't be so late when we get to close. Again, I'm
3 not trying to do a disservice to my client, but it is
4 getting late. I do thank you for being here. You are
5 important. His Honor has shared with you how important
6 you are. And you are, indeed, important to everybody --
7 all the players in this courtroom.

8 The great, late Winston Churchill may have said it
9 best. We have to paraphrase him a little bit. He said
10 that -- Winston Churchill said the greatest service a
11 citizen can provide for their country in peacetime is jury
12 service. I think we all can agree we're not in peacetime
13 right now. Perhaps, we can paraphrase the great, late
14 Winston Churchill a little better and say the greatest
15 service you can provide for your community is jury
16 service. It is that fundamental.

17 I simply ask -- I ask on behalf of Mr. Morris for you
18 to keep an open mind, to remember those four things, and
19 be impartial. And we'll get back together when the
20 evidence is in.

21 Thank you so much for your kind attention.

22 THE COURT: Thank you, Mr. DeJong.

23 Mr. McConnell.

24 MR. O'CONNELL: Thank you, Your Honor.

25 Ladies and gentlemen, that's the first time in a long

1 time I've heard that kind of an opening where you can read
2 between the lines. Mr. DeJong said the same thing.
3 That's not your job. You're going to listen to the facts.
4 You're going to go back in the jury room and deliberate.
5 That doesn't mean you sit here and say, I already know who
6 did this. You've got to listen to the facts of this case.
7 And, in a way, they're kind of real unique..

8 The child was brought home, taken care of, returned
9 on Sunday evening. The man says, hey, here is the card.
10 Take him to the doctor. He's a little sick. If I
11 understood the Prosecution right, my client should have
12 taken -- and my client is Donna Phillips right there --
13 the grandmother should have taken the child to the doctor
14 because the child was sick. Like when we have the flu or
15 something like that, how many of us do that? How many of
16 us say, well, I better run to the doctor right now? I'm
17 going to take the child to the doctor because he's sick.
18 He -- Mr. Morris had the foresight to say, here is the
19 Medicaid card right here. Take the child to the doctor.

20 You will hear testimony that the child was cranky,
21 moving around. Because, you know, the child had been
22 having -- had been up all day, had been moving around.
23 You're going to hear testimony from that stand that the
24 child had such a dose of opiates in him that the child
25 would have been like a sack of potatoes.

1 I'm asking you all to keep your mind on the facts of
2 the case. I understand, like Mr. DeJong has said, that
3 you've got to understand that this is a case where maybe
4 nobody did anything wrong. Maybe they all tried to do
5 everything right, and it just didn't work out. Now,
6 sometimes, that happens.

7 So what I'm asking you to do with many client is
8 listen to the facts. I believe she wants to testify so
9 you all will know what she, as the grandmother, was doing.
10 There's no harm in this case. How could they harm the
11 child when they took care of this child? Nobody even left
12 this child alone. They brought the child to the mother.
13 And the mother took care of the child after they dropped
14 the child off. They even went in and looked at the room
15 and made sure the child had a bed to sleep in.

16 After that, my clients [sic] are out of the picture
17 until -- you'll hear a different story. The mother didn't
18 go check. The mother didn't go check. All I know is
19 there are a lot of things -- and the facts when they all
20 come together, you're going to have to say, wait a minute.
21 That's not how it happened.

22 There's no reading between the lines. And there's no
23 deliberating or trying to make up your minds until the
24 Judge sends you back in the room and you're back there
25 thinking about the case and saying, what have we heard?

1 What are the facts of the case.

2 My client is innocent. Because she didn't do
3 anything. She was simply a grandmother taking care of her
4 grandkid.

5 Thank you very much.

6 THE COURT: Thank you, Mr. McConnell.

7 MR. O'CONNELL: Thank you.

8 THE COURT: Mr. Harbin.

9 MR. HARBIN: Thank you, Judge.

10 May it please the Court.

11 THE COURT: Yes, sir.

12 MR. HARBIN: I have to cheat with some notes
13 sometimes, so forgive me.

14 The Solicitor mentioned that we're here because
15 they've obtained three indictments in this case, three
16 charges. And although the Judge will tell you, as he
17 already has, that the indictments aren't evidence, I think
18 it's important that we reemphasize they're not evidence.
19 And I'll tell you why they shouldn't be. Because it's
20 really easy to get an indictment. All you have to do is
21 present an idea, kind of a couple of connecting factors to
22 a group of 18 people, and get 12 of them to say, yeah, go
23 pursue that charge. It's not in open public. There's no
24 Judge. There's no defense attorneys. It is easy to get
25 an indictment.

1 Jenny gave -- Ms. Barwick, I apologize. Ms. Barwick
2 gave you the definition of homicide by child abuse. And I
3 want to give you the exact definition, because I believe
4 every word is important in this. It says, A person is
5 guilty of homicide by child abuse if the person causes the
6 death of a child under the age of 11 while committing
7 child abuse -- while committing child abuse -- and the
8 death occurs under circumstances manifesting an extreme
9 indifference to human life.

10 And our courts have defined what that means. The
11 Judge will tell you. But it, essentially, is an intent.
12 It says you don't care if they live or die, or you wanted
13 them to die. This case is not going to be that. Whether
14 you read between the lines or the lines themselves -- I
15 agree with them. But if you want to read between the
16 lines, fine.

17 The facts are going to show that my client did
18 absolutely nothing wrong, that she was handed her child
19 Sunday evening with some congestion. They said the child
20 was cranky, irritable, and tired. The child went to bed.
21 She got up early in the morning and changed his diaper.
22 The child was fine. A couple hours later -- a couple and
23 a half hours later, she went in. And when she found the
24 child, he was unresponsive. And then what do you do?
25 What is your responsibility as a mother? You call 911.

1 And that's what she did. That's what the facts are going
2 to show.

3 I can't explain to you why the State has sought an
4 indictment against her today. But I can defend her. And
5 I can ask you to listen. I'll tell you that strangely
6 enough, young Child was 21 months old when he died. I
7 had my first daughter. And she is 21 months old. And I
8 couldn't bear it if she died. I'm sorry. I couldn't bear
9 it. It would destroy me. And I can't imagine what it
10 must be like to not only lose your kid, but then get
11 arrested for it after you called 911.

12 You can't help my client get her child back. You can
13 help her by listening, listening to everything. Come back
14 and tell the State they're wrong. They're dead wrong.
15 I'm going to ask you, at the end of this trial, to come
16 back with a guilty -- with a not guilty verdict. Because
17 she's not guilty. She didn't do anything wrong, nothing.

18 Thank you.

19 THE COURT: Thank you, Mr. Harbin.

20 All right. Ladies and gentlemen, we're going to go
21 ahead and break for the day. And we're going to reconvene
22 tomorrow morning at 9:00. Don't talk about the case.
23 Don't do any kind of outside investigation.

24 And thank you for your patience with us this
25 afternoon. Even though you probably don't think you were

1 doing anything back there when you were in the jury room
2 related to this case, you were. Because you were giving
3 us time to, hopefully, streamline some things and make the
4 case run a little faster, I hope.

5 So we will start tomorrow at 9:00. And have a good
6 evening.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 5:25 p.m.)

9 THE COURT: Anything before we recess?

10 THE CLERK: The door is still open.

11 THE COURT: Oh, it is?

12 THE CLERK: Yes, sir.

13 (Pause.)

14 THE COURT: Thank you.

15 Anything before we recess?

16 MR. O'CONNELL: Your Honor, I just want to make sure
17 that I understand.

18 Are you, Ms. Burgess, going to supply those notes to
19 the Solicitor's Office so I can pick them up tomorrow at
20 the Solicitor's Office first thing in the morning?

21 MS. RITA BURGESS: Yes, sir.

22 MR. O'CONNELL: The notes that --

23 THE COURT: Right.

24 MR. O'CONNELL: Thank you.

25 THE COURT: Okay. See you back at 9:00.

1 into her testimony, could we turn the sound up just a
2 little bit?

3 THE COURT: Sure.

4 BY MS. BARWICK:

5 Q Ms. Johnson, where did you say you worked back in
6 2008?

7 A Pickens County Department of Social Services.

8 Q And how long have you been working with, as we know
9 it, DSS?

10 A For about 13 years now.

11 Q And, back in 2008, what were your duties with DSS?

12 A I was a supervisor involved with intake
13 investigations.

14 Q Back on March 17th of 2008, did you become acquainted
15 with Child ?

16 A I did.

17 Q Do you know Child ' date of birth?

18 A Yes. His birthday was

19 Q Okay. So back in March of 2008, he would have been,
20 what, about months old?

21 A Yes.

22 Q How did you become involved in the case of Child
23 ?

24 A The Department of Social Services received a report
25 in regards to trauma and fatality of Child on March 17th

1 of that year.

2 Q And when you were notified of that, what did you do?

3 A I initiated an investigation that same day. I made
4 contact with law enforcement. And I went to the hospital,
5 and made contact with the family members there at the
6 hospital.

7 Q When you say "hospital," do you mean the hospital in
8 Easley or the one in Greenville?

9 A I initiated -- he went to Easley Hospital first. But
10 I initiated my contact with everyone at Greenville
11 Memorial.

12 Q Do you remember about what time of day that was?

13 A That was that afternoon between about 4:30 to 5:00,
14 somewhere in that time frame.

15 Q And, on March 17th of 2008, what day of the week
16 would that have been?

17 A I'm sorry?

18 Q March 17th --

19 A Oh, it was a Monday. I'm sorry.

20 Q I'm sorry. Sometimes, I'm not loud enough, and,
21 sometimes, I sound funny.

22 When you got to the hospital, what did you see?

23 A The family members -- or some of the family members
24 were in the waiting room. I went to Child 's room and,
25 initially, made contact with Child . And the foster

1 parents were there, as well as the guardian ad litem --

2 Q Okay. Well --

3 MR. DEJONG: Your Honor, I'm going to object to all
4 that testimony, and move that it be stricken.

5 MR. HARBIN: Judge, I join in Mr. DeJong's motion.

6 MR. O'CONNELL: And, Judge, I do, too. It sounds
7 like hearsay.

8 MS. BARWICK: Your Honor, the State would agree.

9 THE COURT: All right. The jury is to disregard the
10 answer to the last question.

11 Go ahead.

12 BY MS. BARWICK:

13 Q When you got to the hospital, did you see Child ?

14 A I did.

15 Q Were Jamie Morris, or Latasha Honeycutt, or Donna
16 Phillips in the hospital room with Child ?

17 A They were not in the hospital room.

18 Q Where were they?

19 A They were in the waiting room.

20 Q When you saw Child , what kind of condition was he in?

21 A He was non-responsive, connected to the machines and
22 the equipment there at the hospital.

23 Q Did you take any pictures of Child 's condition?

24 A I did.

25 MR. DEJONG: Your Honor, she hasn't offered them at

1 this point in time, but I will object at the appropriate
2 time.

3 MR. O'CONNELL: Same here.

4 MR. HARBIN: Same, Judge.

5 BY MS. BARWICK:

6 Q Do you recognize these photographs? If you'll look
7 through them.

8 A I do, yes, ma'am.

9 Q Are those photographs you took on March 17, 2008?

10 A It is.

11 Q Do they clearly and accurately depict what Child
12 looked like at that time?

13 A Yes.

14 MS. BARWICK: Your Honor, the State would like to
15 introduce State's Exhibit No. 14 -- I'm sorry, State's
16 Exhibit Nos. 9 through 14 into evidence at this time.

17 THE COURT: Mr. DeJong.

18 MR. DEJONG: Your Honor, I object. Your Honor, these
19 pictures have no probative value.

20 Can we approach, Your Honor?

21 THE COURT: Sure.

22 (WHEREUPON, a bench conference was held.)

23 BY MS. BARWICK:

24 Q Let me be clear, Ms. Johnson, you were the one that
25 took State's Exhibit Nos. 9 through 14?

1 THE COURT: And I sustain the objection to the
2 pictures. They're not admissible at this time.

3 MS. BARWICK: Thank you, Your Honor.

4 BY MS. BARWICK:

5 Q Ms. Johnson, did you, in fact, go and speak with
6 Latasha Honeycutt and Jamie Morris?

7 A I did.

8 Q That evening at the hospital?

9 A I did.

10 Q When you spoke with Ms. Honeycutt, did she say
11 anything about what happened that morning?

12 A Yes.

13 Q What did she say?

14 A She indicated that at approximately -- when he
15 returned home from visitation with his father that prior
16 evening, Sunday night, that he slept from -- anywhere from
17 between 6:30 when -- he got home between 6:30 and 7:30.
18 He was a little bit fussy, and he went to sleep. And she
19 stated that he slept throughout the night until that
20 following morning. She indicated she went into the room
21 at about 8:00 that morning, he was still asleep. She
22 changed his diaper. And she, in turn, went back to sleep,
23 as well.

24 Q Did she say what time she woke back up?

25 A At approximately somewhere between 10:00 to 10:30

1 that same morning. He wasn't responsive at that point in
2 time. And she called for her boyfriend, Brandon Roper,
3 and, also, called law enforcement -- not law enforcement,
4 911.

5 Q Okay. When she changed his diaper, did she say
6 whether or not he was awake at that point in time?

7 A She indicated he wasn't awoke [sic].

8 Q So he slept through the diaper change?

9 A Yes.

10 Q My next question is, at the time that this happened,
11 who was living in Latasha Honeycutt's house?

12 A Latasha Honeycutt, her boyfriend, Brandon Roper, and
13 their infant daughter, Ava.

14 Q Okay. So Jamie Morris is not the father of Ava?

15 A He's not.

16 Q And Brandon Roper, the boyfriend, is?

17 A Of Ava, yes.

18 Q How old was Ava back when all of this happened?

19 A Ava was born of , so she was just a
20 few months old.

21 Q Now, let's back up. This was Monday. That Saturday
22 before, so that would have been March 15th of 2008, do you
23 recall hearing a voice mail that Jamie Morris left at DSS?

24 A I do.

25 Q And what was that voice mail regarding?

1 A Jamie had indicated to Nancy Bagwell, a fellow
2 coworker, that he had needed a Medicaid card, because
3 Child had been sick.

4 Q Okay. So say that again for me. I'm sorry.

5 A He indicated that he needed the Medicaid card,
6 because Child was sick that evening, I guess that
7 Saturday evening.

8 MS. BARWICK: No further questions at this time.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. DEJONG:

12 Q So, Ms. Johnson, you went to Greenville Memorial
13 Hospital on the 17th of March; correct?

14 A Yes, sir.

15 Q Do you know what time the child got to the hospital?

16 A I'm not sure of the exact time. It was earlier that
17 afternoon.

18 Q Okay. And I guess we're really talking two hospitals
19 here. He went to Easley Baptist -- the child went to
20 Easley Baptist first, and then was taken to Greenville
21 Memorial; is that correct?

22 A Yes, sir.

23 Q Is that correct?

24 A Yes.

25 Q All right. So the child -- when you got there, the

1 Q And he was laying -- was this in a bedroom, or where
2 was this?

3 A It appeared to be a child's room, yes.

4 Q Was there a crib in there?

5 A Yes.

6 Q And when you saw Child laying like that on the
7 floor, what did you do?

8 A My partner immediately scooped him up and started out
9 the door. I called the mom, as we were going out the
10 door, to start asking some questions. We start working,
11 usually, with calls like that in the back of the truck as
12 quickly as we possibly can to get them to the hospital.

13 Q And what kind of questions were you asking of the
14 mother?

15 A The typical questions of, what's going on? What --
16 When was the last time you saw the child awake? She
17 proceeded to tell me that the child had had a cold. That
18 question led into, Have you given the child any medicines?
19 Again, When did you see the child awake?

20 She kept giving me not clear answers. That's the
21 best way I could put it. They were back and forth, Well,
22 I -- you know, we gave him something for his cold.

23 And I said, Okay. Well, what did you give him?

24 Oh, no, I didn't, his dad did.

25 When did he -- you know, she said, We just got him

1 back.

2 And I said, Okay. What time was that?

3 Early this morning.

4 So what time early this morning? So that would give
5 me a time frame of how long the child would have been
6 dead.

7 And then that ended up being, No, that was last
8 night.

9 And I said, Okay. So you haven't seen your child
10 since you put the child in bed last night?

11 And she said, Yes, that is correct.

12 And so you found him like this?

13 And she said, Yes, that is correct.

14 And I said, Do you -- you didn't ever go in and check
15 on the child, or anything like that?

16 And she said, No.

17 And I guess I had that look of, really? It's been
18 that long? He's sick.

19 And she said, Well, I did go and change his diaper.

20 And I said, Oh, okay, about what time was that?

21 And she said, Two hours.

22 And I said, Okay. And by that time --, that seems all
23 very slow, but it was a lot faster than that.

24 Q When you said she said she had changed the diaper
25 about two hours ago, about two hours from the point you

1 got there?

2 A Uh-huh.

3 Q When you started getting these kinds of answers from
4 the mother, what did you do at that point?

5 A I knew that my general answer to the hospital --
6 because we have to report these things to the hospital --
7 was I have a child down, unknown down time. We just could
8 not get specifics of when the last time that this child --
9 it was incredible as far as the probability of it. We --
10 I just couldn't use any of it. It was too sketchy.

11 Q Well, let me ask you this question. When you left
12 the scene, where did you and your partner go to?

13 A Palmetto Health Baptist Easley.

14 Q And Child was in -- is it an ambulance? Is it a
15 rescue truck, or what is it?

16 A No. He was in an ambulance.

17 Q And did the mother go with you to the hospital?

18 A I never saw the mother after I left the porch.

19 Q Did she ask to go to the hospital with you?

20 A No.

21 Q You said you were a paramedic for 15 years?

22 A Yes.

23 Q Or you've been a paramedic for 15 years. If you had
24 to estimate, how many of these types of cases of a young
25 child being in critical condition have you responded to?

1 A Unfortunately, less than 20 -- around 20, give or
2 take a few. But they're unfortunate cases.

3 Q And, normally, when you respond to these calls, when
4 you arrive on scene, what is it that's happening? What
5 are the parents doing? . .

6 A Very hysterical, screaming, crying. At some points
7 in time, they're refusing to give us the child. And
8 they're taking off, or they're jumping in the ambulance
9 with the child and we're supposed to follow them. All
10 kinds of things, I've seen. I've seen parents try to lift
11 a car up, I mean, off their child. You see this natural
12 instinct of mother, father, it doesn't matter, kick in and
13 it's just...

14 Q All right. When you got into the house, where was
15 Latasha Honeycutt when you entered the trailer?

16 A Outside on the porch.

17 Q Where was the other male in the residence when you
18 got there?

19 A When I first walked in the door and I -- immediately,
20 the first thing I saw was the baby, I believe, known as
21 Ava. And he was -- the male subject was to the left side.
22 And he was gathering stuff off the table. I didn't pay
23 him any more attention after that.

24 Q Okay. So, say, I'm walking into the mobile home,
25 where would Child . . . be?

1 A Straight in front of you.

2 Q Child or Ava?

3 A Oh, I'm sorry.

4 Q I'm sorry. I'll clarify my question. When I walk in
5 this mobile home, where is the healthy baby?

6 A Ava, she's straight in front of you.

7 Q Where is the unhealthy baby?

8 A To the right down the hallway.

9 Q And where is the male subject?

10 A To the left.

11 Q Over here?

12 A Uh-huh.

13 Q And the mother is still outside behind you?

14 A Yes.

15 MS. BARWICK: No further questions at this time.

16 THE WITNESS: Sure.

17 THE COURT: Cross-examination.

18 MR. DEJONG: Thank you, Your Honor.

19 May it please the Court.

20 CROSS-EXAMINATION

21 BY MR. DEJONG:

22 Q So, Ms. Sailors, are you familiar with CAD reports?

23 A Yes, I am.

24 Q All right. I get a little confused on these, so I'm
25 going to show them both to you.

1 A Okay.

2 Q These are two CAD reports that have been introduced
3 by the State. That would be State's Exhibit Nos. 16 and
4 17. I would ask you to look at them.

5 Which one of those is your report, EMS's report?

6 A This one.

7 Q And that would be State's Exhibit? If you will, just
8 look down at that little sticker.

9 A Let me just make sure. My first -- second glance is
10 this one.

11 Q You take your time.

12 A That's fine.

13 Q I'm sorry. Are you handing that one back to me?

14 A That one is ours.

15 Q So your report -- and I'm sorry to get so close to
16 you. But your report is what has been marked as State's
17 Exhibit No. 17; is that correct?

18 A It's been marked as mine?

19 Q If you'll look at the little sticker down at the
20 bottom.

21 A Okay. State's Exhibit No. 17.

22 Q So the call -- you got the call at what time? You
23 were dispatched -- well, the difference -- is there a
24 difference between the time you get a call and the time
25 you're, actually, dispatched? Does that make sense to

1 you?

2 A I'm sorry. Can you repeat? I was looking at that.

3 Q I apologize to you.

4 A That's okay.

5 Q Is there a difference between the time you get a call
6 and the time you're, actually, dispatched and get into
7 movement? Does that make sense?

8 A Yes. The call is received.

9 Q Yes, ma'am.

10 A That's when the 911 call comes into the dispatch.

11 The call is then dispatched --

12 Q Excuse me. I don't mean to interrupt you. If we can
13 take this one step at a time.

14 A Sure.

15 Q Okay. What time was the call received?

16 A Looking at these CAD reports, these aren't the same
17 CAD reports that, honestly, we get in EMS. When you say
18 are you familiar with CAD reports, I say, yes, sure.
19 These are separate. These look different than our CAD
20 reports.

21 Q So those are generated by law enforcement?

22 A Okay.

23 Q EMS, actually, generates their own; right?

24 A I have one specially done for my records, or for my
25 manager records.

1 Q Do you have your records with you?

2 A No, I do not. But I usually can look off of theirs.

3 Q Okay. As best you can tell, what time did y'all,
4 actually, leave to go to -- I guess Old Saw Mill Road;
5 right?

6 A I don't think these are my call.

7 Q Would the other one help you maybe?

8 A Yes.

9 Q I'll give it back to you.

10 A Yes.

11 Q Let's take a look at that one and see if that helps
12 you any, or if you have your records --

13 A Yes, I do.

14 Q You can look at your records.

15 A There we go. All right. We received the call at
16 11:15.

17 Q 11:15 on the morning of March the 17th?

18 A Uh-huh.

19 Q All right. And then you received the call, then you
20 dispatch?

21 A Uh-huh.

22 Q Or you, actually, get moving. What time do you,
23 actually, get moving?

24 A One minute later, 11:16.

25 Q Okay. One minute later. Pretty fast. Now, I'm

1 confused about something.

2 A Sure.

3 Q But maybe I misunderstood you. But if I understood
4 you correctly, there was some confusion over the address,
5 you were responding to; is that correct?

6 A Yes. That is correct.

7 Q And if I understood you correctly, you said the 911
8 call came from a different place?

9 A No. I can't say where the 911 call came from. That
10 would be from the dispatcher. The dispatch -- we were
11 dispatched to Road.

12 Q Okay. So you get there at what time?

13 A We arrive on scene at 11:25.

14 Q And that's at Road?

15 A No, sir.

16 Q I'm sorry. I misunderstood you. Where did you get
17 to at 11:25?

18 A At Brayden.

19 Q I'm sorry.

20 A At Brayden Drive, the last trailer on the left.

21 Q Oh, okay. That's -- what's the connection, if you
22 know, between Road and Brayden Drive?

23 A I personally do not know the connection between

24 that -- I do know that we were heading on --

25 towards -- we were on Old Saw Mill Road headed towards

1 when my partner looked to the left and saw a female
2 subject doing the wave.

3 Q Okay.

4 A And he says, Could that be it? And I think he
5 questioned dispatch at that time.

6 Q Okay. So you had to call back to dispatch at that
7 point in time?

8 A We was already backing up.

9 Q All right. So if I understand then, is Brayden Drive
10 off of Old Saw Mill Road?

11 A It's just right there.

12 Q All right. Now, you get there and the mother is --
13 did you identify her as the mother?

14 A No. She was a female subject --

15 Q A female subject. At any point -- I'm sorry. I
16 didn't mean to cut you off.

17 A That's okay...

18 Q At any point in time, did you identify her as the
19 mother of the child?

20 A Yes. She did say she was the mom.

21 Q Okay. So when you went -- were dispatched to either
22 Old Saw Mill Road or Brayden Drive, wherever it was, there
23 were two of you in the ambulance, I gather?

24 A Yes, there are.

25 Q Pardon me?

1 A Yes, always.

2 Q And were you driving, or was your partner driving?

3 A My partner was driving.

4 Q Okay. So you're the first one out of the ambulance?

5 A Yes.

6 Q And when we say ambulance, y'all kind of drive these

7 truck things, but we still call them ambulances?

8 A Yes.

9 Q So you're the first one that gets out of the

10 ambulance, and you go to the porch?

11 A Yes.

12 Q Okay. Now, this is a mobile home; correct?

13 A Brayden Drive?

14 Q Yes, ma'am.

15 A It's a mobile home, yes.

16 Q Okay. And so there, obviously, is a porch on this

17 particular house, if I understand it correctly?

18 A Yes. There was a porch, just like a stoop porch.

19 Q Okay. Now, are there other -- were there other

20 mobile homes around there?

21 A Yes.

22 Q Okay. I want to get a little clearer picture, if I

23 can, Ms. Sailors.

24 A Sure.

25 Q When you pulled the ambulance into the driveway --

1 when you pulled in, I gather Old Saw Mill -- is it like a
2 fork in the road, or is Brayden just a right or a left off
3 of Old Saw Mill?

4 A Just a left.

5 Q So let's say this is Old Saw Mill down here. And if
6 you can't see --

7 A I can.

8 Q -- let me know. It's hard to get where everybody can
9 see. So if it was to the left, I guess we're back up in
10 here; correct?

11 A Yes.

12 Q Now, how far off of Old Saw Mill, if you know, a best
13 guess, was this mobile home?

14 A I'm not very good with distance.

15 Q Okay. That's fair enough.

16 A But there was, at least, probably two to three
17 trailers prior to.

18 Q So one, two, three, and then somewhere back up in
19 here?

20 A I know it was the last one.

21 Q Okay. Now, that trailer, was that porch facing the
22 driveway you pulled the ambulance up into?

23 A If you take Old Saw Mill Road and take Brayden Drive,
24 you would pull straight up.

25 Q So, really, the last trailer would be kind of more

1 like that where --

2 A No. They were -- to me, we pulled up to the last
3 trailer on that left.

4 Q On this left?

5 A Uh-huh.

6 Q So somewhere over here. So you pulled straight up to
7 this trailer?

8 A Uh-huh.

9 Q Now, the front of the trailer, was it facing where
10 you pulled up?

11 A Yes.

12 Q Okay. So you were, actually, looking at the porch
13 when you pulled up?

14 A Yes.

15 Q Now, at any time, did you see Latasha Honeycutt any
16 place in the driveway or any place -- did you see her any
17 place other than the front porch as you were arriving?

18 A I do not know.

19 Q Now, you immediately go into the trailer?

20 A Yes.

21 Q Does Ms. Honeycutt follow you into the trailer?

22 A I'm sure she probably -- she may have tried. We
23 immediately followed into the trailer. And, as soon as we
24 stepped into that front door of the trailer, we were
25 inside. We immediately stopped because of the child right

1 there in the swing.

2 Q Okay. So you come in the front door of the trailer;
3 correct? Now, do you recall what kind of room that was?
4 I'm not saying the door is located properly where I put
5 the two slash marks, but you went in the front door?

6 A Uh-huh.

7 Q Do you know the room you went into when you went into
8 that front door?

9 A It appeared to be set up as a living room.

10 Q A living room?

11 A Uh-huh.

12 Q Do you recall if the kitchen was to the left, or the
13 right?

14 A To the left, I believe.

15 Q To the left?

16 A Uh-huh.

17 Q So you walk into a living room, and the kitchen would
18 be off to the left.

19 Now, as I understand it, the bedroom you were talking
20 about where this child was was off to the right?

21 A It was. It was to the right.

22 Q So there's, basically, a hallway that went down here
23 and --

24 A That way.

25 Q More over here?

- 1 A To the right.
- 2 Q Okay. The bedroom was to the left?
- 3 A No. The bedroom was to the right.
- 4 Q Okay. But there was a hallway going down to the
5 bedroom is my question. Do you remember?
- 6 A If it was, it was very slight. It wasn't nothing.
- 7 Q And maybe to help out a little bit, was this a
8 single-wide trailer, double-wide trailer, or do you
9 recall?
- 10 A Yes. It was a single wide.
- 11 Q So when you get there, there's an infant in a swing?
- 12 A Uh-huh, in the front door.
- 13 Q And was that in this, basically, living room area?
- 14 A Yes.
- 15 Q Okay. And did -- well, then you had to ask a
16 question where the child was. Because you, initially,
17 thought the child was the one in the swing; right?
- 18 A Uh-huh.
- 19 Q So then somebody from behind you says what now?
- 20 A He's over there to the right.
- 21 Q Okay. And do you immediately go there?
- 22 A Yes. We immediately turn and go to the right.
- 23 Q Okay. Was anyone with the child?
- 24 A (Witness shook head.)
- 25 Q Was anyone attempting to do CPR on the child?

1 A (Witness shook head.)

2 Q Okay. Was the child in the crib, or on the floor?

3 A He was on the floor.

4 Q Let me borrow this.

5 Do you need a Kleenex, ma'am?

6 A He was on the floor.

7 Q At that point in time, did you -- well, let me back
8 up a little bit. Now, there was another male that was
9 present when you arrived, I gather -- not another male, a
10 male?

11 A There was a male subject on the scene, yes.

12 Q Okay. And, as I understood your testimony, the male
13 subject would have been more in the kitchen area?

14 A Yes. He was more towards the left area in between
15 the living room and the -- he was just -- in my visual, he
16 was just over there and he was getting stuff up.

17 Q Do you know what he was getting up, like off of a
18 coffee table, a counter?

19 A Yes, sir.

20 Q I asked two questions there, so I'm not sure what the
21 yes, sir is.

22 A Off of a table.

23 Q A table?

24 A Uh-huh.

25 Q Like a dinette table?

1 A I can't be more specific. I'm sorry. It was a
2 table.

3 Q That's all right. But, nonetheless, he was somewhere
4 kind of between the kitchen and the living room cleaning
5 stuff off of a table?

6 A Uh-huh.

7 Q And you don't know what he was cleaning off?

8 A Huh-uh.

9 Q So now -- and, of course, it all happened much more
10 quickly than this, I understand?

11 A Yes, it does.

12 Q But, now, you go back to the bedroom on the right?

13 A Uh-huh.

14 Q When you get back to the bedroom on the right, you
15 find this child?

16 A Uh-huh.

17 Q Was the child breathing?

18 A No, sir. The child was not breathing.

19 Q Did it have a pulse?

20 A No.

21 Q As a technician -- realizing you're not a doctor, and
22 I don't mean that demeaning.

23 A I understand that completely.

24 Q But, be that as it may, could you tell how long the
25 child had not been breathing, based on the condition of

1 the child when you found the child?

2 A I could tell the child couldn't have been breathing
3 for a while, because the skin was blue. When you hold
4 your breath -- if you hold your breath, you start to turn
5 blue. And you start to turn purple just after a few
6 minutes.

7 Q Okay. Was the child turning blue?

8 A The child was blue, very blue.

9 Q Did you get a pulse before you left Brayden Drive?

10 A Get a pulse, no.

11 Q Okay. So you then immediately rush him to?

12 A Baptist Easley.

13 Q And if you know, and if you need to look at your
14 note, what time did you leave Brayden Drive?

15 A Sure. We departed the scene at 11:34.

16 Q And arrived at Easley Baptist?

17 A Six minutes later, at 11:40.

18 Q When you transport a child -- I guess the word -- I'm
19 not sure I'm asking the right word. Is it permissible for
20 a parent to ride in the ambulance with the child?

21 A Our county policy states that if it is appropriate,
22 we can have riders in the ambulance, if there are no other
23 concerns. Especially with children, again, I know being a
24 mother, I would want to ride. We do allow it, especially,
25 they can ride in the front seat. It just depends. If we

1 need -- sometimes, having a mother in the backseat to calm
2 a crying baby does the baby more good, so.

3 Q And -- I'm sorry, ma'am.

4 A Sure.

5 Q I didn't mean to cut you off. I jump the gun
6 sometimes. In this case, did the mother ask to ride in
7 the ambulance with you?

8 A Once I went to the ambulance, I never saw the mother
9 again, so, no.

10 Q So you go back to the bedroom. Now, is it you or
11 your partner that gets the child?

12 A My partner.

13 Q So did both of you go back to the bedroom or just --

14 A Yes.

15 Q Okay. Both of you go back to the bedroom. Does
16 either the mother or this male subject go back to the
17 bedroom with you?

18 A No, not that I recall. Because I remember whispering
19 something to my partner that something is not right. And
20 I wouldn't have done that if somebody was in the bedroom.

21 Q Okay. Now, when you left, your partner has scooped
22 up the child, and you left. Where -- to the best of your
23 knowledge, where was the mother, or did you --

24 A When we came back out, she was back on the porch.

25 Q On the porch. Where was the male subject? Did you

1 see him?

2 A He could have been there. I didn't pay any
3 attention. I'm sorry.

4 Q All right. So in your questioning of the mother, is
5 it safe to say that her answers were very inconsistent?

6 A Very inconsistent.

7 Q Were you able to gather any information from her at
8 all?

9 A That there was unknown down time because of
10 inconsistency.

11 Q I'm sorry?

12 A My answer that I got to give to the physicians was
13 approximate unknown down time due to inconsistencies.

14 Q And unknown down time, I'm not familiar with --

15 A I'm sorry. Down time is we like to know exactly how
16 long a subject, a patient, a child, whomever has been
17 without oxygen.

18 Q Okay.

19 A Organs start dying, tissues start dying.

20 Q And, in this case, there was no way of telling
21 because of the mother's inconsistent answers?

22 A No. I knew at the time that the child did not have
23 lividity, or any other signs.

24 Q When you got to the hospital -- well, let me ask you
25 this. When you went into this trailer, did you take a

1 gurney, or stretcher, or whatever we call them now days in
2 there?

3 A No.

4 Q A bag?

5 A We took a bag and a monitor. Because when we know
6 we're going to a child, we're two big people, scoop and
7 go.

8 Q I'm sorry, ma'am. I ask that -- there was nothing to
9 obstruct the mother or this male subject to come back to
10 the bedroom when y'all were back there checking on the
11 child, was there?

12 A Huh-uh.

13 Q And, by that, I mean there was no gurney in the
14 hallway, or anything?

15 A Oh, no.

16 Q When you get to the hospital, now, of course, you go
17 into the emergency -- the ambulance, I guess, emergency
18 entrance; right?

19 A Uh-huh.

20 Q Now, from the time you get to the hospital -- I
21 gather once you get there, you're pretty much immediately
22 turn the patient over to the medical personnel; is that
23 correct?

24 A That's correct.

25 Q Is that safe to say?

1 A That's correct.

2 Q And once you turn that patient over to the medical
3 personnel, do you immediately leave?

4 A Sometimes, not all the time.

5 Q In this case, do you remember, did you immediately
6 leave, or did you stay around the hospital?

7 A I stayed.

8 Q All right. And did you stay in an area where you
9 could observe, basically, people coming in or out, or
10 people coming to check on this particular patient?

11 A I stayed in the room with Child.

12 Q Okay. And approximately how long were you there?

13 A Approximately 12:15, 12:20.

14 Q Until 12:15 or 12:20?

15 A Yeah.

16 Q Okay. I was --

17 A It could have been as late as 12:30, but the
18 supervisor started calling saying get back.

19 Q All right. So you got to the hospital at 11:40?

20 A Yes.

21 Q According to your report. And then I gather how long
22 you were there was pretty much based on your recollection;
23 is that right, or is that in your notes?

24 A No. It is not in my notes.

25 Q Okay. You get there at 11:40, and you stay with the

1 patient until 12:15 -- we'll say 12:15. During that
2 period of time, did you ever see the mother?

3 A Once.

4 Q Okay. Was that at the beginning, or the end?

5 A That was at the end. That was sometime after 12:00,
6 like -- that was kind of what I was waiting to see, how
7 long it took her to get there. It was 12:10, 12:15ish,
8 maybe. I can't testify to specifics.

9 Q Yes, ma'am. But you saw her pretty much towards the
10 end of your visit, if I understand what you're saying?

11 A Yes.

12 Q Which we said was roughly 12:15?

13 A Uh-huh.

14 Q Now, initially, the mother reported to you that the
15 child had come back to her that morning?

16 A Yeah. I don't know why, but, yes.

17 Q Okay.

18 A I can only testify to what I was told.

19 Q Yes, ma'am. I'm not asking you what happened. I'm
20 asking you what you heard.

21 A Yes.

22 Q Okay. And so, initially, the mother said he came
23 back on the morning of March the 17th?

24 A That Monday morning, early, early. She kept
25 stressing early.

1 Q Okay. Then that changed to the night before?

2 A The night before sometime between 7:00 and
3 sometime -- it was after 9:00.

4 Q Okay. And then, at one point in time, you were
5 asking about medication; right?

6 A Yes.

7 Q And if I recall what you said, at one point in time,
8 she said we gave him medication?

9 A Yes.

10 Q And then she changed that and said the daddy gave him
11 medication?

12 A The daddy gave him medication.

13 Q Were you there when law enforcement arrived?

14 A No. I never saw any law enforcement on the scene
15 whatsoever. I will say that, you know, at that quick
16 questioning, I went and immediately started working on
17 Child. That was my priority. And I let law enforcement
18 do their thing. But I never saw them.

19 Q So when you were transporting the patient, you were
20 in the back and your partner was driving; is that correct?

21 A No, sir. I had rescue drive us in.

22 Q I'm sorry. You had what?

23 A A rescue squad member drive us in. So my partner and
24 I both were in the back.

25 Q Both of you were in the back?

1 A Uh-huh.

2 Q On the way to the hospital, did you ever get a pulse?

3 A No.

4 Q Did you take any other -- I'm not a medical person at
5 all. Did you take any other vitals, blood pressure,
6 anything like that?

7 A No. I can tell you what we did.

8 Q What was the blood pressure, if you recall?

9 A There would be no blood pressure, because there's not
10 a heart beat.

11 Q Okay.

12 A When we checked the pulse, the pulse was zero. The
13 respirations would be zero.

14 Q Did you check pupils, or anything like that?

15 A Yes, I did. The pupils were dilated.

16 MR. DEJONG: One moment, please, Your Honor.

17 (Pause.)

18 MR. DEJONG: Thank you so much.

19 The witness is with you, Mr. O'Connell.

20 MR. O'CONNELL: Thank you.

21 CROSS-EXAMINATION

22 BY MR. O'CONNELL:

23 Q Ma'am, I don't move around so good.

24 A That's quite all right.

25 Q Did this call come in on a land line or a cell phone?

1 A I cannot tell you that, sir.

2 Q When you arrived at the residence, the mom was on the
3 porch?

4 A Yes.

5 Q Was she on a cell phone?

6 A She appeared to be on the cell phone, yes.

7 Q When you went inside the residence, Brandon Roper was
8 doing something at a table; is that correct? He was
9 cleaning off a coffee table, or some kind of table?

10 A When I -- he was to the left. And, at some point,
11 either when I came back out of the child's room, yes, he
12 was doing something with the table.

13 Q Was either the mother or Brandon Roper crying or --
14 crying?

15 A No. They seemed upset, but they wasn't crying. They
16 wasn't sobbing crying. They just seemed upset, nervous.

17 Q And when you left, the police officers had not
18 arrived yet; is that correct?

19 A I don't know if they had arrived. I was in the back
20 of the truck working.

21 Q Okay. Well, when you went out the front door --

22 A They were not there.

23 Q They were not coming in?

24 A No, sir.

25 MR. O'CONNELL: That's all I have.

1 Thank you very much.

2 THE WITNESS: Okay.

3 MR. HARBIN: May it please the Court, Judge..

4 THE COURT: Yes, sir, Mr. Harbin.

5 CROSS-EXAMINATION

6 BY MR. HARBIN:

7 Q You've been referencing a report, I believe. Can I
8 take a look at that real quick?

9 A I'm sorry.

10 Q Do you have a report?

11 A Yes.

12 Q And does this appear to be the same?

13 A Uh-huh.

14 Q And I'm going to ask you a question about this
15 report, if you don't mind.

16 A That's fine. That's fine.

17 Q You had previously testified that you couldn't get
18 any answers out of my client?

19 A Yes.

20 Q Now, can you refer to -- it's the middle of your
21 report here.

22 A Sure.

23 Q And I see -- and this is your report; correct, what
24 we just referenced?

25 A Yes. This is my report.

1 Q And can you explain, it says, Mother states she last
2 seen the patient breathing approximately two hours ago?

3 A Yes.

4 Q That would seem to be an answer; is that correct?

5 A Yes.

6 Q Okay. And you said, also, the mother told a rescue
7 member that patient had a cold, that father had given
8 patient medication like Tylenol last night?

9 A That's correct.

10 Q That would be an answer to a question; correct?

11 A To a rescue member.

12 Q And let me ask you. You had, actually, described --
13 you said, unfortunately, you've had to do this before?

14 A Yes.

15 Q Calls like this?

16 A Yes.

17 Q And I believe your words, as close as I could get is
18 that -- where did I put it -- that people do all kinds of
19 things when they react, people react differently?

20 A Oh, yes, most definitely.

21 Q You're not suggesting that there's an appropriate or
22 inappropriate reaction. People react to stresses the way
23 they react to them. Is that what you've witnessed in your
24 job?

25 A What I've witnessed in my career is out of those 20

1 cases that I've run what has been the consistency, and
2 that has been the consistency of the agitation and
3 everything. This was unlike anything I ever had.

4 Q And you didn't really see -- all you saw was Brandon
5 to the left. You don't know what he was doing; is that
6 correct?

7 A No.

8 Q So he could have been packing things for Ava, the
9 small child he had to take. Is that possible?

10 A Sure.

11 Q And you heard the 911 tape. I believe you were in
12 the courtroom for the 911 tape being played?

13 A Yes.

14 Q And I don't know if you had an opportunity to hear
15 Brandon say, They're here now, I'm going to leave the
16 child.

17 A No.

18 Q So did you witness anything that would suggest to you
19 that he was not with the child immediately prior to you
20 walking in the house? Can you confirm or deny that he
21 was --

22 A I cannot confirm or deny that. I just know when I
23 walked in, he was all alone.

24 Q So it's entirely possible that he had just left the
25 child, as was indicated by the 911 tape. It's possible,

1 but you don't know?

2 A It's possible.

3 MR. HARBIN: No further questions.

4 Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: Redirect?

7 MS. BARWICK: No, sir.

8 Thank you.

9 THE COURT: Thank you, ma'am.

10 You may call your next witness.

11 MS. BARWICK: The State would call Kathy Purdessy to
12 the stand.

13 THE CLERK: Place your left hand on the Bible and
14 raise your right hand.

15 WHEREUPON,

16 KATHY PURDESSY,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: If you would, have a seat.

19 And state your name for the record.

20 THE WITNESS: My name is Kathy Purdessy.

21 DIRECT EXAMINATION

22 BY MS. BARWICK:

23 Q Did you say Purdussy or Purdessy?

24 A I get called all kinds of stuff, but it's Purdessy.

25 Q Ms. Purdessy, where do you work?

1 A I work at Baptist Easley Hospital in the emergency
2 department.

3 Q I'm going to remove this, so I don't trip again.

4 And how long have you been working there?

5 A I have been there for 14 years -- well, actually, it
6 will be 14 years, about 13 and a half years.

7 Q And what do you do there?

8 A I am a nationally-certified emergency room nurse.
9 I'm a registered nurse. And I save lives. I do my best
10 to save lives.

11 Q How long have you been a nurse?

12 A Okay. I graduated with my degree as an RN in 1994.
13 Prior to that, I was a licensed practical nurse in 1992.
14 And, prior to that, I was a certified nursing assistant in
15 the '80s.

16 Q So a long of time?

17 A About 28 years cumulative experience in health care.

18 Q Do you remember Child coming to your
19 emergency room?

20 A I'll never forget Child

21 Q When Child got there, how did he get there?

22 A He came by ambulance.

23 Q And what was your role in his treatment that day?

24 A I was his primary nurse.

25 Q Being a primary nurse, what does that entail?

1 A That means I take the report from EMS and gather all
2 the information I can possibly gather. I assist in his --
3 you have to realize whenever something like this comes in,
4 there's a whole team that goes to work. And we are all on
5 our game. This is why we do what we do.

6 Okay. My role was assisting getting him on to
7 monitors, rapidly trying to gather information from EMS,
8 from Julie Sailors on what she knew about this. Because
9 the cause of cardiac arrest is one thing that we have to
10 try to, as quickly as we can, figure out.

11 Q And you say "cardiac arrest," is that what Child was
12 in?

13 A Yes, ma'am. He had no pulse.

14 Q So cardiac arrest means what?

15 A That means the heart muscle is not pumping.

16 Q So his heart is not working?

17 A That's right.

18 Q Do you try to gather the history?

19 A Yes. As a matter of fact, gathering the history is
20 one of the most important aspects, other than physically
21 resuscitating the child, trying to determine a
22 differential diagnosis as to why the child is in cardiac
23 arrest.

24 Q And who do you normally gather the history from,
25 other than, of course, the EMS workers?

1 A Oh, the parents or the care giver, whoever the care
2 giver is.

3 Q When Child arrived, was there a parent to give you
4 that?

5 A No. There was no parent.

6 Q Is this normal or abnormal?

7 A This is abnormal.

8 Q So he gets in. Can you tell the jury what was going
9 on in Child 's body when he got there and how -- what his
10 condition was?

11 A Yes. He was intubated. He had a tube -- that means
12 he had a tube down his throat. And they were bagging him
13 to breathe for him. He had a needle stuck into the bone
14 of his leg, as EMS had been infusing IV fluids. He was
15 lifeless.

16 Q So it's fair to say he wasn't breathing?

17 A He wasn't breathing.

18 Q And his heart wasn't beating?

19 A His heart wasn't beating.

20 Q Did you draw any urine samples?

21 A Yes, ma'am. That's to try -- to try to put all the
22 pieces of the puzzle together -- we had no one to get a
23 family history -- I mean, Child 's history from, drug
24 allergies, nothing. We had no clue.

25 So we're gathering all the bodily fluids that we

1 possibly can. I did catheterize the child.

2 Q So when you took that urine sample, what did you do
3 with that?

4 A I immediately sealed it up, took Child n's IV sticker,
5 put it on there, put my initials, the date, and time,
6 sealed it tight, put it into a plastic bag, bio bag, and
7 put it in a tube system. And I tubed it directly to the
8 lab. And they received it.

9 Q Now, let's talk about this tubal system a little bit.
10 Is it like a conveyer belt, or is it like at the bank
11 where it shoots up?

12 A It's like the bank, yeah. It shoots up and it lands
13 at its destination.

14 Q And would it have any pit stops along the way?

15 A No. It goes straight there.

16 Q And what destination was that?

17 A To the laboratory.

18 Q At Baptist Easley?

19 A Yes, ma'am.

20 Q After you took the urine sample, do you recall the
21 first time you saw the mother?

22 A Yes, I do.

23 Q About what time was that?

24 A It was approximately 10 after 12:00.

25 Q 10 after 12:00?

1 A Yes. .

2 Q How long had Child been at the hospital?

3 A He had gotten there -- I started generating a triage
4 sheet on him at 11:45. But he had already been there for
5 a couple of minutes.

6 Q Okay. The first time you recall seeing his mom was
7 at 12:10?

8 A 12:10, yes.

9 Q Did you speak with the mother?

10 A Yes, I did.

11 Q Do you recall anything about that conversation?

12 A Yes, I do.

13 Q Will you tell the jury about that conversation?

14 A Yes.

15 May I have a drink of water, please?

16 Q Absolutely.

17 Do you need anything else?

18 A No.

19 Thank you.

20 The mother was -- the mother seemed to act
21 inappropriate to me.

22 Thank you so much.

23 Q And what do you mean by that?

24 A I've probably worked -- in my experience as a
25 registered nurse, I've probably worked 60 cases like this.

1 Usually, it's respiratory arrest and cardiac arrest. So
2 I've got a lot of experience in dealing with parents. And
3 we, actually, encourage family presence in the room,
4 whether it's a baby, or whether it's your spouse, or your
5 brother.

6 There are a lot of studies that show that having the
7 family present, that that's an encouragement. And it,
8 also, helps the parent to see what's real. It helps them
9 in the closure. I -- when I saw her, she was just there
10 in the room. You've got to realize this happened super
11 fast.

12 Okay. I started asking her, you know, does the child
13 have any medical problems? Does he have any drug
14 allergies? Who's his pediatrician? What's been going on
15 with him? Has he had any kind of injury? Because we're
16 thinking maybe a head trauma. Oh, gosh. Has he gotten
17 into anything that he shouldn't have? Have you given him
18 anything? Her answers were so vague. She wasn't crying.
19 She was not even standing near Child .

20 And, at that point, we started to encourage her to
21 touch Child , that it's okay, you can touch him. And he
22 needs to feel your skin. And she did walk up to Child at
23 his feet and rubbed his foot. And then she stepped back.

24 Q Okay. I'm sure -- let's talk about your hospital a
25 little bit.

1 A Yeah.

2 Q The ER, when you walk into the ER, is there like a
3 lobby area?

4 A When you walk in the front entrance of the emergency
5 department, it's that scenario. There's a lobby, you
6 check in. And then you wait until you go to the back.

7 Q And just the general practices and protocol of the
8 hospital. When a parent comes in and their child is back
9 there in the condition that Child was in, what would be
10 the general protocol? Would the parents be made to wait,
11 or would they immediately be allowed back?

12 A No. We encourage that they immediately get back. We
13 give them -- actually, we kind of give them -- because
14 some parents, I've seen some parents that do not want to
15 go back. They do not want to remember their child that
16 way. And there are other parents that you can't keep them
17 out.

18 Q Okay. Child left your hospital that day?

19 A Yes, ma'am.

20 Q How did he leave that hospital? What did he leave
21 by?

22 A He left by helicopter.

23 Q And where did he go?

24 A To Greenville Memorial Hospital. And he was received
25 by a physician there.

1 Q What time did he leave your hospital? Do you
2 remember?

3 A I concluded my documentation on Child at 12:29. At
4 that point, Child had a pulse. We had resuscitated him
5 to the point that his heart rate was in the 120's. And he
6 was breathing assisting a little bit on his own. And so I
7 concluded my documentation at 12:29.

8 And then the process of the guys landing the
9 helicopter -- we know that they're down now. And they
10 have to come around to the ER to get a report from me, and
11 then take him back to the helipad and transport him.

12 Q So how many minutes after 12:29 do you think that --

13 A I would say probably six minutes, at the most,
14 something like that. Six or seven minutes.

15 Q So he was flown to Greenville Memorial?

16 A Yes, he was.

17 Q As part of that treatment, what kind of tests are
18 done on that urine?

19 A The basic protocol for that is a basic urinalysis to
20 see if the child has a bacterial infection. Because the
21 child can become septic and very, very sick from that.
22 And the other thing we do is to rule out any toxins in the
23 child's system. So we order a medical urine drug screen
24 and a basic urinalysis.

25 Q And was a medical drug screen conducted on Child 's

1 urine?

2 A Yes, ma'am.

3 Q And what did it come back positive as?

4 A Opiates.

5 Q And when it came back positive for opiates, what, if
6 any, kind of treatment or measures were taken at that
7 point?

8 A At that point, we went ahead and started giving
9 Narcan, which is a reversal agent. We started giving
10 Narcan.

11 MS. BARWICK: One moment, Your Honor.

12 (Pause.)

13 BY MS. BARWICK:

14 Q I want to make sure I don't forget anything. You
15 said Narcan helps reverse the effects of opiates?

16 A That's correct.

17 Q Have you seen Narcan given in cases before?

18 A I've given Narcan thousands of times.

19 Q And have you seen it reverse the effects?

20 A I have. Oh, yes, I have. Yes.

21 Q Okay. Did y'all give Child anything that helped his
22 heart start beating?

23 A Yes, we did.

24 Q And what did you give him?

25 A Epinephrine.

1 Q What does that --

2 A Epinephrine stimulates everything. It stimulates the
3 heart muscle to beat again.

4 MS. BARWICK: No further questions at this time.

5 THE COURT: Cross-examination.

6 MR. DEJONG: Thank you, Your Honor.

7 May it please the Court.

8 CROSS-EXAMINATION

9 BY MR. DEJONG:

10 Q Ma'am, I apologize. I'm probably going to butcher
11 your name. So I apologize in advance.

12 Is it Purdessy?

13 A Purdessy.

14 Q Purdessy. I put the syllable -- I'll try --

15 A Okay.

16 Q -- but forgive me if I go astray.

17 So you are a trauma nurse?

18 A I am. I am a registered nurse.

19 Q Yes, ma'am.

20 A With certifications as a nationally-certified
21 emergency room nurse. I am certified as a pediatric
22 advanced life support specialist, and an adult cardiac
23 life support specialist. I'm, also, a forensic nurse.
24 And I conduct sane cases gathering evidence.

25 Q So when the ambulance arrives with this child, are

1 you one of the greeters, so to speak?

2 A I am in the room awaiting the child. We've got the
3 pediatric crash cart out, and we're ready to rock and
4 roll.

5 Q So do the medics bring him to the room?

6 A Oh, yes, they do.

7 Q So dispatch tells them exactly where to bring him,
8 and all that good stuff?

9 A They know where to go. They know in that kind of
10 case they're going to go to the closest hospital that has
11 equipment.

12 Q I'm sorry, ma'am.

13 A That's okay.

14 Q In this case -- well, you work on a team, if I gather
15 what you said right?

16 A Yes, sir. There are -- everybody from the
17 respiratory department, everybody is there and everybody
18 is focused on this child.

19 Q My question is, do the responsibilities change a
20 little bit sometimes on the team? For example, you said
21 in this case, you were the information gatherer; right?

22 A I was that and doing other things, too.

23 Q Yes, ma'am. I understand. But would you normally be
24 the information gatherer as if you were on this team, or
25 as a member of this team?

1 A Well, not necessarily. It could be another nurse
2 that, you know, starts immediately questioning the parent
3 about the condition of the child prior to this event.

4 Q Yes, ma'am. But, in this case, that happened to be
5 you; correct?

6 A It was me. I'm very aggressive with a child.

7 Q And the only person you had to gather information
8 from was the emergency medical personnel?

9 A The paramedics, yes, sir.

10 Q And so that I'm clear, did -- other than the EMS
11 technicians, what -- I'm not sure exactly what to call
12 them -- did anybody else come in with the child?

13 A No.

14 Q Okay. So you are now gathering information the best
15 you can from the EMS worker?

16 A Yes, sir.

17 Q Was the EMS worker able to give you much information?

18 A No, sir.

19 Q Okay. And, as I understand it, the mother did not
20 present herself until about 10 after 12:00?

21 A That's correct.

22 Q So that is some half hour after the child got to the
23 hospital?

24 A Yeah.

25 Q Now, one of the first things you do is you said you

1 got a urine sample; right?

2 A That's not the first thing we do. But, in the course
3 of treatment, we do that.

4 Q Yes, ma'am. If I said first thing --

5 A That's okay.

6 Q It's in the front stages?

7 A It's in the protocol in the pediatric events.

8 Q You said you, also, drew other bodily fluids, if I
9 understood you correctly. What other bodily fluids would
10 you have drawn?

11 A There was blood drawn from Child to check things
12 like a white blood cell count to see if that was elevated,
13 maybe he was septic, to check all of his electrolytes, and
14 those things.

15 Q Okay.. Do you know how much blood was drawn?

16 A Enough to fill up pediatric tubes. We have an adult
17 tube size, and we have the pediatric tube size.

18 Q Okay.

19 A With a child, we don't want to take a lot of blood.
20 So we use pediatric tubes on that.

21 Q So you take a little less blood from a child than you
22 would take from me?

23 A Certainly.

24 Q All right, ma'am. Now, did the lab at Easley
25 Baptist -- they look at that blood; right?

1 A Yes, sir. They receive it, and they immediately
2 start analyzing it.

3 Q And the urine; correct?

4 A Yes, sir.

5 Q Now, the urine screening, that is, basically, what it
6 is, it is a screen; right?

7 A Yes, sir.

8 Q Just for the presence of stuff?

9 A Yes, sir.

10 Q Now, not to be offensive or insulting in any way, but
11 you are not qualified -- other than to read those results,
12 you couldn't interpret the results; is that correct?

13 A If the drug screen came back with positive for THC, I
14 would know that there's marijuana in the child's system.

15 Q Yes, ma'am.

16 A If it's positive for opiates, I would know that there
17 would be some type of Lortab, hydrocodone, or morphine in
18 it.

19 Q But as to when it was ingested or amounts, you would
20 have no basis to testify or to know that; right?

21 A I'm not a toxicologist.

22 Q Yes, ma'am. I guess that's what I'm getting at. I
23 could have cut through the chase a little bit.

24 So, certainly, you would know, based on that urine
25 screen, that there were opiates in the screen, but that's

1 pretty much it?

2 A Yes, sir.

3 Q And you would know then what treatment protocol --

4 A That's right. Those things that we gather, the blood
5 work, the urine specimen, these things do help determine
6 the course of treatment.

7 Q Yes, ma'am. I, certainly, understand that.

8 Now, to your knowledge, was there more than one urine
9 sample taken, or one urine sample taken, or do you know?

10 A There was only one urine sample taken, and that was
11 by me. And I catheterized the child to get it.

12 Q That urine sample went to your lab -- not your lab,
13 but at Easley Baptist; right?

14 A Yes, sir.

15 Q Now, once that screen is done, if you know, ma'am, is
16 that urine discarded, kept for further testing, or do you
17 know?

18 A I think that they keep it for further testing. They
19 send it off to an alternate lab.

20 Q The same thing on the blood?

21 A Not necessarily for the blood.

22 Q Okay.

23 A I'm not sure about the blood. But I do know that
24 about the urine.

25 Q Okay. When you did see the mother at approximately

1 12:10 in the afternoon, where did you see her?

2 A In the -- somebody brought her to the room. I'm not
3 certain who brought her to the room. But I saw her in the
4 resuscitation room, trauma room with Child .

5 Q But, as I understand it, she had to be encouraged to
6 speak to the child -- or touch the child?

7 A I have never seen a parent act quite this way before.
8 She seemed to be very detached.

9 Q Very what?

10 A Detached.

11 Q Detached?

12 A From the child.

13 Q Did she in any way -- based on what you could
14 observe, was she more nervous, or upset, or could you say
15 either one?

16 A She was emotionless is the only way I could describe
17 it. It was like there was kind of no emotion there.

18 Q Did the father ever come to the -- did you ever see
19 the father?

20 A Not to my knowledge.

21 Q Okay. That's fine. Do you know which entrance the
22 mother came in?

23 A No, sir. I can't answer that, because I was busy
24 working on Child .

25 Q Okay. Now, you said you did -- you were able to --

1 you and this team were able to resuscitate the child?

2 A That's correct.

3 Q You got a heart beat?

4 A Yes, we did.

5 Q In terms of that, ma'am, to resuscitate a person --
6 and bear with me on this question, because I don't really
7 know quite how to ask it. Okay. Well, let's back up a
8 little bit.

9 The child came in and had no heart rate, no heart
10 beat, cardiac arrest, and you were able to resuscitate
11 him. If you know, ma'am, from -- does it make a
12 difference as far as resuscitating someone -- let me try
13 this again.

14 Is it easier to resuscitate someone that hasn't had a
15 heart beat for a short time, as opposed to a long time?
16 Is that clear at all?

17 A I think I've got that. The shorter the down time --
18 it depends. I'll have to back up on that. I'll retract
19 that statement. It depends on the cause of arrest. Okay.

20 Q All right. Can you elaborate on that for me just a
21 little bit?

22 A Yes, sir. If the child is septic -- in other words,
23 if he has so much infection in his body that his body is
24 overwhelmed and goes into shock, those cases are very
25 difficult to resuscitate. I was told that Child had an

1 unknown down time. But when you have a child in front of
2 you like this, you pull all the stops, you do everything.

3 Q Sure. I understand.

4 A Because he was laying all by himself, you know.

5 Q I understand. I understand. So you -- and I think
6 you answered my question. You didn't know the down time.

7 So without knowing that --

8 A We did not know, so we just went all out.

9 Q Well, let me ask you this. And is it easier to
10 resuscitate someone who hasn't had as long of down time as
11 somebody that's had a longer down time?

12 A Again, sir, it depends on the cause of the down time.

13 Q Okay.

14 A But, in general, I would say the shorter the down
15 time -- if they can receive medical resuscitation as soon
16 as possible, they do have a better chance of surviving.

17 Q Do you know how long it took to resuscitate the
18 child, that is to get a heartbeat?

19 A How long did it take for Child ?

20 Q Yes.

21 A Yeah. I have a note.

22 Can I look --

23 Q If you have notes, ma'am, please, refresh your
24 memory.

25 A Okay. Chest compressions were being done on Child

1 when he came in, because he had -- he was a flat line on
2 the monitor. So that was about 11:42, 11:43. And we
3 stopped compressions at 12:04, because Child had a pulse
4 of his own.

5 Q Okay. So within about 20 minutes, you were able to
6 resuscitate him?

7 A That's a very long time.

8 Q Now, you said something a moment ago about being in
9 toxic shock?

10 A Well, it's septic shock.

11 Q What does that mean?

12 A It just means that the tissues of the body are not
13 getting oxygen. And many times, we'll see in children
14 that sepsis can happen because of infection.

15 Q If you know, would a hydrocodone overdose be similar
16 to septic shock?

17 A No, sir. It presents differently. Usually, there
18 are very objective signs of shock in a child. Usually,
19 they have a very high temperature whenever they are
20 presented.

21 Q With an overdose or --

22 A No, with sepsis.

23 Q Did Child have a fever, or anything?

24 A Oh, no. He, actually, was --

25 Q Well, I guess he didn't, he was in cardiac arrest.

1 A Well, his body temperature was, actually, very low.

2 Q Okay. And the -- I was having a difficult time
3 hearing you. I gather either in the process of
4 resuscitating him, or once he was resuscitated, you gave
5 him certain medications; is that right?

6 A He was given medications all along the way.

7 Q Okay. What was the one in particular that kind of
8 jump starts everything?

9 A Epinephrine.

10 Q Epinephrine?

11 A Yes, sir.

12 Q Was he given any, to your knowledge, at Easley
13 Baptist, any type of opiates?

14 A Oh, no, sir. We were trying to rule out that, you
15 know. The child is toxic from drugs, so we, certainly,
16 did not give him anything.

17 MR. DEJONG: One moment, please, Your Honor.

18 (Pause.)

19 MR. DEJONG: The witness is with you, Mr. O'Connell.

20 MR. O'CONNELL: Thank you, Your Honor.

21 THE COURT: Yes.

22 CROSS-EXAMINATION

23 BY MR. O'CONNELL:

24 Q You are a trauma nurse, the head trauma nurse?

25 A I was not the charge nurse in the ER that day. I was

1 assigned to trauma rooms.

2 Q Okay. You made a point of saying the parents weren't
3 there. Would you change your point if the father was
4 being picked up from his place of employment and brought
5 to the ER?

6 A I have no knowledge of that.

7 Q No. I said, would you change your statement that
8 both parents weren't there if you knew the father was
9 being picked up and brought to the hospital from his place
10 of employment?

11 A Sir, I document everything objectively. And if he is
12 not in front of my face, then I cannot document that he's
13 present.

14 Q So if he was on his way there, you might have said it
15 differently. You would have said the father was on his
16 way there, if you knew that?

17 A If I knew that there were parents en route, then,
18 yes.

19 Q Was the grandmother there?

20 A No.

21 Q The grandmother was not at the ER?

22 A I do not recall seeing her. She could have been
23 there, but I do not recall seeing her.

24 Q Did one of your nurses -- I'm saying this because
25 you're the head; is that correct? You're the one in

1 charge?

2 A No, I'm not. I'm a staff nurse.

3 Q Did one of the nurses come out and say, Where did the
4 bruises come from the child -- on the child?

5 A I'm not aware of that. But we did -- I, myself, did
6 note bruises on the child's buttocks.

7 Q Did one of the nurses note a little bite mark on the
8 child?

9 A Not to my knowledge.

10 Q And you didn't notice it either?

11 A The child had like -- it almost looked like almost a
12 bruise on his cheek.

13 MR. O'CONNELL: That's all the questions I have.

14 THE COURT: Mr. Harbin.

15 MR. HARBIN: May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. HARBIN:

18 Q Ms. Purdessy, did I get that right?

19 A Yes.

20 Q I've got one question. You seem very concerned that
21 you weren't given a lot of information about Child on his
22 trip in. You wanted more information. And I assume that
23 had to be because that would help you help him; is that
24 correct?

25 A That's right.

1 Q And this might be an unfair question kind of in
2 hindsight. Is it not true that the most important you
3 information you could have gotten was that he had ingested
4 hydrocodone?

5 A That he had what? I'm sorry.

6 Q The most important piece of information that you
7 could have been provided, had somebody been there to
8 provide it for you, would be that he had ingested
9 hydrocodone. If you had known that, it could have helped
10 him more?

11 A He would have received Narcan earlier.

12 Q And would that be the single most piece -- important
13 piece of information that you could use as a nurse, or as
14 a medical professional to help him at the time?

15 A That would help determine our treatment plan for him.
16 But the most important aspect of what was going on with
17 Child was that he was dead. He didn't have a heart beat.
18 So we were all working desperately to help oxygenate his
19 tissues.

20 Q Maybe I'm not being clear. My understanding is
21 Child died as a result of a hydrocodone overdose. Is
22 that your understanding?

23 A Yes, sir.

24 Q Okay. And would it not be a terribly important piece
25 of information to receive?

1 A Absolutely.

2 Q That he had ingested hydrocodone as soon as he got to
3 the hospital?

4 A Yes, sir.

5 MR. HARBIN: Okay. Thank you.

6 No further questions.

7 THE COURT: Redirect?

8 MS. BARWICK: Yes, sir, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. BARWICK:

11 Q Is hydrocodone considered an opiate?

12 A Yeah, down the food chain of opiates, yes, ma'am.

13 MS. BARWICK: No further questions.

14 THE COURT: Any recross?

15 MR. DEJONG: Not on behalf of Mr. Morris, Your Honor.

16 MR. O'CONNELL: No, sir.

17 MR. HARBIN: No, Your Honor.

18 THE COURT: Thank you.

19 You may step down.

20 You may call your next witness.

21 MR. RICHARDSON: Thank you, Your Honor.

22 We would call Stacy Garmon to the stand, Dr. Stacy
23 Garmon.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 STACY GARMON, M.D.,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: You may have a seat.

5 And state your name for the record.

6 THE WITNESS: I'm Dr. Garmon, Stacy Garmon.

7 DIRECT EXAMINATION

8 BY MR. RICHARDSON:

9 Q Good morning, Doctor.

10 A Good morning.

11 Q Doctor, where are you presently employed?

12 A Easley Pediatrics is what most people know it by.

13 Recently, the name has changed to Pediatric Associates of
14 Easley, but it's the same place.

15 Q All right, sir. And in what capacity are you
16 employed there?

17 A A general pediatrician. I've been in practice for, I
18 guess, about 18 years now.

19 Q Okay. Have you practiced that type of medicine the
20 entire time?

21 A Yes, sir.

22 Q Okay. And where did you go to school?

23 A Medical school, the University of South Alabama.

24 Q And did you do your residency there, or elsewhere?

25 A No. I did my residency in Greenville at the

1 Greenville Hospital System from 1991 to 1994. And then I
2 joined the practice here in 1994.

3 Q Okay, sir. Now, I want to take your memory back to
4 March the 17th of 2008. Did you have an occasion to be
5 involved with a child by the name of Child ?

6 A Yes.

7 Q And how did that come to be?

8 A It was a normal day. I was working in my office.
9 And I received a message that a child had presented in
10 distress in the emergency room at Baptist Easley, and
11 could I, please, come over and offer my assistance.

12 Q Okay. Now, is that a normal procedure at Easley
13 Baptist to have a pediatrician come to the hospital?

14 A Sometimes, it is, yes, especially if the ER physician
15 and the team feels that we may have something to help
16 with, to offer. So they often call us when they have a
17 child in distress and feel like we can help them.

18 Q Okay, sir. So did you, in fact, go to Easley Baptist
19 and attend to Child ?

20 A I did.

21 Q Okay. And when you arrived, were you the -- I want
22 to call it the main physician, or was some other physician
23 working on the child?

24 A I would not consider myself the main physician. The
25 ER physician was the primary physician who was in charge.

1 I played a supportive role.

2 Q Okay. And what, in particular, did you do to -- in a
3 supportive role?

4 A I monitored what was being done by the team, and I
5 offered my advice. I think, at one point, I may have
6 given a couple of orders for medications.

7 Q Is it fair to say you have an emergency room doctor
8 and a pediatrician because we're dealing with a child?

9 A Correct.

10 Q And you're kind of using each other's knowledge?

11 A Yes.

12 Q Is that fair to say?

13 A Yes, sir.

14 Q And I assume in doing that, you viewed Child
15 there in the hospital in the hospital bed?

16 A I did.

17 Q Okay, sir. And did you -- do you recall noticing any
18 sores about his rear end?

19 A Yes, I did.

20 Q Okay, sir. Let me hand you what's been previously
21 marked for identification purposes as State's Exhibit
22 Nos. 13 and 11. Sir, can you take a look at those,
23 please?

24 A Sure.

25 Q And can you identify those pictures?

1 A Yes.. This is what I saw in the emergency room that
2 day on the child.

3 Q Okay. And on the child Child ?

4 A Yes, on Child.

5 Q Sir, if I may have those back, please, sir.

6 A Yes..

7 MR. RICHARDSON: Your Honor, at this time, the State
8 would offer State's Exhibit Nos. 11 and 13 into evidence.

9 THE COURT: Any objection?

10 MR. DEJONG: Your Honor, I object, basically, on the
11 same basis we objected to before, and that would be the
12 probative value. If we were trying a little different
13 case, I wouldn't have the objection. But, in light of
14 what we're trying, I do not see any probative value
15 whatsoever.

16 If we were trying just a pure unlawful neglect case,
17 it might have some probative value. We're not trying an
18 unlawful neglect case. We're trying a homicide by child
19 abuse case. And I just -- I don't see the relevance of
20 it, nor that it is probative.

21 MR. HARBIN: I join that objection, Your Honor.

22 MR. O'CONNELL: Your Honor, and I would join, also.

23 THE COURT: Let me see the pictures, please.

24 (Pause.)

25 THE COURT: I sustain the objection..

1 MR. RICHARDSON: Your Honor, if I may, I'll follow-up
2 and lay some further foundation.

3 THE COURT: Okay. Sure.

4 BY MR. RICHARDSON:

5 Q Doctor, the wounds -- or the injury -- or the -- what
6 you saw on the child that you testified to, what, in your
7 opinion, was that consistent of?

8 A It's a red rash around the child's bottom. I don't
9 know how it got there, but it looks like maybe from
10 pressure from something pushed against the child.

11 Q And by pressure, would that be a scenario where the
12 child had not moved for a lengthy period of time?

13 A It could be.

14 Q And could it be consistent with a bed sore?

15 A Yes.

16 Q And as far as a bed sore is concerned, how does that
17 come to be?

18 A From lack of movement.

19 Q Okay. Is it lack of movement for --

20 A And pressure against the skin from another source,
21 something pressing against it.

22 Q Okay, sir. And would that be a -- would it take a
23 lengthy period of pressure for that to take place?

24 A It's hard to say. I don't think that that happened
25 very quickly. I think that that probably developed over

1 some period of time. But I don't know how long.

2 MR. RICHARDSON: Your Honor, once again, I would
3 offer these into evidence. I believe that the probative
4 value has been established. Simply, this is a hydrocodone
5 overdose. And there has been testimony about how long the
6 child was --

7 THE COURT: Okay. I'm going to ask the jury just to
8 step out for a moment while we discuss this. Don't talk
9 about the case. And continue to keep an open mind.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 11:45 a.m.)

12 THE COURT: Okay. I appreciate everyone adhering to
13 the rule of no speaking objections. I understand y'all
14 probably have some things you want to put on the record.
15 So that's why I took the jury out.

16 MR. DEJONG: I'm sorry, Your Honor. I'm having a
17 difficult time hearing you.

18 THE COURT: I said that I appreciate everyone
19 adhering to the rule of no speaking objections. But I
20 wanted to give everyone the opportunity to put their
21 positions on the record in full at this time regarding the
22 photographs.

23 Yes, sir.

24 MR. RICHARDSON: Your Honor, as I stated, there has
25 been testimony about the length of time that the child --

1 whether it was seen or not seen by the mother, and the
2 length of time the child was laying in the bed. The
3 premise here is that this was caused due to the child not
4 moving.

5 So if we have a hydrocodone overdose, there's a
6 relevancy to that aspect of it, and when that took place.
7 And I apologize for the speaker.

8 MR. HARBIN: I'll let Mr. DeJong go first, Judge.

9 MR. DEJONG: Well, Your Honor, based on the testimony
10 I've heard so far, again, I don't even see the relevance
11 now. Because if I understood what the good Doctor just
12 testified to, he said it would have developed over time.
13 How much time he didn't know, but it would have developed
14 over time.

15 If that is the case, we're talking about, as I
16 understand it, a window of less than 24 hours here. And
17 if that were the case, it developed over time, which would
18 have been more than 24 hours. What's the relevance of it?
19 I submit to the Court with all due respect that it has no
20 relevance whatsoever.

21 THE COURT: Let me see the pictures one more time,
22 please.

23 (Pause.)

24 THE COURT: Okay. Anybody else?

25 MR. HARBIN: Yes, sir, Judge, quickly.

1 I think that based on the Doctor's ability to testify
2 to a reasonable degree of medical certainty, I don't think
3 he can honestly answer the question to a reasonable degree
4 of medical certainty, because there's too many
5 possibilities of what could have caused that rash. He was
6 asked the direct question, which he honestly answered,
7 that could it be a bed sore?

8 And he said, Yes.

9 But he has no way of telling us what it is or where
10 it came from. And that, essentially, becomes conjecture.
11 And with "Doctor" in front of his first name, it gives a
12 little too much weight to his conjecture. And I don't
13 think he's doing it on purpose, but that's the basis of my
14 objection.

15 MR. O'CONNELL: And, Your Honor, mine is that I don't
16 think anyone has mentioned or they've laid enough ground
17 as to what other sources could there be. This child was
18 supposed to be taking medicine for an earache, supposed to
19 have taken Amoxicillin, supposed to have taken some other
20 medicines.

21 So could those medicines caused this rash, or
22 whatever we want to call this thing?

23 THE COURT: Okay.

24 MR. RICHARDSON: Your Honor, in response to
25 Mr. O'Connell, that would be subject to cross-examination.

1 What the Doctor said is that this was some abnormality
2 caused by pressure, and that it took place over a period
3 of time. It took a while to develop. And that's the
4 purpose that we're putting it in. We're showing the jury
5 that it was there, and it took a period of time for it to
6 come when the child did not move.

7 THE COURT: My ruling is that State's Exhibit No. 11
8 is not admissible.

9 State's Exhibit No. 13 can come in. But I want the
10 picture to be redacted so there's not anything below where
11 this tube starts and that can give, I think, the witnesses
12 and the jury sufficient information about what the picture
13 contains that's relevant to the case without injecting any
14 kind of unfair prejudice, or other improper consideration
15 excluded by Rule 403.

16 I think State's Exhibit No. 11 is just too graphic,
17 in my opinion, and doesn't advance the probative value to
18 a point where it's not vastly outweighed by the
19 prejudicial nature of it.

20 MR. RICHARDSON: Okay, sir.

21 THE COURT: So do you see what I'm saying?

22 MR. RICHARDSON: Yes, sir.

23 I just need to see --

24 THE COURT: Go ahead.

25 MR. HARBIN: I wanted to make a request. I believe

1 Mr. Richardson inadvertently in shifting the papers and
2 stuff, he's very close to the jury. And I watched, at
3 least, three of them. They're trying to see what's in his
4 hand. And it's natural, I understand that. But if he
5 could be very careful and keep the white side of the
6 paper -- I don't know if he has any more photos. But
7 there were a couple of times where they had the
8 opportunity to get a glance.

9 THE COURT: Well, everybody is aware of the rule not
10 to show exhibits that have not been introduced into
11 evidence to the jury, or to put them in places where they
12 might be seen by the jury.

13 MR. HARBIN: Judge, I don't believe it was -- I
14 believe it was inadvertent.

15 THE COURT: I understand. So that's what I'm talking
16 about.

17 MR. RICHARDSON: Yes, sir.

18 THE COURT: So if you can redact that and --

19 MR. RICHARDSON: Would you like me to do that at this
20 time and simply cut it off?

21 THE COURT: Yes.

22 MR. DEJONG: And I'm not arguing with Your Honor's
23 ruling. I just ask that my exception be noted, for the
24 record, Your Honor.

25 MR. O'CONNELL: Same here.

1 MS. BARWICK: And, Judge, the exhibit numbers are up
2 here. We would just have to replace that.

3 Is that going to be a problem for the court reporter?

4 THE COURT REPORTER: No.

5 (Pause.)

6 MR. RICHARDSON: Your Honor, if I may show the Court
7 and the Defense attorneys to make sure it's okay?

8 THE COURT: Sure, yes.

9 (WHEREUPON, State's Exhibit No. 13 was remarked for
10 identification only.)

11 (Pause.)

12 MR. RICHARDSON: Your Honor, we're ready.

13 THE COURT: Okay. You can bring the jury back in.

14 Thank you.

15 (WHEREUPON, the jury came into open court at
16 approximately 11:55 a.m.)

17 THE COURT: Yes, sir.

18 MR. RICHARDSON: Thank you, Your Honor.

19 May it please the Court.

20 Your Honor, at this time, the State would move
21 State's Exhibit No. 13 into evidence.

22 THE COURT: All right. It's admitted subject to the
23 earlier ruling, and subject to the earlier objection and
24 exceptions.

25 Go ahead.

1 MR. RICHARDSON: Thank you, Your Honor.

2 (WHEREUPON, State's Exhibit No. 13 was admitted into
3 evidence.)

4 CONTINUED DIRECT EXAMINATION

5 BY MR. RICHARDSON:

6 Q Now, Doctor, I'm just going to ask you, is that what
7 you saw at the hospital on March 17th of 2008, on Child
8 ?

9 A Yes, it is.

10 Q And can you show the jury the area -- if you could,
11 stand up and just show the jury the area that that is on
12 your body. Just point to where it is.

13 A Okay.

14 Q Or you can explain it, if you would like.

15 A That's what I would call the perianal area, the area
16 around the child's anus around his hips, basically, his
17 buttocks.

18 MR. RICHARDSON: Thank you, sir.

19 That's all the questions I have. Please answer any
20 questions Defense counsel may have.

21 MR. DEJONG: Turn that off. I don't need that. Turn
22 it off.

23 CROSS-EXAMINATION

24 BY MR. DEJONG:

25 Q So, Dr. Garmon, you were, basically, called in, I

1 guess, as a -- in a consulting capacity?

2 A Yes, I suppose so.

3 Q Okay. Who called you, Easley Baptist, the ER doctor,
4 or who called you?

5 A Honestly, I don't know who made the phone call.
6 Someone from the ER called our office and said, Your
7 assistance is needed. So I dropped what I was doing and
8 went there.

9 Q So you were there to -- were you monitoring the
10 doctor, the whole team, the whole situation? What were
11 you monitoring?

12 A I was an observer of everything that was going on
13 from the time I walked in. And I was there to offer
14 advice and support, if needed.

15 Q Okay. And I believe you said, at one point in time,
16 you may have ordered medications?

17 A Yes, sir.

18 Q Do you recall what you ordered?

19 A I ordered Narcan. It's a medication that is given to
20 reverse opiate toxicity.

21 Q All right. Were there any others?

22 A I didn't order any other medications that I recall.

23 Q Okay. Well, let's talk a little bit about this
24 picture the Solicitor flashed up on the screen. You said,
25 if I understood you correctly, that it appeared that it

1 could be a pressure-type sore?

2 A It could be consistent with that.

3 Q All right. And then I think the Solicitor said,
4 well, a bed sore; right? And you said it could be?

5 A It could be.

6 Q Yeah. How long would it take a bed sore to develop?

7 A I don't know. It depends on how deep it is.

8 Q Do you know how deep that one was?

9 A I don't know how deep that was.

10 Q Well, it would take longer than 12 hours for a bed
11 sore to develop, wouldn't it?

12 A For one that causes the skin to be broken down, I
13 would think, yes, it would.

14 Q Was the skin broken down on this one?

15 A The skin appeared to be raw. So I think the surface
16 layers of the skin were eroded.

17 Q But, certainly, when you say developed over a period
18 of time, are we talking a period of minutes, hours, days,
19 weeks? What are we talking about?

20 A Hours to days, not minutes.

21 Q Pardon me?

22 A Not minutes.

23 Q Not minutes. Okay. And this would be from simply
24 being inactive; right? We think of bed sores more when we
25 start thinking about geriatrics; right?

1 A I would think so, yes.

2 Q Not pediatrics. And the bed sores are developed
3 because of pressure points on the mattress or the
4 body's pressure points where they're just laying there;
5 right?

6 A Yes.

7 Q And even though it may be consistent with that, if I
8 understand, there could be other explanations for it as
9 well. Is that what you're saying?

10 A There could be.

11 Q All right. Suppose -- well, given a 21-month-old
12 child who is allergic to Amoxicillin, or, perhaps, some
13 other antibiotic, if they were given that, they could
14 develop a rash?

15 A They could develop a rash if they had an allergic
16 reaction to the medication.

17 Q And so would that be consistent with that?

18 A No, sir.

19 Q It would not?

20 A Not in my opinion.

21 Q What would that be consistent with, other than a
22 pressure sore?

23 A That's a localized rash. The only thing I can think
24 that might cause that would be something that put pressure
25 against the child's skin. An antibiotic-associated rash

1 would be more a generalized rash. It would affect
2 multiple area of the body, not just one localized area
3 like that.

4 Q Well, to say that what you saw is consistent with a
5 pressure sore or bed sore, if that's what we're going to
6 call it, then it could be consistent with other things as
7 well; correct?

8 Forget the rash for a moment. It could just be
9 consistent with other things?

10 A Yes.

11 Q Such as?

12 A Anything that made contact with the child's skin that
13 put pressure on it could cause that.

14 Q Okay. But not necessarily because he was unconscious
15 laying there for some period of time? It could be other
16 things?

17 A Yes.

18 MR. DEJONG: The witness is with you, Mr. O'Connell.

19 MR. O'CONNELL: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. O'CONNELL:

23 Q Doctor, could a yeast rash -- don't kids get yeast
24 rashes, things like that over a period of time?

25 A Kids do get yeast rashes. And they do get them in

1 that area. That didn't look like a yeast rash to me.

2 Because a yeast rash is, typically, more of a bumpy rash

3 with individual bumps raised up on the skin's surface. I

4 don't recall seeing bumps.

5 Q What about -- excuse me. Are you finished? Were you
6 finished?

7 A Yes, sir.

8 Q Okay. If you -- what about if you put some kind of
9 ointment on the child in that area, say, like a Desitin,
10 say?

11 A I don't think a baby rash ointment would cause that.
12 But if some type of substance that the child was very
13 sensitive to were rubbed on that area, it could cause the
14 same type of rash.

15 Q Have you, in your practice, known about certain
16 diapers that would cause rashes?

17 A Yes. Some kids are sensitive to some diapers.

18 Q Certain bed sheets that they're laying on, especially
19 unwashed new bedsheets; right?

20 A Yes.

21 Q Even some plush toys can cause some rashes in
22 children?

23 A They can, yes.

24 MR. O'CONNELL: Thank you very much.

25 THE COURT: Mr. Harbin.

CROSS-EXAMINATION

BY MR. HARBIN:

Q Doctor, would it be fair to say that as much of an expert opinion as you can offer, you can't offer one on this particular subject? To a reasonable degree of medical certainty, you can't really say what caused this particular --

A That is true. I can't tell you what caused it.

MR. HARBIN: Thank you, sir.

THE COURT: Any redirect?

MR. RICHARDSON: Nothing from the State, Your Honor.

THE COURT: Thank you.

You can step down.

How long is your next witness going to be, do you think?

MR. RICHARDSON: It will be a little bit of time. I'd say 30 or 40 minutes.

THE COURT: Okay. Call your next witness.

MR. RICHARDSON: The State calls Detective Rita Burgess.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

RITA BURGESS,

after first having been duly sworn, testified as follows:

1 THE CLERK: If you would, have a seat.

2 State your name for the record, please.

3 THE WITNESS: Rita Burgess.

4 DIRECT EXAMINATION

5 BY MR. RICHARDSON:

6 Q Ma'am, where are you presently employed?

7 A The Pickens County Sheriff's Office.

8 Q And in what capacity are you employed there?

9 A I'm a detective sergeant in the juvenile division.

10 Q And how long have you been a police officer?

11 A 22 years.

12 Q Okay. And back in March of 2008, how were you
13 employed? What was the capacity of your employment at
14 that time?

15 A It was the same as it is now.

16 Q And did you have an investigation regarding the death
17 of Child ?

18 A Yes, sir, I did.

19 Q Okay. And when did you begin that investigation?

20 A On March the 17th, 2008.

21 Q Okay. And how did you begin that investigation?

22 A I was contacted by my lieutenant to respond to Easley
23 Hospital in reference to a child that had been transported
24 by EMS and was unresponsive.

25 Q And did you, in fact, go to the hospital?

1 A Yes, sir.

2 Q And, at the hospital, did you have contact with any
3 of the Defendants?

4 A Yes, I did.

5 Q Okay. Prior to that contact, were you given any
6 information about the child's condition?

7 A Other than the child had been transported to the
8 hospital unresponsive, that's the only thing I knew upon
9 arriving at the hospital.

10 Q At some point in time, were you given information
11 that the child had opiates in his system?

12 A Yes, sir.

13 Q Now, and we're at Easley Memorial -- excuse me,
14 Easley Baptist Hospital at this time; right?

15 A Yes, sir.

16 Q Who did you have contact with at Easley?

17 A As far as the Defendants?

18 Q Yes.

19 A I met with Ms. Honeycutt.

20 Q Okay. Where did you meet with Ms. Honeycutt?

21 A When I arrived at the hospital, I went into the room
22 where Child had been taken to by EMS. And Ms. Honeycutt
23 was in the room with Child.

24 Q And is that -- was it the actual emergency room?

25 A Yes, sir.

1 Q Okay. Now, at some point in time, did you enter into
2 a conversation with Defendant Honeycutt?

3 A I did, yes, sir.

4 Q Okay. And where did that conversation take place?

5 A I don't recall if we spent -- we may have spoken very
6 briefly in the room where Child was. But most of our
7 conversation was outside the room and outside the hospital
8 in the parking lot after Child had been transported to
9 Greenville.

10 Q Okay. So your conversation took place after Child
11 had been transported?

12 A They were in the process of transporting him when I
13 arrived. They were awaiting for a helicopter to arrive.
14 And they left with him shortly after my arrival.

15 Q Okay. Now, at this time, was -- Defendant Honeycutt,
16 was she in custody?

17 A No, sir.

18 Q Was she free to go of her own free will?

19 A Yes, she was.

20 Q Okay. And did you ask her some questions?

21 A Yes, sir.

22 Q What did you ask her?

23 A I just asked if she could kind of give me an idea of
24 what was going on, what brought him to be at the hospital,
25 and who he had contact with, just the basic information

1 that I would have needed in order to start an
2 investigation to try to figure out what was going on with
3 Child

4 Q Okay, ma'am. And, at that time, what, if anything,
5 did she tell you about the time that she received the
6 child from the father?

7 A She told me that Child had been with his father from
8 Friday, March the 14th, 2008, until Sunday, March the
9 16th, 2008, between 8:00 and 9:00.

10 Q Okay. And when the child was with -- I'm sorry.
11 What time was it that the child was returned to her?

12 A She told me between 8:00 and 9:00.

13 Q And that was Sunday, the 16th?

14 A Yes, sir.

15 Q At that time, did she -- what, if anything, did she
16 tell you about the condition of the child upon returning
17 him to her?

18 A She said when he came home on Sunday night that
19 Child was extremely sleepy and pitching a fit. So she
20 put him in his crib and closed the door.

21 Q Okay. And did she state at any time that she checked
22 on him?

23 A She said she did go back and check on Child, and he
24 was still fussy. And she cared for him a little bit and
25 put him to bed. And then he slept all night.

1 Q And did she tell you what time she put him back to
2 bed the second time?

3 A No, sir.

4 Q Now, did she tell you -- what, if anything, did she
5 tell you about when was the next time she saw Child ?

6 A She told me that she awoke around 8:30 or 9:00 the
7 next morning, that Child was still sleeping. She went in
8 to check on him and he was still sleeping.

9 Then she went back to bed and woke up around 11:00 is
10 what she told me. At approximately 11:00, she woke up.
11 She checked on him again and was going to change his
12 diaper. That's when she found him unresponsive. And she
13 called Brandon, her boyfriend, to come for help and, also,
14 called 911.

15 Q And what, if anything, did she tell you at that time
16 about going in at 8:00 in the morning and changing his
17 diaper?

18 A At that point, she did not mention that.

19 Q Okay. Now, this incident took place -- do you know
20 the location that they lived where the child was found
21 unresponsive?

22 A Yes, sir, I do.

23 Q And where is that?

24 A Drive, Easley.

25 Q And that's, certainly, in Pickens County?

1 A Yes, sir, it is.

2 Q And so we have a complete understanding, she is the
3 mother of the child?

4 A Yes, she is.

5 Q And she did not live with the father or the
6 grandmother, the other two Defendants?

7 A No, she did not.

8 Q Okay. Now, after that conversation with Defendant
9 Honeycutt, did you then, again, have contact with her?

10 A Yes, sir.

11 Q And where was that?

12 A At my office.

13 Q Okay. And where is your office?

14 A At the Pickens Law Enforcement Center.

15 Q And did you request that she come to you, or how did
16 that take place?

17 A Yes, sir, I did. I requested she come and speak with
18 me.

19 Q Okay. And did you at that particular time -- what
20 date was that?

21 A That was on March 27th.

22 Q Did you say March 22nd?

23 A 27th.

24 Q March 27th. Okay. And, at that particular time, had
25 you got any information about the cause of the child's

1 death?

2 A Yes, sir.

3 Q And when you bring somebody in in an investigative
4 mode, do you have a certain procedure that you go by?

5 A Yes, sir.

6 Q Okay. And what is that procedure?

7 A We give them their Miranda warning.

8 Q Okay. Let me hand you what's been previously marked
9 as State's Exhibit No. 2. Do you recognize that?

10 A Yes, sir, I do.

11 Q And what is that?

12 A This is the form that we use in order to give them --
13 the person we're speaking with their Miranda warning.

14 Q And who does that pertain to?

15 A This is for Latasha Honeycutt.

16 MR. DEJONG: No objection on the part of Mr. Morris,
17 Your Honor.

18 MR. HARBIN: Without objection.

19 MR. O'CONNELL: No objection, Your Honor.

20 THE COURT: It's in evidence.

21 (WHEREUPON, State's Exhibit No. 2 was admitted into
22 evidence.)

23 BY MR. RICHARDSON:

24 Q Ma'am, I'll hand you State's Exhibit No. 2. When you
25 Mirandize somebody from that form, can you explain to the

1 jury exactly how you do it?

2 A Yes, sir. It's broken into sections. And I read
3 each individual line. As I read it, I mark it on the
4 side. And then I read the bottom section of it to them,
5 which is a waiver of rights. And then I ask them to read
6 the form and to initial on each line. And then they will
7 sign at the bottom.

8 Q Okay. Can you publish to the jury what you -- at
9 that point, what you read to her?

10 A Yes, sir. Before we ask you any questions, you must
11 understand your rights. You have the right to remain
12 silent. Anything you say can be used against you in
13 court. You have the right to talk to a lawyer for advice
14 before we ask you any questions, and to have him or her
15 with you during questioning.

16 If you have no money to pay a lawyer's fee, the Court
17 will appoint one to represent you without cost, if you
18 wish.

19 If you decide to answer questions without a lawyer
20 present, you still have the right to stop answering at any
21 time. You, also, have the right to stop answering at any
22 time until you talk to a lawyer.

23 Q Okay, ma'am. And did she, in fact, initial each of
24 those rights?

25 A Yes, sir.

1 Q And is there, also, a waiver of those rights at the
2 bottom?

3 A Yes, sir.

4 Q Can you read that, please?

5 A I have read this statement of my rights and I
6 understand what my rights are. I'm willing to make a
7 statement and answer questions. I do not want a lawyer at
8 this time. I understand and know what I'm doing. No
9 promises or threats have been made to me. And no pressure
10 or coercion of any kind has been used against me.

11 Q Okay, ma'am. And did she, in fact, waive her rights?

12 A Yes, she did.

13 Q How do you know that?

14 A Because she initialled each line, and she signed the
15 form.

16 Q Okay, ma'am. And did you force or coerce her in any
17 way to sign the form?

18 A No, sir.

19 Q And, at that point in time, did she, in fact, give
20 you a statement?

21 A Yes, sir.

22 Q Okay. Initially, did she give you an oral statement?

23 A Yes.

24 Q And what, if anything, did she tell you at that time
25 about the condition of the child when the child arrived

1 home?

2 A She said that Jamie and Lynn brought Child home on
3 Sunday evening. She said he came home around
4 approximately 7:30 to 7:45.

5 She said Jamie told her that Child was sick and
6 needed to go to the doctor, because he was congested. And
7 he gave her the Medicaid card.

8 She said he sounded congested. He had a runny nose.
9 He was crying, pitching a fit. So she was trying to calm
10 him and put him to bed.

11 Q Okay. Now, during that statement, did she mention
12 anything to you about changing his diaper at 8:00 a.m.?

13 A No, not at that point.

14 Q Okay. And did she mention to you anything about when
15 she had to be at work the next day?

16 A Well, during that time, she was just telling me about
17 him coming home that night. And then she did tell me she
18 got him to bed. And he, finally, went to sleep, and that
19 he never woke up.

20 And she got up at 8:00 for -- Ava had woken her up at
21 8:00 that morning. And when she went into Child's room,
22 she said she changed Child's diaper that morning. And he
23 never woke up while she changed his diaper. She said, at
24 that point, she went back to bed and set her clock for
25 10:00. Because she needed to be at work by 11:00.

1 Q Okay. Now, at some point, did you allow her to write
2 her statement down?

3 A Yes, sir.

4 Q Okay. And let me hand you what's been marked as
5 State's Exhibit No. 1.

6 A Yes, sir.

7 Q What is that?

8 A This is her written statement.

9 Q Okay. And was that given after you had given the
10 Miranda warning that you previously --

11 A Yes, sir.

12 MR. DEJONG: Without objection, Your Honor.

13 MR. HARBIN: Without objection.

14 MR. O'CONNELL: Without objection, Your Honor.

15 THE COURT: All right. It's in evidence.

16 (WHEREUPON, State's Exhibit No. 1 was admitted into
17 evidence.)

18 BY MR. RICHARDSON:

19 Q Let me hand you back State's Exhibit No. 1, which has
20 been placed into evidence.

21 MR. RICHARDSON: Your Honor, at this time, I would
22 ask to allow her to publish that to the jury.

23 THE COURT: All right.

24 BY MR. RICHARDSON:

25 Q Could you read that to the jury?

1 A Yes. It reads, I, Latasha Honeycutt, can read and
2 write. On Sunday, 3/16/08, I was talking on the telephone
3 to my neighbor, Michelle Henry. She stated, Your baby is
4 home.

5 I hear a knock on the front door. I get off the
6 phone and answer the door. It's Lynn Phillips, Jamie
7 Morris' mother. She said, can we come in, as Jamie was
8 getting Child out of the car. Jamie, Lynn, Laura
9 Phillips, and Child came in the house.

10 Ava started to cry. So they sat on the couch while I
11 go into the kitchen to fix Ava a bottle. Jamie was
12 holding Child. I sat down and start to feed Ava. They
13 said, Child had fun this weekend, and he's tired. He's
14 been playing all day.

15 I was sitting on the right side of the couch, Child
16 in the middle, and Lynn on the left. Jamie was crouched
17 down on the floor in front of Child crying. Jamie's
18 mother, Lynn, said, Jamie, stop crying.

19 So I sat Ava in the swing and go into Child's room
20 and put the clean crib sheet on the mattress. Jamie was
21 standing beside me holding Child, Lynn and Laura standing
22 in the doorway. Jamie sat Child in the crib and Child
23 starts to pitch a fit. Jamie's mom says, Come on, Jamie,
24 let's go. They walk out.

25 And as they pull out of the driveway, Brandon Roper

1 and his cousin, Jeremy Galloway, pull into the driveway
2 and come into the house. Brandon and Jeremy. Jeremy sat
3 in the recliner chair. And Brandon walks into the kitchen
4 to fix something to drink.

5 Child is still crying and pitching a fit. Ava
6 starts to cry again. So I finish feeding her. And
7 Brandon goes and gets Child out of his crib. He walks
8 into the living room rubbing Child's back saying, It's
9 okay, buddy, it's okay. Child stops crying. I finish
10 feeding Ava.

11 And Brandon says, Want to stand up, Child? He
12 stands him up on the floor. Child begins to cry and
13 pitch a fit again. So Brandon picks him back up and
14 comforts him again. He stops crying. Jeremy says he's
15 going to go home, he'll see us later. He leaves.

16 I put Ava back in the swing. Brandon hands Child to
17 me. I hold him for five or 10 minutes, as did Brandon. I
18 laid Child on the couch and felt his diaper. It's dry.
19 I asked Brandon to make a cup of milk. He does.

20 I take Child's clothes off. They were a little
21 dirty, plus he sleeps in his diaper and socks. I take him
22 and put him in his crib, cover him up, hand him his cup.
23 He takes two or three sips, and hands it back to me. I
24 give it to Brandon and he puts it into the refrigerator.
25 I kiss Child and say, I love you, sweet dreams, and cover

1 him up.

2 I go watch TV with Brandon. We watch TV for a while.
3 I go check on Child , he's fine. Then me and Brandon go
4 on the back porch to spoke a cigarette. We come back in.
5 I go and check on Child . He's fine. I cover him up
6 again. Then me and Brandon go to bed.

7 Ava wakes me up about three times that night. I
8 check on Child every time, and he's fine. I wake up
9 about 8:00, feed and change Ava, change Child , cover him
10 up. He just peed. He didn't sound as congested as
11 before.

12 While Jamie was crouched in the floor, as I mentioned
13 earlier, he said, Child sounds congested. Here's his
14 Medicaid card. You might want to take him to the doctor.

15 I go back to bed and set the alarm clock for 10:00.
16 I get up, feed and change Ava, and get ready for work. I
17 go to get Child up, and he wouldn't respond. So I was
18 like, Brandon, come here, something is wrong. Child is
19 not responding. Brandon comes and is like, Oh, my God.
20 He's not breathing, call 911. So I do.

21 Brandon starts CPR in the crib, then moves him to the
22 floor and then begins CPR while on the phone with 911
23 talking him through it. Child has vomit that came out
24 both times Brandon gave Child air.

25 I'm panicking. I hear the ambulance coming. So I

1 run halfway down the driveway flagging them down. They
2 came in and took JChild n. We got someone to watch Ava and
3 drove straight to Easley emergency. End of statement.

4 Q Okay. And did she sign that statement?

5 A She did.

6 Q And did you witness it?

7 A Yes, sir, I did.

8 Q Okay. Now, back to March 17th of 2008, did you,
9 also, make contact with Donna Phillips?

10 A Yes, sir.

11 Q And where was that?

12 A At Greenville Memorial Hospital.

13 Q And where at Greenville Memorial Hospital was it?

14 A It was in like a family waiting area.

15 Q Okay. And, at that time, did you have -- did you
16 talk to her?

17 A Yes, sir.

18 Q Okay. And was she in custody? Was she free to go?

19 A Yes. She was free to go.

20 Q And in speaking to her, what, if anything, did she
21 tell you about the child having problems sleeping?

22 A She told me that on Friday, they had trouble getting
23 him to sleep while he was at their house. And that she
24 put a pillow in her lap and laid him across the pillow and
25 rubbed his back to help comfort him and calm him down.

1 Q And did she mention anything about him waking up?

2 A She did say that he had what she called frightmares,
3 that he would have those during the night.

4 Q Okay. And what do you know frightmares as?

5 A I'm sorry.

6 Q What are frightmares? Do you know?

7 A She said he would wake up fighting and crying.

8 Q Okay. And, during that conversation, did she tell
9 you anything about the condition of the child -- the
10 condition of the child while they had possession of the
11 child?

12 A She did say that Sunday, he was coughing and
13 congested and that Jamie had given him only Tylenol, some
14 children's Tylenol. But she did not know how much of a
15 dose he had given.

16 And that when they took him home that day on that
17 Sunday, they were upset. Because Latasha put the baby in
18 the bedroom and closed the door. And they felt like he
19 should not be in there. That worried her.

20 Q Okay. Now, was there anything said about Lortab?

21 A Yes. She made random statements -- just in talking,
22 she would randomly say, I hope he didn't get any of my
23 Lortab. She said that a couple of times. And then she,
24 also, made the statement that her sister takes Lortab.
25 And she hoped he did not get her sister's Lortab.

1 Q Now, did you have any further conversation with her
2 at Greenville -- that was Greenville Memorial; correct?

3 A That was at Greenville Memorial, correct.

4 Q At that time?

5 A Yes -- no. I did not have any more contact with her.

6 Q Okay. Subsequently, did you, again, make contact
7 with Defendant Phillips?

8 A Yes, I did.

9 Q Okay. And where was that?

10 A At my office on April the 10th, 2008.

11 Q Okay. And did you follow the same procedure that you
12 just testified to regarding Defendant Honeycutt?

13 A Yes, I did.

14 Q And let me hand you what's been marked as State's
15 Exhibit No. 6. Do you recognize that?

16 A Yes, sir, I do.

17 Q And what is that?

18 A This is her Miranda rights.

19 Q And when you say "her," who are we talking about?

20 A Donna Phillips.

21 MR. RICHARDSON: Your Honor, I would move this into
22 evidence at this time.

23 MR. O'CONNELL: Your Honor, I don't object.

24 MR. HARBIN: No objection.

25 MR. DEJONG: Without objection, Your Honor.

1 THE COURT: It's in evidence.

2 (WHEREUPON, State's Exhibit No. 6 was admitted into
3 evidence.)

4 BY MR. RICHARDSON:

5 Q I hand you back State's Exhibit No. 6. And did you,
6 in fact, give Defendant Phillips Miranda warnings at that
7 time?

8 A Yes, I did.

9 Q And how do you know that?

10 A I read it from this form and did the same with
11 Ms. Honeycutt. I marked each one as I read them to her.

12 Q Okay. And you read those same rights that you had
13 read Ms. Honeycutt?

14 A Yes, sir, I did.

15 Q And did the Defendant Phillips initial those rights?

16 A Yes, she did.

17 Q Okay. And did you, also, have her read the waiver of
18 those rights on that same form?

19 A Yes. I did the same procedure with her as I did with
20 Ms. Honeycutt. I go over them myself -- read them to
21 them, to the person. Then I will hand them the form and
22 have them to read them. And they will initial and sign.

23 Q Okay. And did she, in fact, sign and waive her
24 rights at that time?

25 A Yes, she did.

1 Q And did you force or coerce her to do that?

2 A No, sir, I did not.

3 Q Let me hand you what's been previously marked as
4 State's Exhibit No. 5. Can you identify that for me,
5 please, ma'am?

6 A This is a written statement that Ms. Phillips
7 provided.

8 Q Okay. And was that done after the Miranda warnings
9 were given to her?

10 A Yes, it was.

11 MR. RICHARDSON: Your Honor, at this time, I would
12 move State's Exhibit No. 5 into evidence.

13 MR. DEJONG: Without objection, Your Honor.

14 MR. O'CONNELL: Your Honor, I object because my
15 client didn't read it. It was read to her because she
16 didn't have her glasses. If they would clarify that, I
17 won't object.

18 THE COURT: All right. It's in evidence.

19 Thank you.

20 (WHEREUPON, State's Exhibit No. 5 was admitted into
21 evidence.)

22 BY MR. RICHARDSON:

23 Q Let me hand that back to you. Again, it's State's
24 Exhibit No. 5. Now, in this case, did you -- did the
25 Defendant write the statement, or did you write the

1 statement?

2 A She requested that I write the statement for her.

3 Q And why was that?

4 A She told me that she had rheumatoid arthritis and it
5 was hard for her -- difficult for her to write for a long
6 period of time. And she asked if I would write this for
7 her.

8 Q And did you write it as she told it to you?

9 A Yes, sir.

10 Q Okay. Did you do it in single sentences, or did she
11 tell you and then you just write it all, or how did that
12 work?

13 A No. I do it in single sentences. And when I finish
14 writing one sentence, I read it back to the person and
15 make sure it's exactly what they wanted to say.

16 MR. RICHARDSON: Your Honor, at this time, I would
17 ask that -- allow her to publish that to the jury.

18 THE COURT: Yes, sir.

19 THE WITNESS: It reads, I Donna Lynn Phillips, have
20 requested that Detective Rita Burgess write this story for
21 me.

22 Thursday, March 13th, 2008, I saw Child at
23 Latasha Honeycutt's house. They called for us to get his
24 car seat. He was crying and ill acting, sleepy, and would
25 only let Jamie hold him.

1 Friday, we, Jamie and I, went to pick Child up
2 around 1:30 or 2:00 p.m. We had a hard time getting
3 Brandon Roper to the door. And he knew we were coming
4 because we talked to him on the phone. We started to
5 leave giving up on him coming to the door. And Brandon
6 opened the door rubbing his eyes like he had been asleep
7 saying, Oh, man, I'm tired.

8 Child was running around in his pajamas and had the
9 cap to a Bic pen in his hand. Jamie took the pen cap away
10 and showed it to me. I shook my head at Jamie.

11 I looked around for a baby monitor, because the baby
12 was in the back bedroom with the door closed. And I
13 didn't see a monitor. That concerned me because the baby
14 is a newborn. Brandon got the baby at my request so Jamie
15 could see her.

16 We got his Teddy bear and duck and we left. He was
17 still wearing his pajamas. On the way to my house, he was
18 in the car seat and Child said, Daddy, and Nanny's baby.

19 He woke up on schedule both mornings between 6:30 and
20 7:00 a.m. I was worried about him waking up at night
21 frightened from nightmares. And he had a runny nose and
22 started getting congested by Sunday.

23 When we carried him home on Sunday, I talked to
24 Latasha about him being sick and needing to go to the
25 doctor. And she acted like she wasn't listening. She

1 just smiled and acted like he was just having a temper
2 tantrum. Jamie, later that night, wanted to call Latasha
3 and check on him, because he thought Child needed to go
4 to the doctor. And I told him they were going to get
5 upset with him calling all the time. I later told him to
6 go ahead and call, but I'm not sure if he heard me.

7 Jamie gave Latasha the Medicaid card to take him to
8 the doctor. He was sick and Latasha put him in the crib
9 and closed the door. And it made me feel uneasy.

10 On Monday, I carried Jamie to work and took Sydney to
11 get his license and wash the car out. Sydney got his
12 license and we came back.

13 At about 12:30 p.m., someone was banging on the door.
14 And Brandon told them to come quick, it was Child .. I
15 asked if Child was alive. And he told me, Yes, but they
16 are airlifting him to Greenville. I was running to my
17 car. And he told me Child had stopped breathing and said
18 the doctor said Child took something. And Brandon asked
19 what Jamie had given Child. Brandon said he would go to
20 get Jamie at work. And me and Sydney went to the
21 hospital.

22 The nurse said Latasha said we brought him home at
23 9:00 p.m. covered in bruises. I told her all of that was
24 a lie. Child only had a place on his face, a bite mark.
25 The nurse said we detect that it looks like a child's bite

1 mark.

2 She took us through the emergency room as they were
3 rolling him out to the ambulance to take him to the launch
4 pad. And we went straight to Greenville. Someone
5 mentioned that Child had a trace of opiates in his
6 system, but I'm not sure who it was. But I think it was
7 the nurse.

8 When we got to Greenville Hospital, Latasha said
9 Child went to sleep about 15 minutes after we left on
10 Sunday night. She said he slept all night in his clothes
11 and never got up. Jamie questioned why she didn't get him
12 up before 10:00 a.m., and asked if she changed his diaper.
13 And she said she did change his diaper while he was in the
14 crib. I later asked Latasha if Child ate anything. And
15 she said he drank some milk.

16 The next day I asked Latasha if he had any of those
17 nightmares. And she said, yes, he woke up three times.
18 The nurse ran us out of the room one day saying only two
19 people could stay. And I said that that should be the
20 momma and daddy. We went to a waiting room, me, Sydney
21 and Brandon. I asked Brandon if they had anything in the
22 house Child could have got. And he said, No, nothing. I
23 told Brandon I had Lortab, but I didn't think Child could
24 have gotten it. Brandon said he had been prescribed
25 Lortab two weeks before, but they were all gone.

1 At the funeral home, Jamie asked Brandon if he
2 noticed Child sounded congested and he said no, not when
3 I picked him up. Brandon said Child woke up four times
4 that night. End of statement.

5 BY MR. RICHARDSON:

6 Q Okay, ma'am. And did she sign that statement?

7 A Yes, sir, she did.

8 Q Okay. Now, prior to her giving that statement, did
9 you have a conversation with her?

10 A Yes, sir.

11 Q Okay. And did she reveal to you anything about how
12 the child was breathing?

13 A She did. She said he had a runny nose all weekend.
14 And by Sunday, he had started getting congested, and that
15 he had become ill and irritated. And they decided to
16 leave Greenville where they were visiting a family member.

17 And, on the way home, he was breathing hard -- what
18 she called hard in the car. And that Jamie had moved him
19 around in the car seat to try to help his breathing in the
20 car.

21 Q Okay. Now, did you have any further conversations
22 with Defendant Phillips after that?

23 A On that day?

24 Q Yes.

25 A No, sir.

1 Q Okay. Now, regarding the Defendant Morris, did you
2 have a conversation with him at the hospital, also?

3 A Yes, sir, I did.

4 Q Okay. And which hospital was that?

5 A At Greenville Hospital.

6 Q And what day was that?

7 A It was March 17th.

8 Q And, at that particular time, was he in any type of
9 custody or control of yours?

10 A No, sir.

11 Q Okay. Was he free to leave?

12 A Yes, he was.

13 Q Okay. And did he speak to you freely?

14 A Yes, he did.

15 Q Okay. And what, if anything, did he say about the
16 child, Child, being sick?

17 A He, actually, said that Child had been fine all
18 weekend and that around 3:00 on Sunday, he started crying
19 and acting ill. And around 4:00 that day, he started
20 breathing funny. He was wheezing, congested, his jaw was
21 shaking. And he was concerned about the way Child was
22 breathing that day.

23 Q Okay. And what, if anything, did he say about giving
24 him any type of medication?

25 A He said around 3:45 that day, he did give him one

1 dropper full of infant Tylenol, Equate brand,
2 grape-flavored infant Tylenol.

3 Q At any time, did he say he gave him more than that
4 one dropper full?

5 A On that day?

6 Q Yes.

7 A At that time, he did not.

8 Q Okay. Now, was that the extent of your conversation
9 with him?

10 A Basically, that day, yes.

11 Q Okay. And, subsequently, did you, also, have a
12 second contact him?

13 A Yes, sir.

14 Q Okay. And where was that?

15 A That was at my office.

16 Q Okay. And did you follow the same procedures in
17 speaking to him -- what day was that?

18 A That was on April the 4th, 2008.

19 Q Okay. And did you follow the same procedures in
20 speaking to him as you did the other two Defendants?

21 A Yes, sir..

22 Q And let me hand you what's been marked as State's
23 Exhibit No. 4. What is that?

24 A This is his Miranda.

25 Q And did you -- that's the same Miranda that you had

1 given the other two Defendants?

2 A Yes, sir. It's the same form.

3 Q Okay. And did he initial those rights?

4 A Yes, sir.

5 Q Okay. And did he, also, waive those rights?

6 A Yes, sir.

7 Q And how do you know?

8 A Because he initialled each line, and he signed the
9 bottom.

10 Q Okay. And did you force or coerce him to sign this
11 form in any manner?

12 A No, sir.

13 MR. RICHARDSON: Your Honor, at this time, I would
14 move State's Exhibit No. 4 into evidence.

15 MR. DEJONG: Without objection on behalf of
16 Mr. Morris.

17 MR. O'CONNELL: No objection.

18 MR. HARBIN: Without objection.

19 THE COURT: It's in evidence.

20 (WHEREUPON, State's Exhibit No. 4 was admitted into
21 evidence.)

22 BY MR. RICHARDSON:

23 Q After you gave him those Miranda warnings at your
24 office, did you have a conversation with him?

25 A Yes, sir.

1 Q During that conversation, what, if anything, did he
2 reveal to you about pneumonia?

3 A He described Child 's breathing as sounding like he
4 may be having pneumonia.

5 Q Okay. And what, if anything, did he say at that time
6 about the child being sick, and how long the child had
7 been sick?

8 A He said Child was fine on Friday. He didn't appear
9 sick at all. He, actually, described that he slept well
10 Friday night. He had one nightmare that night. The same
11 thing on Saturday. He said he seemed to be fine on
12 Saturday. He slept all night, had one nightmare on
13 Saturday. And he stated on Sunday between 3:00 and 3:30,
14 he started acting ill and crying.

15 Q And that -- was that when the breathing that you
16 described before --

17 A That's when he said he started crying and he was
18 acting sleepy, acting like he was fighting sleep. And
19 that this went on for about 30 minutes, and he rubbed his
20 face into his shirt. When he was holding Child , Child
21 rubbed his face into Jamie's shirt. And, at that point,
22 he said that went on for about 30 minutes.

23 Q Okay. And after your oral conversation with him, did
24 he give a written statement to you?

25 A He did. And he, also, mentioned the Equate Tylenol

1 when we were talking in my office.

2 Q Let me hand you what's been previously marked as
3 State's Exhibit No. 3. Can you identify that?

4 A Yes, sir. It's Jamie Morris' written statement.

5 MR. DEJONG: Without objection, Your Honor.

6 MR. O'CONNELL: No objection, Your Honor.

7 MR. HARBIN: No objection, Judge.

8 THE COURT: It's in evidence.

9 (WHEREUPON, State's Exhibit No. 3 was admitted into
10 evidence.)

11 BY MR. RICHARDSON:

12 Q Let me hand you back State's Exhibit No. 3.

13 MR. RICHARDSON: Your Honor, at this time, I would
14 ask that she be allowed to publish that to the jury.

15 THE COURT: Go ahead.

16 THE WITNESS: It reads, I, Jamie Edward Morris, can
17 read and write.

18 On Friday, March 14th, I picked Child , my son, up at
19 Latasha Honeycutt and Brandon Roper's residence at
20 approximately 1:00 to 1:30 p.m. Child n and I stayed at
21 home on Friday all day long. Child acted fine on Friday.
22 Child had a nap between noon, 12:00 and 1:00 Friday. I
23 got him home -- I'm sorry. I got him to bed at 10:00 p.m.
24 He woke up Saturday morning at 6:30.

25 On Saturday, I took him to my stepmother's, Renee

1 Shelton's house. Child was fine all day Saturday. I got
2 him to bed at 8:00 p.m. on Saturday. Child and I woke up
3 together at 7:30 on Sunday morning. We went to my aunt's
4 house, Cindy Stevens, Sunday.

5 At that point, Child was still fine. My mother was
6 with me the whole time over the weekend. We all went to
7 my sister's, Brandy Leslie, on Sunday and arrived there at
8 about 2:00 or 2:30. Child was still just fine at that
9 point.

10 At about 3:30, Child started crying and acted
11 sleepy. I tried to get him to calm down and rest, but he
12 would not go to sleep. He acted like he was fighting
13 sleep. I felt his head and the back of his neck, and he
14 felt hot. I gave him some Equate brand grape-flavored
15 infant Tylenol. He still wouldn't calm down. After he
16 acted like this for about one hour, I decided we should
17 leave my sister's house.

18 We left at about 5:30 to 6:00 and went back to my
19 house to get Child n's things. Child slept in the car on
20 the way back from Brandy's. We took Child directly from
21 my house back to Latasha's. He was breathing bad on the
22 way like he was congested. I got upset about his
23 breathing.

24 So when we arrived at Latasha's residence, I gave her
25 his Medicaid card and told her to get him to the doctor.

1 She said something about his doctor said he needed his
2 medical records before he could see him. I told her I
3 thought he should see one very soon because his breathing
4 sounded bad. Child was awake when I got him inside at
5 Latasha's, and was awake when I left. He was reaching for
6 me when I told him goodbye. I told him I loved him and
7 would see him later. That was the last time I saw him
8 conscious.

9 BY MR. RICHARDSON:

10 Q Okay, ma'am. Now, after all of this, did you have --
11 did you receive anything from Defendant Phillips?

12 A Yes.

13 Q And what did you receive from her?

14 A I received an envelope that contained an Equate
15 bottle of Tylenol, Equate brand.

16 Q And how did you receive that?

17 A It was, actually, in my mail box at work.

18 Q And who sent it to you?

19 A It was enclosed in an envelope, sealed up.

20 Q Do you have that envelope?

21 A I do.

22 Q Okay, ma'am. And who did you -- is that the note you
23 received the Equate or the Tylenol from?

24 A Yes, sir. It was left with Sergeant Kristy Leopard,
25 who works in our detention center.

1 Q And did she put any type of marks on there?

2 A Ms. Leopard?

3 Q Yes.

4 A Yes, she did.

5 Q And what kind of marks are those?

6 A She wrote a note on here. She, also, dated and
7 signed it, and timed it. And she sealed it up with a date
8 and time. And it's, also, signed by Ms. Phillips.

9 Q Okay. And after you received that Tylenol, what did
10 you do?

11 A After I received the Tylenol -- I'm sorry?

12 Q After you received the Tylenol, what did you do with
13 it?

14 A I turned it over to our ID division for -- to put
15 into evidence.

16 Q Okay. And was that the last time you had anything to
17 do with that Tylenol?

18 A Yes.

19 MR. RICHARDSON: Thank you, ma'am.

20 Please answer any questions the Defense might have
21 for you.

22 THE COURT: All right. I think we're just going to
23 go ahead and take a break for lunch. We'll just resume at
24 2:00. Be back in the jury room at 2:00. Don't talk about
25 the case. Don't do any outside investigation. And

1 continue to keep an open mind.

2 Thank you very much.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 12:45 p.m.)

5 MR. HARBIN: Judge, I just wanted to bring to the
6 attention -- Mr. O'Connell brought to my attention, the
7 third juror from the left, he's the young man with the
8 long black hair, he appears to be sleeping.

9 THE COURT: Okay. I hadn't noticed. I'll keep an
10 eye on him.

11 MR. HARBIN: Thank you.

12 THE COURT: We'll reconvene at 2:00.

13 (WHEREUPON, a lunch break was taken.)

14 (WHEREUPON, State's Exhibit No. 39 was marked for
15 identification only.)

16 THE COURT: Anything before we resume?

17 MR. DEJONG: Not on behalf of Mr. Morris.

18 MR. O'CONNELL: Not from us, Your Honor.

19 MR. HARBIN: Nothing from us, Your Honor.

20 THE COURT: Ma'am, you may resume your seat.

21 And bring the jury on in.

22 (WHEREUPON, the jury came into open court at
23 approximately 2:01 p.m.)

24 THE COURT: Cross-examination.

25 MR. DEJONG: Thank you, Your Honor.

1 May it please the Court.

2 CROSS-EXAMINATION

3 BY MR. DEJONG:

4 Q Ms. Burgess, if we can, what I'd like to do is try to
5 get some times and, basically, a timeline, if we could.

6 And then we'll talk about some other stuff.

7 A Yes, sir.

8 Q And I gather -- before we do that, I gather you were
9 the chief investigating officer, detective, lead, whatever
10 they call y'all?

11 A Yes, sir.

12 Q It's your case?

13 A Yes, sir.

14 Q All right. Now, of course, it goes without saying
15 that you were not present when anything happened, if
16 anything happened?

17 A That's correct.

18 Q Okay. So let's start out with -- we'll try this.
19 Let's start out with Friday, March the 14th. What time
20 did your investigation reveal that Mr. Morris picked up
21 the child in this case?

22 A Okay. It would be between 1:00 and 1:30.

23 Q In the afternoon?

24 A Yes, sir.

25 Q And I kind of got my back to you, so if you can't

1 hear me, holler at me. Okay.

2 A Sure.

3 Q Between 1:30 and 2:00?

4 A Between 1:00 and 1:30.

5 Q 1:00 and 1:30. Okay. Now, from 1:30 on the 14th,
6 the child was with his father and/or grandmother, is that
7 an accurate statement? That's what your investigation
8 revealed; right?

9 A Yes, sir.

10 Q Now, on 3-16, the child is returned to his mother; is
11 that correct?

12 A That's correct.

13 Q Now, I've heard a lot of varying times in there. But
14 I think -- well, I've heard everywhere from 6:30 to 9:00.

15 A That's correct.

16 Q Okay. And that was, basically, reported by the
17 mother, Ms. Honeycutt?

18 A Those times, I gathered from all three of them.

19 Q All three of them?

20 A Yes, sir.

21 Q Okay. So the latest would be 9:00 on the -- 9:00 in
22 the evening, nighttime, if you will, and the earliest
23 would be 6:30; right?

24 A Yes, sir.

25 Q Now, after 6:30, or whatever that window was when he

1 was returned, until the child was at the hospital, does
2 your investigation reveal that Mr. Morris had any further
3 contact with that child?

4 A Once he left him with Latasha, not to my knowledge,
5 he had no more contact.

6 Q All right. So somewhere after 6:30 or 9:00 on March
7 the 16th, Mr. Morris had no further dealings with this
8 child?

9 A No, sir.

10 Q Or Ms. Phillips, as far as that goes?

11 A That's right.

12 Q Okay. Now, we get a little fuzzy, I think, after
13 that. How many statements did you, actually, take from
14 Ms. Honeycutt?

15 A Written statements?

16 Q No, statements via oral.

17 A Just in general talking, we talked several times. We
18 talked at Easley Hospital. We talked at my office. I
19 believe I even spoke with her on the phone. And I likely
20 spoke with her at Greenville Hospital, just in general.

21 Q Okay. So you spoke -- well, let's deal with Easley
22 Baptist. You spoke with Ms. Honeycutt there?

23 A Yes, sir.

24 Q Did you speak to Mr. Morris there?

25 A No. I did see him very briefly.

1 Q But you did not speak with him?

2 A I did not speak with him.

3 Q Now, the two times, as I understand it, that you
4 talked with Mr. Morris was at Greenville Memorial, and
5 then when he came to your office on April the 10th?

6 A April the 4th.

7 Q April the 4th. Okay. Those were the two times.

8 Now, the first time when you talked to Ms. Honeycutt --
9 well, let's go way to the far end. We can agree and your
10 investigation revealed and paperwork you got, the 911 call
11 came in at 11:15 in the morning on March the 17th;
12 correct?

13 A That's correct.

14 Q All right. And, for purposes of my timeline, I'm not
15 too concerned about the times after that. I think we've
16 got that part.

17 A Okay.

18 Q Now, when you talked to Ms. Honeycutt at Easley
19 Baptist Hospital --

20 A Yes.

21 Q -- she said she put Child down at what time?

22 A Let me get my notes here in front of me so I can tell
23 you correctly. What time she put him down that night?

24 Q Yes, ma'am. What did she tell you at Easley Baptist
25 Hospital?

1 A She said that she put him down approximately 15
2 minutes after he was dropped off by his father.

3 Q So that would have been anywhere from 6:15 to 9:15 at
4 night?

5 A Well, 6:45 to 9:15.

6 Q Well, 6:45?

7 A Yes.

8 Q Is my 6:30 here wrong? Should that be 6:45?

9 A No, 15 minutes after he was dropped off.

10 Q Oh, I'm sorry. My math is cockamamie. Too much
11 lunch, I believe. 6:45 to 9:15, that's what?

12 A Actually, what she said is approximately 15 minutes
13 after Mr. Morris left her house is when she, finally, got
14 Child settled.

15 Q Right. Okay.

16 A And I believe she said they stayed at her house maybe
17 five to 10 minutes.

18 Q So they did stay there for a while?

19 A Yes, for five to 10 minutes, she said.

20 Q Which could -- so we don't know if that's the time
21 they left or got there; correct?

22 A Correct.

23 Q But, nonetheless, at Easley Baptist, she said about
24 15 minutes after they left, she put Child down?

25 A Yes, sir.

1 Q Now, during that conversation, when did she say was
2 the next time that she saw Child ?

3 A During that conversation?

4 Q Yes, ma'am.

5 A During that conversation, she, actually, said she
6 checked on him before she went to bed. And then she woke
7 back up around 8:30 or 9:00 the next morning.

8 Q So, in that statement, she does not say anything
9 about getting up during the night?

10 A No, not during that statement.

11 Q So she put him down around 9:15, checked on him
12 around what time?

13 A She said she woke up around 8:30 or 9:00 the next
14 morning.

15 Q All right. Now, how long was your conversation with
16 her at Easley Baptist?

17 A It was very brief.

18 Q Okay. Well, I do need to ask the time a little bit.
19 What time did you get to Easley Baptist Hospital?

20 A Do we have the CAD sheet available?

21 Q Yes, ma'am, certainly. If I can find it here.

22 MR. DEJONG: You don't have the exhibits, do you,
23 Ms. Barwick? State's Exhibit Nos. 16 and 17?

24 MS. BARWICK: Yes, I do. I apologize. Here's one.

25 MR. DEJONG: No, I'm looking for the CAD report.

1 That's not the CAD report.

2 BY MR. DEJONG:

3 Q Well, maybe we can kind of back into it this way.

4 A I have a copy in my file.

5 Q If you would like to step down.

6 A I have it. I just have to find it.

7 Q I'm looking for it.

8 A I arrived at Easley Hospital at 12:09.

9 Q 12:09?

10 A Yes.

11 Q Now, was Ms. Honeycutt there when you got there?

12 A Yes, she was.

13 Q So how long did you spend with her at Easley Baptist?

14 A It was very brief. When I got the hospital, they
15 were already preparing to take Child to Greenville. And
16 I did not hold her up very long at all, just, basically,
17 long enough to get some information as to what brought him
18 to the hospital that morning.

19 Q And that information was?

20 A That she woke up that morning and found him
21 unresponsive.

22 Q Okay. Now, did you talk to her again at Greenville
23 Memorial Hospital?

24 A I'm sure I probably spoke with her briefly there, but
25 nothing that was of importance to the case at that point.

1 Q Okay. So there's nothing at Easley -- Greenville
2 Memorial that you made notes of, or anything else with
3 regard to Latasha Honeycutt?

4 A Concerning Latasha, no.

5 Q So the next time you talked to her is in your office;
6 is that correct?

7 A Outside of -- I'm pretty well sure we spoke on the
8 phone a couple of times, just her asking about updates.
9 But, as far as interviewing, no, not until she came back
10 to my office.

11 Q And my question wasn't clear. I shouldn't have used
12 the word just talking to her, that encompasses a lot of
13 things. But as far as trying to get a statement from her
14 was in your office --

15 A That's correct.

16 Q And on what date was that?

17 A That was on March the 27th, 2008.

18 Q All right. Now, basically, on March the 27th, you
19 have a situation where there were -- for want of a better
20 term, there were two statements; correct?

21 A Correct.

22 Q There was, basically, a verbal statement, and then an
23 oral statement -- I mean, an oral statement and then
24 followed up by a written statement; right?

25 A That's correct.

1 Q Now, in the verbal statement -- the oral statement,
2 did she say anything about getting up through the night
3 and checking on Child ?

4 A I believe she did. Let me go back here and look.
5 Let me look at my notes.

6 Q Surely, please do, ma'am.

7 A She said Ava woke her that night several times during
8 the night, and that she looked in on Child when she got
9 up with Ava.

10 Q Okay. So that was in the oral portion?

11 A Yes, sir.

12 Q Okay. Oral on -- what was the date?

13 A March 27th.

14 Q Thank you.

15 She got up several times; is that correct?

16 A Let me make sure she did not give me a specific
17 number here. Ava woke her several times. She changed
18 Child 's diaper at 8:00. He never woke up.

19 Q When she said Ava woke her up several times, did she
20 talk about checking on Child ?

21 A I apologize. She did not say that during her oral
22 statement. She said Ava woke her up several times, and
23 she changed Child 's diaper.

24 Q Now, I'm confused. Was that the oral part?

25 A That's the oral part. I apologize.

1 Q No problem. Now, we get to her written statement.

2 A Yes, sir.

3 Q Okay. Now, during the oral portion of this statement
4 on April [sic] the 27th, was that an ask and answer type
5 thing, or how did that work?

6 A Yes, sir. It, basically, is... I just ask to kind of
7 give me a timeline and explain some -- you know, tell me
8 what happened from the time he was brought back home to
9 her by Mr. Morris until he ended up at the hospital on
10 Monday morning.

11 Q Okay. So the next step on the 27th is you get the
12 written statement?

13 A Yes, sir.

14 Q Okay. Now, in the written statement -- and that was,
15 again, on 4-27 of '08; correct?

16 A 3-27.

17 Q 3-27. I'm sorry. That was both of them, the oral
18 and the written?

19 A Yes, sir.

20 Q Okay. Now, in the written statement, she -- does she
21 indicate whether or not she checked on Child through the
22 night?

23 A Yes, she did.

24 Q And did she indicate how many times she checked on
25 Child ?

1 A She wrote in her statement, Ava wakes me up about
2 three times that night. I check on Child every time, and
3 he was fine.

4 Q Okay. So there's no indication -- well, do we know
5 if one of those times was the 8:00 or 8:30 when she
6 changed the diaper, or does she go on further and talk
7 about changing the diaper?

8 A She does say that he was -- after she says he was
9 fine, she says I wake up at 8:00 to feed and change Ava,
10 cover him up. He just peed.

11 Q All right. So, again -- well, in either the oral
12 statement on 3-27, or the written statement on 3-27, does
13 she say what time Child went to bed?

14 A Not a specific time, no, sir.

15 Q Okay. But, nonetheless, at least, three times, as I
16 understand the statement, she got up through the night and
17 checked on Child ?

18 A Yes. In her written statement, that is what she
19 says.

20 Q That's correct -- I mean; is that correct?

21 A Yes, sir.

22 Q And she said there's no indication that there was any
23 problems those three times she got up to check on him?

24 A That's correct.

25 Q All right. Now, we get to 8:00 or 8:30 in the

1 morning. That's when we get the diaper change; right?

2 A Yes, sir.

3 Q All right. And in any of your conversations, was
4 there any indication that she said that Child was
5 unresponsive at that point in time?

6 A At 8:00 that morning?

7 Q 8:00 or 8:30, whatever time it was.

8 A No. She doesn't say he was unresponsive at that
9 time.

10 Q She said he was asleep, but she changed his diaper?

11 A That's right.

12 Q Nothing in her statements would have indicated that
13 she had any alarm over Child at that point in time?

14 A That's right.

15 Q Okay. And then she goes back to bed -- well, she
16 sets her alarm clock, I believe; right?

17 A Yes, sir. That's what she indicated.

18 Q And then what time does she say she gets up again?

19 A She wrote, I go back to bed and set the alarm clock
20 for 10:00. I get up, feed and change Ava, get ready for
21 work, go to get Child up, and he wouldn't respond.

22 Q Okay. So we don't know if she got up at 10:00 or
23 not, but that's when she set her alarm clock for?

24 A Correct.

25 Q So 10:00 -- again, we're on Monday the 17th; right?

1 A That's correct.

2 Q Okay. As I understand her statement, she doesn't
3 immediately go check on Child ?

4 A No. What she wrote is that she fed Ava, changed Ava,
5 and got herself ready for work before she went to check on
6 Child .

7 Q Okay. So then after she gets up at 10:00, the next
8 step that we're really sure of is the 911 call at 11:15 on
9 the 17th?

10 A Yes, sir.

11 Q So from the time -- we'll even take the latest time
12 that people -- various people used different times, but we
13 use the 9:00. So from the time the child was returned,
14 the latest time being 9:00 on the 16th, some about 14
15 hours passed before the 911 call went in?

16 A Yes.

17 Q Okay. Now, you talked to -- well, the talk of the
18 child -- let's just deal with March the 16th, when the
19 child is returned.

20 A Yes, sir.

21 Q Pretty much what your investigation revealed is there
22 was an agreement -- or it was agreed, not a good choice of
23 words. But everybody said about the same thing, the child
24 was fussy?

25 A Yes, sir.

1 Q Pitched a fit?

2 A Yes, sir.

3 Q He cried?

4 A Yes.

5 Q And he was sleepy?

6 A Yes.

7 Q Okay. Maybe had a runny nose?

8 A Congested, breathing difficulties.

9 Q Yes. Right. And, again, this was a 21-month-old
10 child; right?

11 A Yes, sir.

12 Q And this was in March of '08?

13 A Yes, sir.

14 Q What is that, late winter, wintertime?

15 A Early spring.

16 Q Late winter or early spring. I'm not sure. But it's
17 still fairly cold outside, that type of thing?

18 A Sure.

19 Q Okay. And then even after that -- well, after that,
20 when he was returned, she says he remained fussy?

21 A Yes, for approximately 15 minutes after he was
22 dropped off.

23 Q And, at some point in time, she went and closed the
24 door on his room, or something?

25 A Yes. I believe that was while Mr. Morris was still

1 there.

2 Q Okay. But, certainly, there's no indication by
3 anyone at that point in time when the child was returned
4 to his mother that he was in any distress, other than
5 congestion, runny nose, cold-like symptoms, that type of
6 thing?

7 A Right. He was congested. He had difficulty
8 breathing. They were all concerned about that.

9 Q Right. Now, in the course of your investigation, did
10 it come about as to whether there was any kind of custody
11 order or agreement between Ms. Honeycutt and Mr. Morris?

12 A No. None that was brought to my attention.

13 Q Okay. Was anything brought to your attention as to
14 the time he was -- Child was to be returned on March the
15 16th?

16 A No, sir.

17 Q Okay. Now, I think we're clear, but let's be sure
18 we're clear. Your investigation did reveal that Jamie
19 Morris -- well, number one, Jamie Morris was the
20 biological father -- is the biological father of Child ;
21 correct?

22 A Yes, sir.

23 Q And Latasha Honeycutt was the biological mother?

24 A Yes, sir.

25 Q But, at this point in time, and I think it's implicit

1 that they were not living together?

2 A No, sir, they were not.

3 Q Okay. Do you know how long they had -- or if they
4 had ever?

5 A No, sir. I know Ms. Honeycutt and Mr. Roper had a
6 child together that was a newborn.

7 Q But that child was younger than Child ; correct?

8 A Yes.

9 Q Speaking of Mr. Roper, was he at the emergency room
10 at Easley Baptist when you got there?

11 A When I arrived?

12 Q Uh-huh.

13 A No, he was not.

14 Q Did he come later?

15 A Yes.

16 Q To the best of your recollection, was he at
17 Greenville Memorial?

18 A Yes, sir, I believe he was.

19 Q So if you know --

20 A Actually, I can say he was. Because he was in the
21 room with Child at one point while I was there.

22 Q So do you know if Ms. Honeycutt and Mr. Roper came
23 to Easley Baptist together, or separately, or do you
24 know?

25 A I do not know.

1 Q Okay. Very good. Did you ever ask about the
2 Medicaid card? Did you ever get a Medicaid card?

3 A I never saw a Medicaid card.

4 Q So then the next person you talked to at Easley --
5 Greenville Memorial, I gather the sequence of events
6 was -- well, really, the first person you talked to at
7 Greenville Memorial was Donna Phillips?

8 A Actually, out of the ones I talked to at Greenville
9 Memorial, I couldn't tell you which one I spoke to first.
10 I just had general conversation with all of them,
11 including the hospital staff.

12 Q Okay. Well, nonetheless, your conversation with --
13 well, let me back up a little further. What time did you
14 get to Greenville Memorial? Do you know?

15 A I can tell you.

16 At 1:26.

17 Q In the afternoon, I gather?

18 A Yes, sir.

19 Q On the 17th?

20 A Yes, sir.

21 Q Now, in your conversation with Ms. Phillips at the
22 hospital, I believe you said she randomly said on a couple
23 of -- or she talked about Lortab?

24 A Yes, sir.

25 Q Okay. Now, did she ever say she gave Jamie Lortab --

1 I mean, I'm sorry, not Jamie, Child ?

2 A No, sir, she did not.

3 Q She, basically, said she hoped he hadn't found it or
4 gotten it; right?

5 A Right. She was upset. And she was just making a
6 random statement, I hope he didn't eat my Lortab.

7 Q And even if he had, she didn't say Jamie had any
8 knowledge of that, did she?

9 A No, she did not.

10 Q And there would be nothing in your investigation that
11 would indicate, even if that happened, that Jamie had any
12 knowledge of that?

13 A No, sir.

14 Q Okay. Or as far as that goes, I think Ms. Phillips
15 mentioned her sister?

16 A Her sister, yes, sir.

17 Q And the same thing. Number one, there's no
18 indication that the sister gave Child any hydrocodone;
19 correct?

20 A That's correct.

21 Q And if hydrocodone was found or even given by
22 anybody, nothing in your investigation would reveal that
23 Jamie Morris knew anything about that?

24 A That's correct.

25 Q Do you know at this time how old Jamie Morris was?

1 A At that time -- I can look on his statement. He was
2 24.

3 Q All right. And do you know where he was living?

4 A His address was Road in Pickens.

5 Q Do you know if he lived with anyone at that point in
6 time?

7 A That's, also, his mother's address.

8 Q Okay. Now, while you were at the hospital, you,
9 also, talked to Jamie. And we're not sure which -- what
10 the sequence was and who you talked to first or second,
11 but you did talk to Jamie?

12 A Yes, sir.

13 Q Now, again, you got there at one something in the
14 afternoon?

15 A 1:26.

16 Q Okay. And you did see, I believe you said, Jamie at
17 Easley Baptist; right?

18 A I saw him very briefly in a hallway. And he turned
19 and went back out the door.

20 Q Okay. Was that about the time they were transporting
21 Child to Greenville Memorial?

22 A They were preparing to take him to Greenville.

23 Q So that would have been about 12:30 in the
24 afternoon -- roughly, 12:30, somewhere around there? Do
25 you know?

1 A It would have been around that time. I can't give
2 you a specific time.

3 Q I'm not asking for a specific time, but around that
4 time?

5 A Yes, sir.

6 Q So by the time you got to Jamie, several hours had
7 elapsed from the time the 911 call was made?

8 A At least, a couple of hours, yes.

9 Q Okay. And, now, while you were at the hospital,
10 Jamie talked about congestion on Sunday, I believe;
11 correct?

12 A That's correct.

13 Q I believe runny nose, some congestion, and a shaking
14 jaw?

15 A That's right.

16 Q But he never said anything about Child being
17 unresponsive, did he?

18 A No. He never said he was unresponsive.

19 Q He was fussy?

20 A Yes.

21 Q Crying?

22 A Yes.

23 Q And the breathing issue was more one of congestion,
24 or what they suspected was congestion; correct?

25 A He said when Child went to sleep in the car, he was

1 wheezing, congested, and his jaw was shaking.

2 Q And then -- well, Jamie reported that he really
3 started getting sick on Sunday?

4 A Yes.

5 Q Okay. Remembering he's the daddy; right?

6 A That's right.

7 Q Daddy's aren't quite as observant sometimes as
8 momma's, or even grandma's are. Would you agree with
9 that?

10 A True.

11 Q Now, the bottle of Equate Tylenol that you said you
12 came into possession of --

13 A Yes, sir.

14 Q I think -- I don't think it's been introduced. But I
15 think that was dropped off to Ms. Leopard. And then it
16 came to you, and you turned it over to who?

17 A Let me look on the property sheet, and I can tell
18 you.

19 Lieutenant Robinson.

20 Q And he's in?

21 A He's in our ID division.

22 Q All right. So, once you turned it over to Lieutenant
23 Robinson, what was or was not done with it? You don't
24 know?

25 A I had nothing else to do with that.

1 Q Well, let me ask you this. Do you know -- and you
2 were the chief investigating officer on the case;
3 correct?

4 A Yes, sir.

5 Q Do you know if -- let me back up. Was there a
6 substance in that bottle when you got it?

7 A Yes, sir.

8 Q Was there liquid in there?

9 A Yes, sir.

10 Q Do you recall how full or empty it was, whichever way
11 you want to look at it?

12 A I don't recall.

13 Q Okay. But -- well, let me ask you this. Had the
14 seal been broken on it?

15 A Yes, sir.

16 Q It was open?

17 A If I recall correctly -- and just going by feeling
18 the bottle and taking a look in there, there was not a lot
19 in the bottle.

20 Q Okay. How long someone had the bottle before it was
21 turned over to you, you would have no way of knowing that,
22 would you?

23 A No.

24 MR. DEJONG: One moment, please, Your Honor.

25 (Pause.)

1 BY MR. DEJONG:

2 Q What were your conversations with the hospital staff?

3 A Checking on his condition.

4 Q And what was his condition at that point in time?

5 A At which point in time?

6 Q Well, you said you got to the hospital about 1:26 on
7 the 17th. Did you check on his condition?

8 A Right. I spoke with the nurses. And I spoke with --
9 I did speak with -- there's an advocate, a family
10 advocate. I spoke with her. And I spoke with the doctor,
11 Dr. Burning.

12 Q Doctor who?

13 A Dr. Burning.

14 Q Okay.

15 A And he was still unresponsive. His condition had not
16 changed from the time when he left Easley.

17 Q Was he still breathing? Do you know?

18 A Yes, he was. I believe he was on a ventilator at
19 that point.

20 Q What time did you leave Greenville Memorial?

21 A At 4:58 p.m.

22 Q So you were there roughly three and a half hours?

23 A Yes, sir.

24 Q Now, were you talking to people that whole three and
25 a half hours?

1 A In some capacity, yes.

2 Q Did you receive anything by way of investigation as
3 far as reports as to the mother while you were at
4 Greenville Hospital System?

5 A As to the mother?

6 Q Yes.

7 A Ms. Honeycutt.

8 Q Yes.

9 A Medical records?

10 Q No. Just any reports at all.

11 A Not that I recall.

12 Q Well, when you went to Easley Baptist and first saw
13 Ms. Honeycutt, what was her demeanor as you observed her?

14 A When she was in the emergency room with Child ? In
15 the room?

16 Q Uh-huh.

17 A There was no emotion.

18 Q Okay. Where was she in the room, as compared to
19 where Child was?

20 A I don't recall if she was at the head of the bed, or
21 the foot of the bed. But she was there by the bed.

22 Q And when she came to your office on March the 27th,
23 was there any more emotion?

24 A There was some. She did get emotional at one point.
25 But she was not overly emotional.

1 Q By and large, pretty emotional if there is such a
2 word, no emotion?

3 A At the hospital -- at Easley Hospital, there was no
4 emotion.

5 MR. DEJONG: The witness is with you, Mr. O'Connell.

6 MR. O'CONNELL: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. O'CONNELL:

9 Q Ms. Burgess, my client was at Baptist Hospital, also?

10 A I saw her very briefly when I saw Jamie at the
11 hospital.

12 Q And you didn't question her at Baptist Hospital?

13 A No, sir.

14 Q You then go over to Greenville Hospital, and that's
15 where you questioned most of these folks; is that right?

16 A Right.

17 Q And she was more helpful, trying to help you out. Is
18 that what she was trying to do?

19 A They were all very helpful. No one seemed to be
20 holding anything back.

21 Q She never said or even hinted that she gave any kind
22 of medicine to this child; is that right?

23 A No. She never said she gave him anything.

24 Q She was trying to be helpful; is that right?

25 A Yes.

1 Q Later on, is she the one who, actually, brought you
2 the -- what do you call that, the tube of medicine and
3 stuff?

4 A Which tube of medicine?

5 Q That one that you were talking about earlier. What's
6 that, the child Equate stuff?

7 A She did not give it directly to me. It was left with
8 someone else at the Sheriff's Office, but she did drop it
9 off.

10 Q You had asked her to get it, didn't you?

11 A I think I spoke with Jamie by phone and asked him.
12 Because they had left the bottle at his sister's house.

13 Q Everything you've asked her, she's done, she's
14 brought you whatever you asked for; is that right?

15 A Yes.

16 Q Did you take any other statements from any other
17 people in this case?

18 A Yes, I did.

19 Q Okay. Were they consistent with the facts we have
20 right now? In other words, the child was crying, fussy,
21 or more or less active when the child was returned to the
22 mother that evening between 6:30, 7:30, whatever that time
23 frame is on Sunday evening?

24 A That he was "active"?

25 Q In other words, fussing, crying?

1 A He was fussing, and crying, and having difficulty
2 breathing, yes.

3 Q And, further, that the child was put to bed and the
4 child seemed to be okay?

5 A Yes.

6 Q And Brandon Roper even said the same thing in his
7 statement; is that correct?

8 A That's correct.

9 Q Okay. Actually, there were other people involved.
10 Wasn't there some other fellow at the house when they
11 were all at the house? There was another gentleman
12 there?

13 A Yes.

14 Q And he said about the same thing?

15 MR. RICHARDSON: Your Honor, I'm going to object to
16 the hearsay.

17 BY MR. O'CONNELL:

18 Q Well, he stated the same -- you took a statement from
19 him?

20 A No, sir. I did not.

21 MR. RICHARDSON: Your Honor, my objection is hearsay.
22 He's asking for what another person said.

23 MR. O'CONNELL: No. I'm asking did she take a
24 statement, and what did that statement --

25 THE COURT: Overruled.

1 BY MR. O'CONNELL:

2 Q What did that other fellow's statement --

3 MR. RICHARDSON: Your Honor, I object.

4 THE COURT: Sir --

5 MR. O'CONNELL: I'm trying to get there were other
6 people involved, and other people saying the same thing.

7 THE COURT: Okay. You can ask if she took
8 statements. But I don't think you can get into the
9 substance of the statements.

10 MR. O'CONNELL: Okay.

11 BY MR. O'CONNELL:

12 Q But they all indicated the same thing, the child was
13 active?

14 MR. RICHARDSON: Your Honor, I object.

15 THE COURT: Sustained.

16 MR. O'CONNELL: Right at the moment, I don't have any
17 other questions.

18 CROSS-EXAMINATION

19 BY MR. HARBIN:

20 Q Detective, the first conversation you had with my
21 client, Ms. Honeycutt, was pretty much right after she
22 arrived at the hospital, or in the immediate aftermath of
23 her arrival at the hospital; right?

24 A That's correct.

25 Q And you described it as a brief meeting?

1 A Yes.

2 Q And opposed to a more extensive conversation you had
3 with her a few days later on the 27th?

4 A That's correct.

5 Q Would you consider the conversation on the 27th,
6 perhaps, more informative than the one -- the brief
7 conversation you had at the hospital? Did you have more
8 time to really get into the facts?

9 A Oh, absolutely, yes, sir.

10 Q Do you recall when you -- well, actually -- and I
11 don't know if this is your decision or not. But do you
12 recall when Mr. Morris and Ms. Phillips were indicted?

13 A I may have a copy of it, but I'm not certain.

14 Q Well, just for my purposes, would it sound accurate
15 that it is -- I've got December 16th, 2008. Would that
16 be --

17 A It was in December of 2008, I'm pretty sure.

18 Q And, at that time, prior to trying to get an
19 indictment, what information -- kind of generally
20 speaking, I know there's a whole bunch of information
21 here. But what information had you gathered prior to
22 presenting that information to the Grand Jury? And by
23 that -- and, perhaps, maybe I can just ask you if you've
24 received certain things. Had you received the
25 toxicologist's report by them?

- 1 A By December of '08?
- 2 Q Yes, ma'am.
- 3 A I believe so, yes.
- 4 Q And the coroner's report by then as well?
- 5 A Yes.
- 6 Q And you had had an opportunity to speak with doctors
7 and witnesses by then?
- 8 A Yes, sir.
- 9 Q In other words, you're going to do the best you can
10 to do a complete investigation prior to presenting
11 something to the Grand Jury; is that correct?
- 12 A Absolutely.
- 13 Q Okay. Can you recall when the last time you spoke
14 with my client, Ms. Honeycutt, was?
- 15 A No, sir, I honestly cannot. Because, like I say, I
16 did speak with her by phone. She would call and ask for
17 updates, just the same as Ms. Phillips and Mr. Morris
18 would do. And, also, Mr. Roper would call me.
- 19 Q Perhaps, a better phrased question would be, when was
20 the last substantive conversation you had with her? Would
21 it be the interview on the 27th?
- 22 A Yes.
- 23 Q And that would be March 27, 2008?
- 24 A Yes, sir.
- 25 Q Okay. And I wanted to back up. I totally forgot

1 about this. Mr. DeJong was asking about the various time
2 frames given for when Child was dropped off Sunday
3 evening. And your first, I believe, it was the oral
4 statement that my client gave you and, perhaps, the same
5 time frame given in her written statement. She estimated
6 that Child had been dropped off between 8:00 and 9:00
7 p.m. in her first statement; is that correct?

8 A When I spoke with her at Easley Hospital, yes.

9 Q Now, Mr. DeJong had suggested, perhaps -- I think
10 there was some confusion. She didn't suggest that he had
11 ever come as early as 6:30?

12 A I don't believe she did.

13 Q And, in her written statement, Detective, I believe
14 she was, perhaps, more -- trying to be more specific. And
15 she believed he was dropped off between 7:30 and 7:45?

16 A Yes. That's correct.

17 Q So she never said it was as early as 6:30?

18 A Yes, sir.

19 Q And to go back to a statement given to you by
20 Mr. Morris, he had given some fairly specific descriptions
21 of Child and said that even -- and I'm paraphrasing here,
22 you can correct me, that he had some kind of what he
23 thought might be pneumonia?

24 A Yes.

25 Q Did he mention that, specifically?

1 A That his breathing sounded like someone who had
2 pneumonia.

3 Q And I believe he mentioned in one statement that he
4 gave one dropper full of Children's Tylenol, and in
5 another statement, he said he gave two dropper fulls of
6 Children's Tylenol?

7 A Yes, sir.

8 Q And that is your recollection?

9 A Yes, sir.

10 Q Can you tell me -- do you recall when you presented
11 evidence to the Grand Jury to get an indictment for my
12 client, Ms. Honeycutt?

13 A It was in 2009.

14 Q I've got a date, and you can tell me if this jives
15 with your recollection. October 13th of 2009, does
16 that --

17 A I would say, yes. I don't know for certain, but it
18 was in late 2009.

19 Q Late 2009. That's perfectly good enough.

20 A Yes, sir.

21 Q Okay. And my final question, Detective, do you
22 recognize the name Renee Shelton?

23 A I do.

24 Q And who is that to you?

25 A To me?

1 Q Yes, ma'am.

2 A That is my husband's sister.

3 Q And did your investigation lead you to believe that
4 Renee Shelton is related to Mr. Morris?

5 A Yes. She, back in the '90s, I believe, was married
6 at one time to Jamie's father.

7 Q Father?

8 A Until he passed away.

9 Q Okay. And was there any communication between you
10 and Ms. Shelton regarding this case at all?

11 A No, sir.

12 MR. HARBIN: Thank you very much.

13 No further questions, Judge.

14 THE COURT: Redirect?

15 MR. RICHARDSON: Nothing further from the State, Your
16 Honor.

17 THE COURT: Thank you, ma'am.

18 All right. You may call your next witness.

19 MS. BARWICK: The State would call Deputy J.T.
20 Albrecht to the stand.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 J.T. ALBRECHT,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BARWICK:

Q Deputy Albrecht, where do you work?

A The Pickens County Sheriff's Office.

Q And how long have you worked there?

A Since 2001.

Q What's your official title there?

A I'm a sergeant of forensics.

Q I apologize for calling you a deputy. I know there's a difference.

A That's all right.

Q Sergeant Albrecht, what do you do as a normal course of your duties?

A Crime scene preservation, identification, documentation, evidence collection.

Q And how long have you been doing that?

A Since 2006.

Q Okay. Back in 2008, after March 17th of 2008, did you go out to Donna Lynn Phillips' residence?

A Yes, ma'am.

Q And when you went out to her residence, did Ms. Phillips give you anything?

A Yes, ma'am. She gave me a bottle of Tussin cough syrup, and a bottle of Tussionex.

Q And that bottle of Tussionex, which day was that that

1. you went out there to collect them?

2 A May the 29th, 2008.

3 Q May the 29th of 2008?

4 A Yes, ma'am.

5 Q And once you got that Tussionex, what did you do with
6 it?

7 A I turned it into evidence at the Sheriff's Office in
8 our evidence holding area.

9 Q And who has access to that evidence holding area?

10 A Myself, my lieutenant, Lieutenant Robinson, and
11 Sergeant Gibson, who is, also, in forensics.

12 Q So only the forensic department has access to your
13 storage area?

14 A Yes, ma'am.

15 MS. BARWICK: Nothing further for this witness.

16 MR. DEJONG: Thank you, Your Honor.

17 May it please the Court..

18 THE COURT: Sure.

19 CROSS-EXAMINATION

20 BY MR. DEJONG:

21 Q When did you pick up these items?

22 A May the 29th.

23 Q Of 2008?

24 A Yes, sir.

25 Q Okay. And was there two bottles, did I understand?

1 A Correct. A bottle of Tussin cough syrup and a bottle
2 of Tussionex.

3 Q And did both of those go into property and evidence?

4 A That's correct.

5 Q How did you come about going out to get those?

6 A I can't recall if it was Lieutenant Kelly or
7 Detective Burgess requested I go out there and pick them
8 up.

9 Q When you went out there, Ms. Phillips just gave them
10 to you?

11 A Yes, sir.

12 Q Just met you at the door?

13 A Yes, sir.

14 Q No indication that she had ever given this child any
15 of these medications, were there?

16 A I don't know.

17 Q Right. Well, I'm asking you. From your point of
18 view, your part of this case, there was no indication by
19 her that she had given --

20 A I was sent to get those --

21 Q Pardon me?

22 A I was sent to go pick up the medicine. That's all I
23 know.

24 Q So you didn't even talk to her?

25 A Briefly.

1 Q All right. Did you turn the Tussin cough syrup into
2 property and evidence, too?

3 A I turned both bottles in, yes.

4 Q And once they went into property and evidence, do you
5 know where they went after that?

6 A They were signed out by Lieutenant Robinson to be
7 delivered to Micro Analytical.

8 Q To who?

9 A Micro Analytical.

10 Q Where is that?

11 A I have no idea.

12 Q Okay. You're just reading off the chain of custody?

13 A I'm just reading off the chain of custody, sir.

14 Q And after it went to Micro Analytical --

15 A That's correct.

16 Q So as not to be demeaning in any way, you were the
17 gopher on this day; right?

18 A You got it.

19 Q You went to --

20 A That is correct.

21 Q -- go get the bottles, they were handed to you, and
22 you turned them into P&E?

23 A Yes, sir.

24 MR. DEJONG: The witness is with you, Mr. O'Connell.

25 MR. O'CONNELL: Thank you.

CROSS-EXAMINATION

BY MR. O'CONNELL:

Q Officer, just one or two questions. Were these items returned? Were they brought back to evidence? Are they in evidence now?

A Yes, sir.

MR. O'CONNELL: Thank you.

MR. HARBIN: Judge, I don't have any questions for this witness.

Thank you.

THE COURT: Any redirect?

MS. BARWICK: No, sir, Your Honor.

THE COURT: All right. Thank you, Sergeant.

You may step down.

You may call your next witness.

MS. BARWICK: The State would call Lieutenant Tony Robinson to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

TONY ROBINSON,

after first having been duly sworn, testified as follows:

THE CLERK: If you would, have a seat.

And state your name for the record, please, sir.

THE WITNESS: Tony Robinson.

DIRECT EXAMINATION

BY MS. BARWICK:

Q Lieutenant Robinson, where do you work?

A I'm with the Pickens County Sheriff's Office.

Q What's your position there?

A I'm the lieutenant over the ID division, which is commonly referred to as the crime scene unit. And we, also, handle property and evidence storage.

Q Lieutenant, does that mean you're the boss over that division?

A I am the supervisor over two other members of that division.

Q Yes, sir. You got involved in this case. Did you ever have the opportunity to go over to Latasha Honeycutt's house and Brandon Roper's house?

A I did.

Q And what day would that have been?

A March the 17th, 2008.

Q Okay. You may or may not recall. Do you recall what time you got there?

A It was around 1:00 in the afternoon.

Q And when you got there, what did you do?

A I met Lieutenant Kelly there. And he gave me a brief understanding of what we knew at that point, which was, basically, we had a very sick child at Baptist Hospital

1 being transferred to Greenville. And that we needed to do
2 an investigation at that point. And we were going to go
3 in the house and look around.

4 Q And did you go inside the house and look around?

5 A Yes, we did.

6 Q And when you were inside the house, did you take any
7 photographs?

8 A I took several, yes.

9 Q Can you tell me if these are those photographs?

10 A Yes, they are.

11 Q Before you went in the house, can you tell me if
12 Latasha Honeycutt or Brandon Roper signed a Consent to
13 Search form?

14 A Lieutenant Kelly handled that, but I believe he
15 received it from Latasha.

16 Q And would you have witnessed that?

17 A I did witness it. And he obtained it from both of
18 them.

19 Q And did you sign your name saying you did witness
20 that?

21 A I did, yes.

22 Q And while we're waiting, can you tell the jury what a
23 Consent to Search Form is?

24 A It's a form we obtain. There's two ways to go into
25 someone's house and search for any type of evidence when

1 we think there may have been a crime, or similar
2 situation. We can do it with a search warrant, or we can
3 receive consent from the people who live there.

4 MS. BARWICK: Thank you, Your Honor.

5 At this time, we would offer the Consent to Search
6 form, State's Exhibit No. 20, and then the photographs,
7 State's Exhibit Nos. 32 through 38.

8 MR. DEJONG: No objection, Your Honor.

9 MR. O'CONNELL: No objection, Your Honor.

10 MR. HARBIN: No objection, Judge.

11 THE COURT: Okay. They're in evidence.

12 (WHEREUPON, State's Exhibit Nos. 20, 32, 33, 34, 35,
13 36, 37, and 38 were admitted into evidence.)

14 BY MR. BARWICK:

15 Q Lieutenant Robinson, if you would, just kind of walk
16 us through this a little bit on what we're seeing.

17 MS. BARWICK: Is there any way to dim the lights
18 right over this?

19 THE CLERK: They've already dimmed them.

20 BY MS. BARWICK:

21 Q This top portion, Lieutenant Robinson, what is that a
22 picture of?

23 A The top photo is a photo of the outside of the
24 residence at

25 Q Would that be the front of the residence?

- 1 A Yes.
- 2 Q And this picture, what is this a picture of?
- 3 A That's the bedroom where -- that's Child 's bedroom.
- 4 Q Okay. And I notice there's something on the ground
- 5 here and here. Do you know what that is?
- 6 A You're referring to the stain-type substance?
- 7 Q Yes, sir.
- 8 A It appeared to me to be vomit.
- 9 Q And these photos?
- 10 A They're additional shots further inside the room just
- 11 showing the baby's bed.
- 12 Q Would this have been the door to the bedroom?
- 13 A I believe that's correct.
- 14 Q Is that the crib in the bedroom?
- 15 A That's the crib. That's a picture down inside the
- 16 crib.
- 17 Q And, that pillow, was that on the ground or in the
- 18 crib?
- 19 A It was on the floor.
- 20 Q This bottom picture?
- 21 A That's a photograph of the refrigerator in the
- 22 kitchen. And there's a sippy cup -- what we call a sippy
- 23 cup for little children.
- 24 Q Is that what you're referring to as the sippy cup?
- 25 A It is.

1 Q And did you, in fact, take that into custody?

2 A I did.

3 Q And why did you do that?

4 A On these cases, that's routine to take the last food
5 or bottle that the child has drank from.

6 Q Is that what you were informed of, that that was the
7 last bottle that he had?

8 A That's what I was informed, yes.

9 Q Did you take anything else from the house?

10 A I took several of the -- I took the bed sheet out of
11 the crib. There was a paper towel or a baby wipe with it.
12 I took some of the stuffed animals that you saw on the
13 floor. I took a small little blanket, a little blue
14 blanket, the pillow, and the pillow case. I took a bottle
15 of Tylenol infant drops, and an empty prescription bottle
16 for Amoxicillin with the name Latasha Honeycutt on it. I
17 took a Tylenol infant drop box. There was no bottle in
18 the box. And I took that sippy cup.

19 Q Okay. And did you take -- I'm sorry if you already
20 said it. You said you took some Tylenol from the house?

21 A I took a bottle of Tylenol infant drops, yes.

22 Q And where was that bottle found?

23 A Latasha gave us that bottle.

24 Q At the house?

25 A At the house, yes.

1 Q And when you got all of those items, what did you do
2 with those items?

3 A I took those items to the Sheriff's Office and
4 secured them in the evidence room.

5 Q Again, who has access to that evidence room?

6 A Just myself, Sergeant Albrecht and Sergeant Dickson.

7 Q Once in the evidence room, did you do anything with
8 those items after that point?

9 A I carried two of those items that I've already
10 mentioned to SLED to be analyzed.

11 Q And which were those items?

12 A The Tylenol infant drops and the sippy cup were sent
13 to SLED.

14 Q And when you say Tylenol, are you just using that as
15 a generic term for it, or was it the actual Tylenol brand?

16 A It was the Tylenol brand.

17 Q And the sippy cup, you took that as well?

18 A I did.

19 Q And when you brought it to SLED -- how would you have
20 brought it to SLED? What kind -- would you have had it
21 sealed in a container? How would that have been brought
22 to SLED?

23 A It would have been sealed in some type of bag.

24 Q And would you have put your initials on the bag?

25 A Yes.

1 Q And when you dropped it off at SLED, did you ever get
2 those items back?

3 A No. SLED did not send those items back after they
4 analyzed them.

5 Q Let's back up a little bit. You just heard Sergeant
6 Albrecht testify about the Tussionex received from Donna
7 Phillips. Did you do anything with that Tussionex once it
8 hit your storage room?

9 A He received two items. He received a bottle of
10 Tussin cough syrup, and a bottle of Tussionex.

11 Q Let me be clear on that, the Tussin cough syrup,
12 that's over the counter?

13 A As far as I know, yes.

14 Q And then the Tussionex, is that a prescription?

15 A That's a prescription, yes.

16 Q And the Tussionex prescription, was anything done
17 with that?

18 A I fingerprinted the bottle the next day after I --
19 Sergeant Albrecht was working nights. And he picked it up
20 on the night shift, or in the late afternoon, or evening
21 time. And the next morning, Detective Burgess requested
22 we process it for prints.

23 Q Did you find anything?

24 A I did not find anything.

25 Q Is that unusual to you?

1 A No, it's not.

2 Q Why is it not unusual to you?

3 A Fingerprinting works sometimes, and sometimes it
4 doesn't. This particular bottle had a paper label that
5 wrapped pretty much all the way around it. That doesn't
6 help any when you're processing items for prints.

7 Q Okay. After you fingerprinted it, what did you do
8 with that Tussionex bottle?

9 A It remained in evidence until I delivered it to Micro
10 Analytical to have the contents analyzed.

11 Q And who did you deliver that to at Micro Analytical?

12 A Jeff Hollifield.

13 Q Did Mr. Hollifield then give you that Tussionex
14 bottle back?

15 A He did.

16 Q When was that?

17 A He gave it back to me on the 24th of July, 2008.

18 Q And do you have that Tussionex container with you
19 today?

20 A I do.

21 Q May I look at it?

22 A (Witness complied.)

23 MS. BARWICK: I'd like to have this marked.

24 (WHEREUPON, State's Exhibit No. 41 was marked for
25 identification only.)

1 BY MS. BARWICK:

2 Q Without looking at it, if your memory will serve you,
3 that Tussionex bottle, whose name was on that Tussionex
4 bottle?

5 A Donna Phillips.

6 Q While they're looking at that, let me back up a
7 little bit. When you were in Latasha Honeycutt's house,
8 did you see any other drugs, be it over-the-counter or
9 prescription?

10 A We found the Tylenol infant drop box. And I found an
11 empty prescription bottle that said it was Amoxicillin for
12 Latasha Honeycutt.

13 MS. BARWICK: Your Honor, at this time, the State
14 would like to introduce State's Exhibit No. 41.

15 MR. DEJONG: Without objection.

16 MR. HARBIN: No objection.

17 MR. O'CONNELL: No objection.

18 THE COURT: It's in evidence.

19 (WHEREUPON, State's Exhibit No. 41 was admitted into
20 evidence.)

21 BY MS. BARWICK:

22 Q Can you tell the jury what that bottle says, if it
23 says anything, as to who that medication is supposed to go
24 to, and who it's not supposed to go to?

25 A It's a prescription from CVS pharmacy to Donna

1 Phillips. There's no other name on it.

2 Q Is there anything on there about not giving it to
3 anybody else?

4 A There's small very finely written print that mentions
5 federal law that prescribed medications are only for the
6 person they're prescribed to. They're not supposed to be
7 given to other people.

8 Q Fair enough. Did you, also, receive -- thank you for
9 that.

10 Did you, also, receive something from Rita Burgess in
11 this case?

12 A Detective Burgess turned in a bottle of Equate infant
13 pain relief to me on March 24th, 2008.

14 Q You said Equate?

15 A Equate, yes.

16 Q So not the Tylenol brand, the Equate brand?

17 A Yes.

18 Q And she gave you an Equate brand bottle -- and I'm
19 sorry. Say that again for us.

20 A She wrote -- she filled out the evidence sheet. She
21 described it as a one-ounce bottle of Equate infant's pain
22 relief.

23 Q And what, if anything, did you do with that
24 container?

25 A That went to SLED with the items I collected at the

1 Brayden Drive address.

2 Q So just so we're clear, the sippy cup of what was
3 told to you as being milk, the Tylenol brand container
4 from Latasha Honeycutt's house, and the Equate infant pain
5 relief from Detective Burgess all went down to SLED?

6 A They went to SLED, yes.

7 MS. BARWICK: Your Honor, at this time, we have no
8 further questions.

9 THE COURT: Cross-examination.

10 MR. DEJONG: Thank you, Your Honor.

11 May it please the Court.

12 CROSS-EXAMINATION

13 BY MR. DEJONG:

14 Q So you went out to Court on March the
15 17th?

16 A Yes, I did.

17 Q And when you got there, who all was there?

18 A I met with Lieutenant Kelly, and Latasha, and
19 Mr. Morris -- or Mr. Roper. I apologize.

20 Q Okay. And this was on the 17th, Monday?

21 A It was.

22 Q And you got out there about what time?

23 A Around 1:00.

24 Q Around 1:00. So when you got there at 1:00,
25 Lieutenant Kelly was there, Latasha Honeycutt was there,

1 and Brandon Roper was there?

2 A I don't recall if we all got there at the same time,
3 or if they were already there when I got there. I do not
4 recall that.

5 Q All right. Well, how long were you there?

6 A About an hour.

7 Q Okay. So sometime between 1:00 and 2:00, Latasha
8 Honeycutt and Brandon Roper were there; correct?

9 A They would have had to have been there pretty much
10 around 1:00, because they signed the consent. And I
11 wouldn't have done anything before.

12 Q And what has been marked as State's Exhibit No. 32, I
13 hand to you, Lieutenant Robinson. And there's two
14 pictures on there. The top one appears to be a picture of
15 a mobile home; is that correct?

16 A Yes, it is.

17 Q And there are two vehicles in that picture; is that
18 correct?

19 A Yes, there are.

20 Q Do you know who those vehicles belong to?

21 A No, sir.

22 Q Okay. Now, looking at the mobile home, there's a
23 porch there. Is that the only porch, to the best of your
24 recollection, on that mobile home?

25 A I don't recall even walking to the back of the

1 residence. So there may be one at the back, but that's
2 the main side, the front.

3 Q And this consent to search that you got from
4 Ms. Honeycutt, basically, you confined your search to the
5 area where the child was found; correct?

6 A We looked through the house. We knew enough at that
7 point -- we didn't know much at that point. But we knew
8 enough to know that medication may have played a role in
9 whatever was wrong with this child. So we did walk
10 through the house looking for anything to do with
11 medication.

12 Q And probably a question for Lieutenant Kelly, but do
13 you know what time Lieutenant Kelly got to
14 Court?

15 A It would have been around the same time I got there.
16 It would have been in the 1:00 range.

17 Q About 1:00. So you refer to this, I guess, as part
18 of your title -- you refer to it as a crime scene;
19 correct?

20 A I suppose you could call it that.

21 Q Now, EMS left this place, Bearden Court, if I'm
22 saying that right. Is it --

23 A Brayden.

24 Q I'm sorry. I've got Bearden on the mind for some
25 reason. EMS left Brayden somewhere around 11:30?

1 A That was what I understood from the testimony, yes.

2 Q Okay. And we're not arguing the point. But you
3 would agree that they left around 11:30?

4 A Yes.

5 Q Now, to your knowledge, were you and Lieutenant Kelly
6 the first people that arrived on this scene at --

7 Court?

8 A To my knowledge, we were the first officers who got
9 out there.

10 Q Okay. So between roughly 11:30 and 1:00, an hour and
11 a half, this crime scene was not secured, was it?

12 A I cannot say. It was not secured by an officer, no,
13 sir.

14 Q And that's my question.

15 A And I don't know if anybody had been there during
16 that hour and a half or not.

17 Q But it wasn't secured by law enforcement?

18 A No, sir.

19 Q So you cannot say that when you arrived at roughly
20 1:00 in the afternoon that -- if you want to refer to it
21 as a crime scene, that the crime scene was intact, could
22 you?

23 A No. I could not say what happened during that hour,
24 no, sir.

25 Q Yes, sir. Now, I'm a little -- well, let's back up

1 here a little bit. I'm a little bit -- while you were at
2 Court, you take an infant Tylenol bottle into
3 evidence?

4 A Yes, sir.

5 Q And a box?

6 A The box for that bottle. I'm assuming it was for
7 that bottle. It was in the trash can.

8 Q Okay. But they weren't together?

9 A No.

10 Q A sippy cup?

11 A That's correct.

12 Q Pillow sheets -- pillow case?

13 A Pillow with pillow case, yes.

14 Q Sheets?

15 A Yes, a bed sheet.

16 Q And a blanket, or a couple of blankets?

17 A A couple of stuffed animals and a blanket.

18 Q Did you -- those stains that were on the carpet in
19 State's Exhibit No. 32, did you take any samples of those
20 stains or that carpet?

21 A I didn't take any samples. It appeared to be the
22 same stuff that's on the pillow, and the stuffed animal,
23 and the blanket.

24 Q Okay. And you took some stuffed animals?

25 A I did.

1 Q Now, the pillow, the pillow slips, the -- by the way,
2 did you bring any of that with you today?

3 A I did not. They were not going to introduce that.

4 Q Okay. So other than what we're seeing in these
5 pictures, we don't know what's in property and evidence at
6 this point in time, whether it's the same thing or not?

7 A Yes. I can show you in the photograph what I have,
8 if you'd like me to, what I do have in evidence.

9 Q Okay. Are you operating off of memory, or off the
10 P&E sheet, or what are you operating off of?

11 A If you'll show me the photograph, I'll be operating
12 off of that.

13 Q I'll just show you the whole stack here, Lieutenant.
14 I'll tell you, I'm not good with this equipment. But
15 maybe, for purposes of the jury, it would be better if we
16 put it on the screen here.

17 MR. DEJONG: Did y'all furnish him with the magic
18 wand.

19 MS. BARWICK: No, sir.

20 THE WITNESS: I think if you'll use that one right
21 there, I'll be able to answer your question.

22 MR. DEJONG: Hang on just a second. I don't know how
23 to work that thing.

24 BY MR. DEJONG:

25 Q Do you know how to work it, Lieutenant?

1 A Yes, sir.

2 Q Well, you handed me back the whole stack, but on top
3 is State's Exhibit -- it's been marked as State's Exhibit
4 No. 33. In that picture -- and that, again, is a picture
5 of the room where, presumptively, the child was found; is
6 that correct?

7 A That's correct, yes, sir.

8 Q And those are, basically, the same pictures from
9 slightly different angles; right?

10 A Yes, sir.

11 Q In those pictures, what did you take into property
12 and evidence?

13 A The bed sheet, and there was a paper towel with it.
14 I took a green stuffed animal, which is in the bed, I
15 believe. I took a purple stuffed animal, which is like a
16 duck, right there. I took the pillow and pillow case on
17 it.. And that's it.

18 Q That's it?

19 A That's it for what's in that room, yes, sir.

20 Q Okay. So one, two, three, four, if we count the
21 pillows and pillow slip separately, four, sheet -- sheet
22 or sheets?

23 A Just the bed sheet. The sheet that was on the
24 mattress.

25 Q Now, when you're referring to this sheet, is that

1 the -- basically, what appears to be a colorful thing up
2 here on the top?

3 A Yeah. There's another photograph looking directly
4 down into the crib. If you can find that, it might be
5 better.

6 Q Well, maybe this one. I'm putting up here State's
7 Exhibit No. 36. Again, I presume this is the pillow?

8 A That's the pillow from the floor.

9 Q Okay. And that's the bed sheet and the green stuffed
10 animal right there. Okay. Well, I guess my question --
11 is that more of a blanket or a sheet?

12 A It's a sheet.

13 Q It's a sheet. Okay. Now, you said you, also, took a
14 blanket; is that correct?

15 A There was a small blue blanket on the floor. I don't
16 think I pointed that out a moment ago. It was hard to see
17 from this distance.

18 Q I see something blue right in there. Do you know if
19 that was it or not?

20 A I don't think that's it. That's the pillow and the
21 pillow case. There was another angle that showed a small
22 blue blanket on the floor. That's it right there.

23 Q Right where?

24 A I think that's a distant shot of it, and that's it
25 closer up.

1 Q Okay. So bed sheet, pillow, pillow slip, two stuffed
2 animals?

3 A Yes.

4 Q Now, once you took those into property and
5 evidence -- into your custody, property and evidence, as
6 far as the sheets, the pillow slips, the pillow, any of
7 those things, was any testing done on them at all?

8 A I don't know of anything to test that for, other than
9 it appeared to have vomit on it. And I don't know what
10 else we could do with that.

11 Q And down the road, you saw no need to test it either?

12 A No, sir. Not after we obtained -- the samples had
13 been obtained from the child, blood, and urine. So I
14 didn't see where that would help us.

15 Q So we don't know what that regurgitation would have
16 shown us, it was never tested; right?

17 A I don't -- and I'm not a toxicologist. But I don't
18 believe it would have shown anything.

19 Q Now, I'm a little confused. What did you try to take
20 prints off of?

21 A The bottle of Tussionex.

22 Q Do you know how that bottle of Tussionex came into
23 Ms. Burgess' possession?

24 A It never was in Ms. Burgess' possession. The bottle
25 of Tussionex is what Sergeant Albrecht picked up from

1 Donna Phillips.

2 Q I stand corrected. You are right, sir.

3 Okay. So Sergeant Albrecht picked up the Tussionex
4 from Donna Phillips?

5 A That's correct.

6 Q And that's what you tried to get prints from?

7 A I did.

8 Q And you were not able to?

9 A I was not, no.

10 Q But, to your knowledge, it had come from Donna
11 Phillips?

12 A Yes.

13 Q Now, there's nothing in your part of this case or
14 your part of this investigation that would have indicated
15 that Donna Phillips ever gave that child any of that
16 Tussionex?

17 A Nothing on my part, no, sir.

18 Q Or as far as that goes, the Tussin cough syrup?

19 A I have no knowledge of any of that.

20 Q Or anything else. So when Madam Solicitor asked you
21 about that print on the bottle, about not giving it to
22 anybody else, you can't say it wasn't given to anybody
23 else, can you?

24 A No, sir.

25 Q I may have asked you, I don't think I did. I

1 apologize if I did. Do you know how it came about that
2 Sergeant Albrecht went out to Donna Phillips' residence to
3 pick up that Tussionex and/or the infant Tylenol?

4 A I know that one of the investigators asked him to do
5 it.

6 Q What led up to it, you don't know?

7 A No, sir.

8 Q Whether she volunteered, or whatever?

9 A No, sir, I don't.

10 Q Okay. The sippy cup, you took that out of the
11 refrigerator; right?

12 A Yes, sir.

13 Q And how long did it stay in property and evidence
14 until it went to -- I guess it went to Micro Analytical?

15 A No. The sippy cup went to SLED.

16 Q When did it go to SLED?

17 A I collected it on the 17th of March. And I delivered
18 it to SLED on the 27th of March.

19 Q Did it stay refrigerated, to your knowledge?

20 A Yes, it did.

21 Q So the -- there were four items that were tested in
22 this case, I believe, or that you sent to SLED for
23 testing?

24 A I sent three to SLED. And I sent one to Micro
25 Analytical.

- 1 Q What did you send to Micro Analytical?
- 2 A The Tussionex.
- 3 Q The Tussionex?
- 4 A Yes, sir.
- 5 Q Micro Analytical, is that local?
- 6 A Micro Analytical is a private company. It was based
7 in Mauldin at that time. And I had used him several times
8 before. It was close and you could, usually, get results
9 fairly quickly from him.
- 10 Q So the Tussionex went to Micro Analytical, then the
11 Tussin, and the Tylenol infant pain drops, and the
12 Equate --
- 13 A The Tussin was not analyzed.
- 14 Q It was not analyzed?
- 15 A It was not analyzed. Nobody requested that I analyze
16 that.
- 17 Q So that never went to SLED or Micro Analytical?
- 18 A No.
- 19 Q Okay. But then the Equate went to SLED; right?
- 20 A The Equate went to SLED.
- 21 Q So I'm clear now, the Equate came from Donna
22 Phillips?
- 23 A According to my paperwork, it came from Donna
24 Phillips. It is the bottle that came through Sergeant
25 Leopard in the jail, and Detective Burgess turned it into

1 me.

2 Q And the Tussin came from?

3 A Donna Phillips at a different time.

4 Q Okay. Now, I'm getting myself confused now. I'm
5 sorry. What did you get at Court?

6 A I got the sippy cup and bottle of infant Tylenol
7 drops.

8 Q Was that tested?

9 A Yes.

10 Q Okay. The Tussin that you got from Donna Phillips
11 was never tested?

12 A The Tussin was not. The Tussionex was.

13 Q Okay. I'm with you. So some of the items you send,
14 I guess, to SLED, they send back to you, and some of them
15 they don't?

16 A I -- normally, they would send, at least, the
17 container back, but they did not send the container back
18 on these items.

19 Q And, of course, what's been marked as State's Exhibit
20 No. 41, that's a Tussionex bottle?

21 A That's the Tussionex.

22 Q That went to Micro Analytical?

23 A Yes, sir.

24 Q Do you know how much -- when you came into possession
25 of it how much was in the bottle?

1 A I do not. There was some in it.

2 MR. DEJONG: The witness is with you, Mr. O'Connell.

3 MR. O'CONNELL: Thank you.

4 CROSS-EXAMINATION

5 BY MR. O'CONNELL:

6 Q That State's Exhibit No. 41, the Tussionex, would you
7 read the name of that?

8 MR. O'CONNELL: Will you hand that to him?

9 MR. DEJONG: I'll get it, Madam Court Reporter.

10 BY MR. O'CONNELL:

11 Q Would you read the full name on the bottle there --
12 Tussionex -- what's the rest of that?

13 A Tussionex Pennkinetic SUSP MPI. It says SUSP MPI, so
14 I'm assuming that means suspension.

15 Q Does it have a date when it was given to her, like
16 when a pharmacy gives the medicine?

17 A Yes. It was filled on January 4th, 2008.

18 Q January 4th, a quick calculation, about 80 days
19 before the incident that happened at this house on the
20 17th; is that right?

21 A I'd say between 60 and 70 days, yes.

22 Q When you and the other officer -- I think you said it
23 was Officer Kelly?

24 A Yes.

25 Q And you said you went looking around. Did you open

1 drawers and look in the drawers? Did you look in
2 cabinets, behind things, or --

3 A We looked in places that we felt like we might find
4 medication. We didn't tear the place apart. We didn't
5 know enough at that point. We weren't trying to do that.

6 Q But there was a time frame involved where everybody
7 had left, or the -- let's see, Ms. Honeycutt and Mr. Roper
8 were left there and you arrived. Between the time the
9 child was taken away and the time you got there, there was
10 a time frame --

11 A I don't know who was there during that time frame. I
12 don't know if they stayed there, or locked the door and
13 left. I don't know.

14 MR. O'CONNELL: Okay. Thank you.

15 MR. HARBIN: May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. HARBIN:

18 Q Lieutenant, Rhonda Whitaker testified earlier that --
19 she read a CAD report into the record. And she said Code
20 1023 means on the scene; is that right?

21 A That's right.

22 Q She had you on the scene at 11:35 and 13 seconds; is
23 that right?

24 A She didn't have me on the scene at 11:35.

25 Q Can I hand you this CAD report, and you can tell me

1 what I'm looking at? Is there any way for you to decipher
2 that?

3 A This is an EMS CAD report. This is not from the
4 Sheriff's Office.

5 Q So if she put into the record that police were on the
6 scene at 11:35, Code 1023, she's wrong?

7 A Yes. She -- EMS was on the scene, I think, at that
8 time. But --

9 Q If she had said police, then she would be mistaken,
10 she would be wrong?

11 A Based on what I'm seeing there, yes.

12 Q You arrived with Lieutenant Kelly; correct?

13 A Roughly, at the same time we got there.

14 Q Got you. And, to your knowledge, did Mr. Roper and
15 Ms. Honeycutt comply with whatever requests you had? Were
16 they cooperative?

17 A Yes.

18 Q Did they appear to be hiding anything?

19 A I wasn't there to speak with them. I was there to
20 help Lieutenant Kelly. And I didn't really interact with
21 them very much. But they didn't appear to be causing any
22 problems or hiding anything.

23 Q Do you recall when you were there Mr. Roper packing
24 up anything for Ava? I don't know if you recall that
25 there was a small child in the house.

1 A There was a baby in the house, yes. I do not recall
2 him doing any of that.

3 Q Okay. And I want to be clear. The Consent to Search
4 form that you have, is that a limited Consent to Search
5 form, or is that a whatever you want to search you get to
6 search?

7 A We --

8 Q Is there --

9 A They can stop us at any point during that. But, as
10 far as I'm concerned, it means we can search anywhere we
11 want to search. And if they didn't like what we were
12 doing, they could stop us.

13 Q And they did not stop you?

14 A They did not.

15 Q And you did not find anything, other than the Tylenol
16 they, actually, handed you; is that correct?

17 A That's right.

18 Q As far as medications?

19 A As far as medications. And the empty bottle of
20 Amoxicillin, but it's empty.

21 MR. HARBIN: Thank you.

22 No further questions.

23 MS. BARWICK: Nothing further, Your Honor.

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

25 Ladies and gentlemen, we're going to take a 10-minute

1 recess. Don't talk about the case. Continue to keep an
2 open mind.

3 If you would, select somebody during the break to be
4 the Foreperson of the jury, and write the name down and
5 give it to the bailiffs.

6 Thank you very much.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 3:29 p.m.)

9 MS. BARWICK: Judge, I know there's some question as
10 to where the CAD reports were. When Mr. DeJong
11 cross-examined Ms. Sailors about the CAD reports, she took
12 them with her. We have them back. So we're going to go
13 ahead and put them up there.

14 THE COURT: All right. Thank you.

15 (WHEREUPON, a break was taken.)

16 THE COURT: Anything before the jury returns to the
17 courtroom?

18 MR. RICHARDSON: Nothing from the State, Your Honor.

19 THE COURT: Okay. Thank you.

20 (WHEREUPON, the jury came into open court at
21 approximately 3:43 p.m.)

22 THE COURT: Mr. Allison, you've been selected to be
23 the Foreperson. That just means you'll preside over the
24 deliberations. And if you need to communicate with me or
25 any member of the jury needs to communicate with me, the

1 only way I can talk with you is either out here on the
2 record, or by a note that's made part of the record. The
3 note is the preferred way to communicate.

4 But with that, the State may call its next witness.

5 MS. BARWICK: Thank you.

6 The State would call Mr. Jeffrey Hollifield.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right hand.

9 WHEREUPON,

10 JEFFREY MORRIS HOLLIFIELD,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you, sir.

13 If you will, have a seat.

14 And state your name for the record, please.

15 THE WITNESS: My name is Jeffrey Morris Hollifield,
16 H-O-L-L-I-F-I-E-L-D.

17 DIRECT EXAMINATION

18 BY MS. BARWICK:

19 Q Mr. Hollifield, where do you work?

20 A I own and operate Micro Analytical, which is a
21 private chemical laboratory in Mauldin, to do like small
22 particle identification, trace evidence identification,
23 and just general chemical analysis, including drug
24 analysis. And I, also, teach chemistry at Lander
25 University in Greenwood.

1 Q Are you a chemist?

2 A I am. My background is in chemistry and in
3 microscopy.

4 Q And what exactly is -- we all hear are you a chemist,
5 but what is chemistry?

6 A Chemistry is the study of matter and interactions of
7 matter. Most of what I do is look at unknown particles,
8 samples, solutions, powders, and identify what they are,
9 what possible sources are potential, but identify those so
10 far as what its made of chemically and what the chemical
11 component is.

12 Q Okay. And were you asked to examine a substance back
13 in 2008?

14 A I was. Lieutenant Robinson with Pickens County
15 Sheriff's Office brought to my office and submitted to me
16 on July the 14th of 2008, one heat-sealed pouch with a
17 bottle of liquid.

18 Q And if you'll tell the jury a little bit about your
19 education and training in the chemistry field.

20 A I received a Bachelor's Degree in Chemistry from
21 Furman University in '84, a Master's in Chemistry, also,
22 from Furman in '86. And then I received a Master's Degree
23 in chemical microscopy from the Chrome Research Institute
24 in Chicago in 1997.

25 Q And what about any certificates or licenses, do you

1 have any of those?

2 A I'm licensed by the DEA and DHEC to handle controlled
3 substances. I worked at SLED for 10 years, received a lot
4 of training there, both with instrumentation and analysis.
5 And I've attended various schools and seminars over the
6 years.

7 MS. BARWICK: Your Honor, at this time, the State
8 would like to introduce him as an expert in chemistry.

9 MR. DEJONG: No voir dire, Your Honor.

10 MR. O'CONNELL: None, Your Honor.

11 MR. HARBIN: Nothing, Judge.

12 THE COURT: All right. He's qualified.

13 Ladies and gentlemen, let me just briefly instruct
14 you that, typically, witnesses may only testify about
15 things they personally observed or absorbed through one of
16 their five senses. There is an exception under the law
17 for witnesses who by reason of their training, education,
18 or experience have achieved expertise in their field.

19 An expert witness is allowed to testify not only
20 about things they've observed, but about their opinions as
21 to things they've observed. So that's the difference.
22 However, expert witnesses, like all witnesses, must have
23 their credibility judged by you, the jury.

24 So, yes, ma'am, you may continue.

25 MS. BARWICK: Thank you, Your Honor.

1 BY MS. BARWICK:

2 Q Did Lieutenant Robinson provide you with this bottle
3 marked as exhibit -- entered into evidence as State's
4 Exhibit No. 41?

5 A He did. This is the heat-sealed pouch he submitted
6 to me. After I completed the analysis, I resealed it and
7 initialled it. And it's marked as item #12, which is the
8 Pickens County #12.

9 Q I'm just going to leave that with you for a little
10 bit.

11 When you got the substance, what did you do with it?

12 A The first thing I did was I photographed it in the
13 package, inside the heat-sealed pouch. I then opened it
14 on the opposite end from where it had been heat-sealed. I
15 removed the bottle. I photographed the bottle. And then
16 I emptied the contents of the bottle into a small glass
17 container, a beaker. And I photographed it again.

18 The next thing I did was to weigh the liquid, just
19 the liquid portion that was in the bottle to get a total
20 weight. And then I did the chemical analysis to identify
21 what drugs or controlled substances might be present. And
22 then I submitted a report.

23 Q Okay. Did you -- you said you emptied the Tussionex
24 into a container to do all the measurements and whatnot
25 with it. Do you have a container with you today that is

1 similar to the container you used that day?

2 A I do. You asked me to bring a beaker. That's the
3 same size as the one I used. It's a 50 milliliter glass
4 beaker.

5 Q So this isn't the same beaker, just one like it?

6 A Same size.

7 Q Now, when you tested the substance, what kinds of
8 things were you looking for?

9 A I was asked to do a drug analysis. So I carried out
10 the routine general screening tests that were done on
11 drugs. Those tests would detect any street drug or
12 illicit drug, as well as any pharmaceutical that might be
13 present. It would, also, pick up any petroleum-type
14 products that would be present.

15 And once I identified the presence of two drug-like
16 substances, I then extracted those and analyzed those with
17 an additional test, which is very specific and that
18 identified, specifically, what drugs were present.

19 Q And before we get to that, you said you took
20 pictures. Are those the pictures you took?

21 A They are, yes.

22 MS. BARWICK: At this time, the State would like to
23 introduce State's Exhibit No. 22 into evidence.

24 MR. DEJONG: Without objection, Your Honor.

25 MR. O'CONNELL: No objection.

1 MR. HARBIN: No objection.

2 THE COURT: It's in evidence.

3 MS. BARWICK: Thank you, Your Honor.

4 (WHEREUPON, State's Exhibit No. 22 was admitted into
5 evidence.)

6 BY MS. BARWICK:

7 Q Will you just briefly tell the jury what that is?

8 A That's a photograph of the heat-sealed pouch
9 containing the bottle.

10 Q Is #2 just a close up of that?

11 A That's a close up of the same thing.

12 Q Okay. And #3 and #4, is that just a picture of the
13 bottle?

14 A Figures three and four are taken after I removed the
15 bottle from the plastic bag. It just gives a close up of
16 the label, yes.

17 Q And five and six?

18 A Five and six are two -- just two different
19 perspectives of the liquid in the glass beaker. That's
20 what I poured out of the medicine bottle into the glass
21 container. And that green background is a scale bar,
22 which is marked off in inches and centimeters just to give
23 a perspective as to how -- what size the glass is.

24 Q And that glass container and this pitcher are the
25 same size as that glass container sitting right there?

1 A It is. It will hold approximately 50 milliliters.

2 Q Okay. Did you come up with the results of what was
3 found in that liquid?

4 A I did. I detected two drug substances, one was
5 hydrocodone and the other was chlorpheniramine.

6 Q And I always have a hard time with the pronunciation,
7 but chlorpheniramine and hydrocodone, is that consistent
8 with the drug Tussionex?

9 A It would be. I first examined the liquid visually.
10 I, typically, look at the color, the texture, any odor.
11 In this case, there was a sweet odor to it. That would be
12 consistent with what one would expect to find in
13 Tussionex, or cough syrup. Chemically, those two drugs
14 that were detected would be consistent with what one would
15 expect to find in Tussionex.

16 Q And those two drugs that you found, are those
17 controlled drugs?

18 A They are.

19 Q Did you create a lab report as to your results?

20 A I did. I issued a report on July 22nd of 2008. And
21 that report was submitted to Lieutenant Robinson.

22 Q Is this that report?

23 A It is. State's Exhibit No. 39, that's a copy of my
24 report.

25 Q And while they're looking at it, did you see anything

1 else? I think you used the word "adulterants," or
2 anything -- do you know what I'm asking?

3 A The last statement in my report says, No adulterants
4 or contaminants were detected. What that simply means is
5 I did not detect any odor of drugs that would not be found
6 in Tussionex or any -- there was no discolorization or
7 odor of foreign street drugs, or petroleum products, or
8 anything to lead me to find that it was anything but what,
9 again, one would expect to find in Tussionex.

10 MS. BARWICK: Your Honor, at this time, the State
11 would like to introduce State's Exhibit No. 39 into
12 evidence.

13 MR. DEJONG: No objection.

14 MR. O'CONNELL: None from us.

15 MR. HARBIN: No objection.

16 THE COURT: That's the report?

17 MS. BARWICK: Yes, sir, Your Honor...

18 (WHEREUPON, State's Exhibit No. 39 was admitted into
19 evidence.)

20 BY MS. BARWICK:

21 Q When you got that container of Tussionex, it was not
22 completely full, was it?

23 A It wasn't.

24 Q How many grams were in the container when you
25 received it?

1 A Just the liquid, after I removed it from the
2 container, weighed 18.401. So just slightly over 18
3 grams.

4 Q Okay. And how many grams would have been prescribed
5 if it was prescribed in accordance with that prescription
6 label on the bottle?

7 A The label exhibits a quantity, which, typically, is
8 the amount prescribed. And it's marked as 60, which would
9 be equivalent to 60 grams or 60 milliliters. That's a
10 liquid.

11 Q So if it started with 60 grams -- and how many grams
12 did you have when you looked at it?

13 A I found a little over 18 grams.

14 Q So how many grams were missing?

15 A If one subtracts the 18.40 grams from 60, that means
16 41.60 grams were potentially missing, and were not in the
17 bottle.

18 Q Is that about two-thirds missing?

19 A That's about two-thirds. What I found was about a
20 third of what the prescription indicates with respect to
21 the label.

22 Q And then are you able to convert the grams into
23 teaspoons?

24 A I did. The 60 gram total volume would be equivalent
25 to 12 teaspoons. I measured 3.68 teaspoons. And that

1 means that approximately -- or 8.32 teaspoons had been
2 removed at some point from the bottle. Again, about a
3 third of the 12 was left in the bottle.

4 Q And does that prescription say how many teaspoons are
5 supposed to be taken a day? Does it have an amount that's
6 supposed to be taken?

7 A It has a prescription -- a prescribed amount. Each
8 dose is one half teaspoon, according to the label, and
9 given twice daily, which means a 24-hour period. So that
10 would be 1 teaspoon per day.

11 Q And to back up a little bit. I know we're getting
12 kind of confusing. How many total teaspoons would have
13 been in it, in 60 grams?

14 A Originally, there would have been 12 teaspoons.

15 Q So 24 doses?

16 A 24 doses.

17 Q Now, we're going to break this down even further.
18 There should have been, at full, 24 doses in the
19 container. How many doses were left?

20 A There was 7.36 doses remaining, which means 16.64
21 doses has been used or removed.

22 MS. BARWICK: No further questions at this time.

23 THE COURT: Cross-examination.

24 MR. DEJONG: Thank you, Your Honor.

25 May it please the Court.

CROSS-EXAMINATION

1
2 BY MR. DEJONG:

3 Q Is it, Doctor?

4 A No, Mr.

5 Q No doctor, not yet.. All right. Mr. Hollifield;
6 correct?

7 A That's correct.

8 Q Do you know what Tussionex Pennkinetic -- I can't
9 pronounce it. It's on the bottle. It's in your report.

10 A Yeah. Tussionex Pennkinetic suspension, a trade
11 name, basically, that just means it's a syrup-type
12 substance, as opposed to a tablet or capsule.

13 Q So, basically, that says it's a liquid?

14 A It's a liquid.

15 Q So nothing particular, unique, or unusual about that
16 name being on the bottle?

17 A No, sir.

18 Q Just one of the regulations that designates it
19 presumptively as a liquid, as opposed to a tablet?

20 A That's my understanding.

21 Q If someone was looking at the bottle. Now, you may
22 have, if you have not, I would ask that you do. Can you
23 look on that bottle and see when the prescription was
24 filled?

25 A The date filled was January 4, 2008, January the 4th,

1 2008.

2 Q All right, sir. Now, as in your profession, you deal
3 with analyzing substances; is that correct?

4 A That's correct.

5 Q Do you deal at all with the effects of those
6 substances on the human body?

7 A No, I don't.

8 Q Okay. Fair enough. Now, there were some 24 doses at
9 a half a teaspoon, I gather; right?

10 A Correct.

11 Q Originally, in that bottle?

12 A Correct.

13 Q And I think we said, what was it, 12 teaspoons left?

14 A There were eight -- a little over eight teaspoons --
15 or I'm sorry. There were three and a half teaspoons
16 remaining, or 7.36 doses remaining.

17 Q Certainly, you analyzed the substance. But when that
18 bottle started depleting, you don't know when it started
19 depleting, or how it depleted, do you?

20 A I have no way of knowing that.

21 Q Right. And, certainly, between January the 4th of
22 2008, and March the 16th or 17th of 2008, a considerable
23 amount of time had passed?

24 A That's correct.

25 Q About, what, 60, 70 days, something like that?

1 A Right.

2 Q Okay. So you say you found hydrocodone and
3 chlorpheniramine --

4 A And chlorpheniramine, that's right.

5 Q They don't name these things so we can pronounce
6 them, do they?

7 Okay. So, basically, those are the two things that
8 you found in this liquid substance?

9 A That's what I detected, yes, sir.

10 Q Okay. And I believe you've already testified, but
11 that's consistent with Tussionex?

12 A It would be.

13 Q Now, is there anything -- let's talk about the
14 hydrocodone for a moment. Is there anything particularly
15 significant about that hydrocodone?

16 A It's used as an anti-tussin, which means to prevent
17 cough and an analgesic, which is a painkiller. But I
18 don't know of anything particularly unusual about it.
19 This is the same hydrocodone that would be in any other
20 hydrocodone drug.

21 Q Right. But, in terms of anything significant,
22 there's nothing about this substance that would indicate
23 that it's time released, or takes a long time for it to
24 kick in, or anything else is there?

25 A That information is, typically, given in the

1 Physicians Desk Reference, the information that comes with
2 the bottle with the prescription when it's distributed. I
3 mean, all of that information is documented, but I don't
4 know what that would be.

5 Q Okay. So just based on your analysis, you found
6 hydrocodone and that other funny named stuff?

7 A That's it.

8 Q Nothing else? You didn't find anything else?

9 A No, sir. That's it.

10 Q Did you look for anything else?

11 A My tests were, specifically, to look for drug-like
12 substances. I did not do a complete deformation to find
13 out what the inactive ingredients would be, no. But no
14 other drugs were found.

15 Q So when we talk about active and inactive
16 ingredients, I guess; right? So what I hear you saying
17 were there were two active ingredients, hydrocodone and
18 the other thing?

19 A Correct.

20 MR. DEJONG: The witness is with you, Mr. O'Connell.

21 MR. O'CONNELL: Thank you.

22 CROSS-EXAMINATION

23 BY MR. O'CONNELL:

24 Q Young Doctor -- I'll call you Doctor because you have
25 all those degrees and all that.

1 So you're saying this medicine has, actually, 24
2 doses; is that correct?

3 A If the bottle were full as prescribed by the label,
4 it would contain a total -- it would have contained a
5 total of 24 doses, yes, sir.

6 Q And there was how much remaining again, about seven
7 or eight?

8 A A little over seven doses, yes, sir.

9 Q So if it was given out in January and the person
10 took it, they were pretty good about taking it, weren't
11 they?

12 A I don't know.

13 Q Okay. So there's nothing particularly different
14 about that either, is there, some people do save their
15 medicine; right?

16 A That's true.

17 Q And some people when they feel better, they stop
18 using it; right?

19 A That's true.

20 Q And there's no indication here anybody gave it to
21 anybody else, is there?

22 A I have no knowledge of that. I don't know.

23 MR. O'CONNELL: Okay. That's all I wanted to ask
24 you.

25 Thank you very much.

CROSS-EXAMINATION

BY MR. HARBIN:

Q You're good enough at what you do to tell me with all confidence that all your results are correct, and that is the two substances found in Tussionex; is that correct?

A In my opinion, this bottle contained those two drugs that are consistent with Tussionex, yes, sir.

MR. HARBIN: Thank you.

No further questions.

MS. BARWICK: Nothing further, Your Honor.

THE COURT: All right. Thank you, Mr. Hollifield.

You may call your next witness.

MS. BARWICK: Thank you, Your Honor.

The State would call Kristy Leopard to stand.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

KRISTY LEOPARD,

after first having been duly sworn, testified as follows:

THE CLERK: If you would, have a seat.

And state your name.

THE WITNESS: Kristy Leopard.

DIRECT EXAMINATION

BY MS. BARWICK:

Q Ms. Leopard, where do you work?

1 A The Pickens County Sheriff's Office.

2 Q What do you do there?

3 A I'm a sergeant deputy sheriff, and I'm the supervisor
4 over the detention center.

5 Q And what are your normal duties?

6 A To supervise the jail, supervise inmates, maintain
7 safety and security of the jail.

8 Q Back in 2008, did Donna Phillips ask you to do
9 something that was kind of outside the normal of your
10 duties?

11 A Yes.

12 Q And what did Donna Phillips do?

13 A She brought a bottle of medication to the window of
14 the jail and said that Rita Burgess -- that Detective Rita
15 Burgess had asked her to bring it. And if the calender I
16 checked was correct, that would have been on a Sunday.

17 So there were no ID officers or detectives working at
18 that time. So I had to take the medication and seal it in
19 an envelope. And I took it to Ms. Burgess' office.

20 Q Okay. Is this that envelope?

21 A Yes.

22 Q And is that your writing on the front of it?

23 A It is.

24 Q Whose writing is on the back of it?

25 A That would be Donna Phillips.

1 Q And did you have Donna Phillips write on the back of
2 that?

3 A I did.

4 Q What was the purpose of her writing on the back of
5 that?

6 A Just so she could witness me putting it in this
7 envelope. I sealed it. And I had her and myself both
8 sign over the tape where I sealed it just so she would
9 know it was in the envelope.

10 Q And where is Detective Burgess' box?

11 A That would have been in the control room in the
12 sheriff's office, which is across the hall from the
13 detention center.

14 Q Does the general public have access to that?

15 A No, ma'am.

16 Q You might not remember the date right off the top of
17 your head. Do you?

18 A I don't. I had to refer to the envelope.

19 Q And you wrote the date on the envelope?

20 A I did.

21 MS. BARWICK: Your Honor, at this time, the State
22 would like to introduce State's Exhibit No. 40 into
23 evidence.

24 MR. DEJONG: No objection, Your Honor.

25 MR. O'CONNELL: No objection.

1 MR. HARBIN: No objection.

2 THE COURT: It's in evidence.

3 (WHEREUPON, State's Exhibit No. 40 was marked for
4 identification and admitted into evidence.)

5 BY MS. BARWICK:

6 Q Can you tell the date that Donna Philips came down
7 there to give you that?

8 A March 23rd, 2008. And I noted the time, which was
9 20:15, so that would have been 8:15 p.m. at night.
10 Because I don't come into work until 6:00 p.m.

11 Q Thank you very much.

12 Other than that, did you have any other involvement
13 in this case?

14 A None.

15 MS. BARWICK: No further questions at this time.

16 THE COURT: Cross-examination.

17 MR. DEJONG: Very briefly.

18 Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. DEJONG:

21 Q So you were working at the jail; this was on March
22 the 23rd of 2008; right?

23 A That's correct.

24 Q At 8:15?

25 A Yes, sir.

1 Q And, now, this is your handwriting right here;
2 correct?

3 A Yes, sir.

4 Q And then on the back are the initials, and it looks
5 like "903"?

6 A That would have been my unit number at the time.

7 Q Okay. That was your unit number at the time. And
8 Ms. Phillips appeared at the window and she had a
9 bottle?

10 A That's correct.

11 Q Did you look at the bottle?

12 A I did. I did not look -- I'm sure I looked at the
13 bottle. But as far as knowing what it was or anything
14 like that, no.

15 Q So you put it in this envelope and gave it -- well,
16 this was on a Sunday, you said?

17 A Yes, sir.

18 Q And you gave it to Ms. Burgess on?

19 A I would have put it in her box. She would have
20 received it on Monday morning when she returned.

21 Q Is that a secured box?

22 A It's in the patrol room where only deputies have
23 access to it, so it's as secure as that.

24 MR. DEJONG: The witness is with you, Mr. O'Connell.

25 MR. O'CONNELL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. O'CONNELL:

Q Officer, did my client state -- I think you said this, that Officer Bridges [sic] asked her to bring it to the police department; is that right?

A Yes. And I believe I noted that on the note as well.

Q So she was doing what she was asked to do; correct, as far as you know?

A I can only assume, yes.

MR. O'CONNELL: Thank you very much.

MR. HARBIN: No questions, Judge.

THE COURT: Thank you.

You may step down, Ms. Leopard.

All right. You may call your next witness.

MS. BARWICK: The State would call Jennifer Brown.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

JENNIFER MICHELLE GARDNER BROWN,
after first having been duly sworn, testified as follows:

THE CLERK: If you will, have a seat.

And state your name for the record.

You may need to slide up to the microphone.

THE WITNESS: Jennifer Michelle Gardner Brown.

DIRECT EXAMINATION

BY MS. BARWICK:

Q Ms. Brown, where do you work?

A I work at the South Carolina Law Enforcement Division, commonly known as SLED.

Q What do you do there?

A I'm a forensic toxicologist.

Q And how long have you been working at SLED?

A For about five and a half years.

Q Were you asked to test any substances in this case?

A Yes.

Q What were you asked to test?

A I was asked to test two bottles that came into us, one was Tylenol, and one was a more generic type of Tylenol, and a baby sippy bottle that came in.

Q And when you got this evidence, would it have been in a sealed container?

A Yes.

Q And why is it in a sealed container?

A So that we can show if there's any tampering, also, just easier for us if something leaks to not get it everywhere.

Q And would you have tested this substance if it had not been sealed?

A No.

1 Q And let's talk a little bit about SLED's procedure.
2 SLED stands for what?

3 A The South Carolina Law Enforcement Division.

4 Q All right. And SLED's procedure when a deputy or
5 lieutenant -- like Lieutenant Tony Robinson, when he drops
6 off something to be processed and tested, is it kept
7 within a secured facility?

8 A Yes.

9 Q Would anybody, other than SLED personnel, have access
10 to that facility?

11 A No.

12 Q When you got these substances, you said Tylenol, the
13 generic brand of pain relief and a sippy cup, did you
14 perform tests on those three containers?

15 A Yes.

16 Q What was the purpose of that test? What were you
17 testing for?

18 A Well, whatever was asked for. So, in this case, just
19 to see what's in it.

20 Q Okay. Did you find anything in any of those
21 substances?

22 A In any --

23 Q In any of the containers. I'm sorry.

24 A Yes.

25 Q And let's start with the Equate Tylenol. What did

1 you find in there?

2 A Acetaminophen, which is commonly known as Tylenol.

3 Q So the Tylenol container had Tylenol in it?

4 A Correct.

5 Q Anything else?

6 A No.

7 Q Let's talk about the generic container that came to
8 you. What did that test for?

9 A Acetaminophen.

10 Q Tylenol again?

11 A Yes.

12 Q The sippy cup, did that test for anything?

13 A No.. We didn't find any drugs in it.

14 Q No drugs?

15 A No.

16 MS. BARWICK: No further questions, Your Honor.

17 MR. DEJONG: Very briefly.

18 CROSS-EXAMINATION

19 BY MR. DEJONG:

20 Q Ms. Brown, acetaminophen is kind of an off the
21 shoe -- kind of like aspirin; right? It's not aspirin,
22 but it's kind of like aspirin?

23 A It's a pain reliever.

24 Q I'm sorry?

25 A A pain reliever.

1 Q Over the counter?

2 A Yeah.

3 Q It is not a controlled substance?

4 A No.

5 Q And both of these came to you in bottles; correct?

6 A Yes.

7 Q One of which was Tylenol?

8 A Uh-huh.

9 Q And the other one, was that Equate?

10 A Yes.

11 Q And they both tested for the same thing,
12 acetaminophen?

13 A Yes.

14 MR. DEJONG: Thank you, ma'am.

15 Nothing further.

16 MR. O'CONNELL: Your Honor, I have no questions.

17 Thank you.

18 MR. HARBIN: No questions, Judge.

19 THE COURT: All right. Anything further?

20 MS. BARWICK: No further questions, Your Honor.

21 THE COURT: Thank you, Ms. Brown.

22 You may call your next witness.

23 MS. BARWICK: The State would call William Gassman to
24 the stand.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand.

2 WHEREUPON,

3 WILLIAM GASSMAN,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you, sir.

6 If you would, have a seat.

7 And state your name for the record, please.

8 THE WITNESS: My name is William Gassman.

9 DIRECT EXAMINATION

10 BY MS. BARWICK:

11 Q Mr. Gassman, where do you work?

12 A Baptist Medical Center in Easley.

13 Q What do you do there?

14 A Supervisor of chemistry, toxicology.

15 Q Do you work in their lab?

16 A I do.

17 Q And what are your normal duties at that lab?

18 A I supervise the chemistry department, which is
19 analyzing blood, urine, spinal fluid.

20 Q Did the lab receive any urine samples -- or a urine
21 sample from Child back on March 17th of 2008?

22 A Yes, we did.

23 Q At what time did that urine come to your lab?

24 A It was received into our lab on 3/17 at 11:54 a.m.
25 in the morning.

1 Q And do you know what time it was, actually, sent to
2 your lab?

3 A It was collected at 11:52 that morning.

4 Q And when it gets sent to the lab, how does it get
5 sent there?

6 A Via pneumatic tube system. The ER has a tube system.
7 They seal the urine in a zip lock container to biohazard.
8 It's sent to us. And then it drops into our lab, an alarm
9 goes off, tells us a courier has arrived. We open the
10 courier and receive it in the computer system.

11 Q And would it have had any information on it
12 identifying Child ?

13 A It has to have that information on it. It has to
14 have name, date of birth. It, also, has the sex. It,
15 also, has identifying marks of who collected it, when they
16 collected it, and the time they collected it.

17 Q I understand. Once that urine sample gets to the
18 lab, what happens to it?

19 A After we receive it into the laboratory, a bar code
20 is stamped and a label prints off with what we call
21 container ID. It's a bar code to cue that sample, which
22 has the same exact information on it. And then we analyze
23 it for the test that was ordered from the physician. And
24 on this specimen, we ordered a medical drug screen.

25 Q A medical drug screen. Does that mean it was for

1 medical purposes?

2 A That's correct.

3 Q And was a drug screen performed on Child
4 blood -- I'm sorry, Child ' urine?

5 A On the urine, yes, it was.

6 Q And do you recognize this?

7 A Yes, that's a printout of the report.

8 Q With the results of his urine screen?

9 A That's correct.

10 Q Now, do you take the whole sample of the urine and
11 test the whole sample?

12 A No. We take an aliquant. The container itself
13 cannot go into the instrument to be analyzed. The amount
14 that's needed to be analyzed is ported off with a label
15 that we -- that printed automatically as soon as we
16 receive it. And then it's analyzed.

17 Q Okay. And what's done with the rest of the urine?

18 A The container is then put into a refrigerator,
19 limited access refrigerator is what we have for -- we are
20 inspected by the College of American Pathologists, and a
21 requirement if we do any kind of drug testing is we have
22 to have limited access.

23 Q Okay. Was the reserve -- I'm going to call it the
24 reserve urine sample. Was that later given to anybody?

25 A Yes, it was.

1 Q Who was it given to?

2 A Dr. Mahanes.

3 Q When was it given to Dr. Mahanes?

4 A The next day.

5 MS. BARWICK: One moment. I apologize.

6 (Pause.)

7 MS. BARWICK: Your Honor, at this time, the State
8 would like to introduce State's Exhibit No. 23 into
9 evidence.

10 MR. DEJONG: No objection, Your Honor.

11 MR. O'CONNELL: No objection.

12 MR. HARBIN: No objection.

13 THE COURT: It's in evidence.

14 (WHEREUPON, State's Exhibit No. 23 was admitted into
15 evidence.)

16 BY MS. BARWICK:

17 Q What were the results of that drug screen?

18 A Negative for amphetamines, barbiturates,
19 benzodiazepines, cocaine, methadone, phencyclidine, THC,
20 which is, also, known as marijuana, and positive for
21 opiates.

22 Q So negative for everything else, positive for
23 opiates?

24 A That's correct.

25 Q What time would those results have been available to

1 the doctor?

2 A We resulted at 12:14.

3 Q When you say you "resulted," would those results be
4 immediately available to that doctor?

5 A Within seconds, yes, in the computer system.

6 MS. BARWICK: Thank you.

7 Nothing further at this time.

8 THE COURT: Mr. DeJong.

9 MR. DEJONG: Thank you, Your Honor.

10 May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. DEJONG:

13 Q Dr. Gassman --

14 A No, medical laboratory scientist.

15 Q I'm sorry.

16 A That's okay.

17 Q We have all sorts of titles floating around here. I
18 didn't mean to offend you.

19 A No problem.

20 Q Okay. You're a toxicologist?

21 A No, I'm not.

22 Q You're not a toxicologist?

23 A I'm a medical laboratory scientist.

24 Q A medical laboratory scientist?

25 A I have an Associate's Degree in medical laboratory

1 technology. I have a Bachelor's Degree in Health Science.
2 I'm qualified to run urine, blood, and spinal fluid
3 specimens.

4 Q Okay. So you -- you, actually, did this report?

5 A No, I did not. I supervise the people that do that.

6 Q So how many people were involved in doing this?

7 A One person.

8 Q Okay. Other than yourself?

9 A Yeah. I supervise the department. Only one person,
10 actually, analyzed that specimen, yes.

11 Q Okay. That's what I'm getting at. And this was a
12 urine specimen; right?

13 A That's correct.

14 Q Now, when you run something for a drug screen, which
15 that's what this was; right?

16 A That's correct.

17 Q You don't quantitate anything?

18 A No, we do not.

19 Q The only thing you're looking for here is presence?

20 A That's correct.

21 Q And I note here it says -- well, let me back up a
22 little bit. So you got the urine specimen -- and if you
23 need this, please, let me know.

24 A I've got a copy.

25 Q All right. I didn't mean to try to keep it from you.

1 What came to the lab was a urine sample; correct?

2 A That's correct.

3 Q Okay. Did blood, also, come?

4 A No. We did not receive any blood.

5 Q Okay. If blood were taken, would that normally come
6 to you?

7 A Yes, it would.

8 Q Okay. So, now, looking at this, you don't quantitate
9 it; right?

10 A Yes.

11 Q And you don't really interpret it?

12 A We have a cut off of what is positive, and what is
13 negative.

14 Q Right. And then I see here it says, Drug screen
15 positive, screening method, not confirmed?

16 A That's correct.

17 Q For medical purposes only?

18 A That's correct.

19 Q What does "not confirmed" mean?

20 A It means we have not confirmed that. We have
21 screened it only. We are doing it for the medical
22 purpose, to aid a physician in diagnosis.

23 Q And then it could have gone some place else in the
24 hospital to be confirmed, I guess?

25 A No. It does not. It goes outside the laboratory.

1 We do not confirm anything.

2 Q So no department at Easley Baptist would do the
3 confirmation?

4 A No.

5 Q Do you know how the confirmation is done?

6 A Mass speck.

7 Q Also, through blood?

8 A You can do that, also, yes.

9 Q And blood is somewhat more reliable than urine?

10 A No, sir. We're looking for a metabolite. We're not
11 looking for the active drug itself.

12 Q Okay. So when you say this was a metabolite, you
13 didn't, actually, find hydrocodone, you found a metabolite
14 in the urine specimen?

15 A We found a metabolite of opiates. Hydrocodone is an
16 opiate.

17 Q Right.

18 A Synthetic opiate.

19 Q But the metabolite is hydromorphone. Is that what
20 you found?

21 A We found the metabolite opiate.

22 Q Okay. So you don't know what it was?

23 A It was a metabolite of an opiate.

24 Q Other than an opiate; right?

25 A (There was no response.)

1 Q Let's talk about metabolites just for a minute. A
2 metabolite is, basically, what would be in the urine after
3 the body has started breaking down a substance; right?

4 A That's correct.

5 Q And that can -- once a substance is taken, the body
6 almost immediately starts breaking it down, does it not?

7 A That's correct.

8 Q So, again, in this particular case -- well, if I get
9 out of your field -- I'm not trying to be offensive.

10 A No problem.

11 Q You yell at me.. Okay. The liver, basically, starts
12 metabolizing these substances?

13 A Among other organs, yes.

14 Q But -- well, the whole gizmo works together somehow?

15 A That's correct.

16 Q But, basically, the liver and some of the other
17 organs almost immediately start breaking these drugs down,
18 if it is a drug?

19 A Exactly.

20 Q Okay. So you're going to find metabolites pretty
21 quickly after the drug has been ingested?

22 A Depending on the half life of the medicine.

23 Q Do you know what the half life of hydrocodone is?

24 A Out of my area of expertise.

25 Q Out of your area. That's fair enough. Now, the

1 urine specimen was -- after you ran your screen, the
2 balance of it was given to Dr. Mahanes?

3 A It was, actually, stored in a refrigerator.

4 Q Okay. For what period of time?

5 A We store our urines for seven days.

6 Q So are you saying at seven days or within seven days,
7 it was turned over to Dr. Mahanes?

8 A Dr. Mahanes presented us with a subpoena. That's the
9 only reason -- or any reason we'd, actually, give it to
10 anybody outside the laboratory.

11 Q Your report says, Specimen integrity check performed
12 on the sample submitted to the laboratory. What does that
13 mean?

14 A That means we verify that it is concentrated, and it
15 has not been altered in any way. We run all the PH and
16 creatinine are the two alternates that we look for.

17 Q Okay. Well, when it says there hasn't been an
18 integrity check performed, are you talking about the
19 specimen you got?

20 A The urine itself.

21 Q All right. So, basically, all that is saying is that
22 hasn't been messed with?

23 A Okay. Your phraseology.

24 Q Yeah. It's not technical, I'll be the first to
25 admit. But, basically, that's what it boils down to?

1 A Yes. It hasn't been diluted. It is, actually, human
2 urine.

3 Q The specimen was taken and went into the zip tube and
4 came to you and --

5 A Was processed.

6 Q In doing this drug screen, though, there's nothing
7 there that indicates when the drug was ingested, or
8 anything else?

9 A No, there's not.

10 Q Okay. It's just that the body has started breaking
11 down the drug, and you've got metabolites in the urine?

12 A That's correct.

13 MR. DEJONG: The witness is with you, Mr. O'Connell.

14 CROSS-EXAMINATION

15 BY MR. O'CONNELL:

16 Q You're not a doctor, but you're like a doctor; right?

17 A I'm a medical laboratory scientist.

18 Q The question I have is, you don't know where or how
19 this child got any of this stuff into his system?

20 A No, I do not.

21 MR. O'CONNELL: Thank you very much.

22 MR. HARBIN: No questions, Judge.

23 MS. BARWICK: Nothing further for Mr. Hollifield.

24 THE COURT: Thank you, Mr. Gassman.

25 MS. BARWICK: Mr. Gassman. I'm sorry.

1 THE COURT: You may call your next witness.

2 MS. BARWICK: Your Honor, at this time, the State
3 would call Dr. Mahanes to the stand.

4 THE CLERK: Place your left hand on the Bible and
5 raise your right hand.

6 WHEREUPON,

7 JAMES MAHANES,
8 after first having been duly sworn, testified as follows:

9 THE CLERK: Sir, if you would, have a seat.

10 And state your name for the record.

11 THE WITNESS: My name is James Mahanes.

12 DIRECT EXAMINATION

13 BY MS. BARWICK:

14 Q Dr. Mahanes, back when all of this was going on in
15 March of 2008, where were you working?

16 A I was the coroner for Pickens County.

17 Q And were you involved in the Child case?

18 A Yes, I was.

19 Q Do you recall collecting the urine sample from
20 Baptist Easley?

21 A Yes, I do.

22 Q When did you collect that? Would it have been the
23 same day you subpoenaed it?

24 A It would have been the day I subpoenaed it. I don't
25 know which day that was, Tuesday or Wednesday, whatever.

1 Q Would this refresh your memory?

2 A Probably the 18th of March, 2008.

3 Q And once you got that urine sample, what, if
4 anything, did you do with it?

5 A Well, I took that urine sample to my office,
6 initially, and refrigerated it in the locked office that I
7 had upstairs in this building.

8 Q Yes, sir. And what about a blood sample from Child
9 , did you collect that from anywhere?

10 A I did. I went to Greenville Memorial Hospital. And,
11 through subpoena, I collected what's called "first drawn
12 blood," the initial blood sample that was taken when the
13 child came to the hospital.

14 Q Over in Greenville?

15 A In Greenville.

16 Q What day did you collect that sample from that
17 laboratory?

18 A Let me look, please.

19 The 20th of March, 2008.

20 Q So three days after being admitted to the hospital?

21 A Yes.

22 Q And once you collected that sample from the
23 Greenville -- the blood sample from the Greenville
24 laboratory, what did you then do with that?

25 A I took both the urine sample and the blood sample to

1 the Medical Examiner's Office in Greenville.

2 Q Okay. And that's the question -- the urine sample
3 came from Baptist Easley?

4 A Right.

5 Q And the blood came from Greenville Memorial?

6 A Correct. Baptist Hospital did not draw any blood
7 from the child.

8 Q And you took both of those items to the coroner's --
9 I'm sorry, the Medical Examiner's Office?

10 A Yes, ma'am.

11 MS. BARWICK: Let me grab those from you.

12 No further questions at this time.

13 CROSS-EXAMINATION

14 BY MR. DEJONG:

15 Q So that I'm clear, Dr. Mahanes, Easley Baptist did
16 not draw any blood?

17 A No, sir.

18 Q Okay. So the blood draw -- well, let me ask you
19 this, if you know. When did Greenville Memorial do the
20 blood draw?

21 A My assumption is when the child arrived in the PICU
22 unit at Greenville Memorial.

23 Q Are you familiar with how the child got to Greenville
24 Memorial?

25 A I know he went by ambulance from Baptist Hospital.

1 Q Well, to the best of the information that you have,
2 the blood draw would have been done on March the 17th?

3 A The day he was transported there, yes, sir.

4 Q Yes, sir?

5 A Yes, sir.

6 Q And so March the 20th, there's nothing significant
7 about that, other than that's the day you, actually,
8 picked the blood up; right?

9 A That's correct.

10 Q And then you kept it in your office here in the
11 courthouse?

12 A Not the blood.

13 Q Not the blood?

14 A No, just the urine.

15 Q Okay.

16 A Correct.

17 Q So the urine stayed here for some period of time, a
18 day or two?

19 A A day or two, 40 hours, correct.

20 Q And then you picked the blood up at Greenville
21 Memorial?

22 A Correct.

23 Q And then did everything at that point in time go to
24 the ME?

25 A Yes, it did.

1 Q And was that pretty much your involvement with it?

2 A Well, that was my involvement with the samples,
3 correct.

4 Q Somebody else did all the testing?

5 A That's correct.

6 Q Somebody else did the interpretation of the testing?

7 A That's correct.

8 Q So the samples, you, basically, collected, were
9 turned over to somebody else, and that was it; correct?

10 A Well, and we sent our samples to a laboratory called
11 AIT. It was a certified laboratory out in the Midwest.

12 And we sent all the samples there for analysis.

13 Q When you say "we," were those samples sent by the
14 Greenville medical examiner, or did you send them?

15 A The medical examiner sent those, yes.

16 Q Who exactly is the medical examiner, if I may ask?

17 A Well, Dr. Michael Ward is currently and Dr. Fulcher.
18 But Dr. Eric Christensen is the physician that handled
19 this case.

20 Q Okay. So when we talk about the medical examiner, I
21 guess we could -- maybe use my language, a pathologist?

22 A A forensic pathologist.

23 Q A forensic pathologist?

24 A Yeah.

25 Q The people who do the autopsies is, basically, what

1 it boils down to?

2 A Right.

3 Q So you turn that over to the people who do the
4 autopsy, and they gather up whatever, and ship it off to
5 AIT?

6 A Well, we ship some items of our own, but not in this
7 particular case. Because the critical issue here was the
8 anti-mortem specimens that were collected that were
9 critical to the analysis of the case.

10 Q What do you mean by "anti-mortem"?

11 A Before death.

12 Q Okay. Which was the blood and the urine; right?

13 A That's correct.

14 MR. DEJONG: Thank you, Dr. Mahanes.

15 The witness is with you, Mr. O'Connell.

16 CROSS-EXAMINATION

17 BY MR. O'CONNELL:

18 Q Dr. Mahanes, are you the coroner that did the death
19 certificate?

20 A Yes.

21 Q And the death certificate originally read, Under
22 investigation; is that correct?

23 A That -- I think that's correct, yes.

24 Q And then later, it was written on there what the
25 cause of death was; is that right?

1 A Correct.

2 Q Did you previously give any testimony in any previous
3 hearings as to the same parties?

4 A No.

5 Q You've never given any testimony in any previous
6 hearings?

7 A No.

8 MR. O'CONNELL: Thank you very much.

9 THE WITNESS: My primary duty as the coroner --

10 MR. O'CONNELL: Your Honor, I stopped asking my
11 question.

12 THE COURT: He's got the right to explain his answer.

13 Do you need to explain your answer, sir?

14 THE WITNESS: Well, my primary duty as the coroner is
15 to find the cause and manner of death. And, in this
16 instance, I filled in and certified the death certificate
17 of Child.

18 MR. HARBIN: May it please the Court.

19 CROSS-EXAMINATION

20 BY MR. HARBIN:

21 Q And what did you find was the manner of death? You
22 may have already answered this questions and I just missed
23 it.

24 A Well, I found the manner of death to be homicide.

25 Q And did you formulate an opinion as to what caused

1 the homicide?

2 A That the child died from an overdose of hydrocodone.

3 Q Did you have a specific method by which he received
4 this hydrocodone? In other words, where did the
5 hydrocodone come from, or what formulation was the
6 hydrocodone part of?

7 A Well, the hydrocodone came from the grandmother's
8 home. That's where I was told that it was positioned and
9 collected by law enforcement.

10 Q And can you expand upon that a bit? You said "from
11 the grandmother's home." In what formulation? Do you
12 know?

13 A In the form of Tussionex.

14 Q In the form of Tussionex?

15 A Yes.

16 Q And what leads you to be confident that it was
17 Tussionex, and not some other form of hydrocodone?

18 A Because it was a combination of hydrocodone and
19 chlorpheniramine, and that's Tussionex.

20 MR. HARBIN: Thank you.

21 No further questions.

22 THE COURT: Redirect?

23 MS. BARWICK: Nothing further, Your Honor.

24 THE COURT: Thank you, Doctor.

25 THE WITNESS: Thank you.

1 THE COURT: You may call your next witness.

2 MR. RICHARDSON: Your Honor, may we approach?

3 THE COURT: Sure.

4 (WHEREUPON, a bench conference was held.)

5 THE COURT: All right. Ladies and gentlemen, we're
6 going to go ahead and break for the day. We've had a lot
7 of witnesses, and it's been a long day for everyone. So
8 we're going to go ahead and recess. We've reached a good
9 breaking point.

10 Don't talk about the case. Keep an open mind. And
11 we'll resume tomorrow morning at 9:00.

12 THE BAILIFF: Do I take their notes, or just leave
13 them in jury room?

14 THE COURT: Yes, just leave them in the jury room.
15 Thank you.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 4:39 p.m.)

18 THE COURT: I will see you all in the morning.

19 (WHEREUPON, the proceedings were concluded at
20 approximately 4:40 p.m., to be reconvened on
21 Wednesday, July 25, 2012.)
22
23
24
25

1 WEDNESDAY, JULY 25, 2012

2 THE COURT: Anything before we bring the jury in?

3 MR. RICHARDSON: Judge, we have one matter. It is
4 the intent of the State to call Michael Lark to the stand.
5 He is a polygrapher. The purpose of his testimony would
6 be to testify to certain things that the Defendant Morris
7 and Defendant Phillips said to him in a pre-polygraph
8 interview.

9 Our intent would be -- obviously, we can't bring up
10 anything from the polygraph, and we can't refer to him as
11 a polygrapher. But we would refer to him as an
12 investigative consultant who had an interview with these
13 individuals.

14 I believe there's going to be an objection to that.
15 So I wanted to go ahead and get that on the floor.

16 THE COURT: All right.

17 MR. DEJONG: Your Honor, there is an objection to
18 that on behalf of Mr. Morris. Obviously, this came about
19 as a result of a polygraph. That request for the
20 polygraph was made by law enforcement.

21 The thrust of where I'm going is that I believe they
22 can call him an investigative consultant, or call him
23 whatever they want to call him. But, nonetheless, he was
24 a polygrapher and this polygraph was done at the behest of
25 law enforcement. It was done in, I believe, May of -- May

1 the 29th, to be precise, of 2008.

2 Now, Mr. Morris had already been in and talked to
3 Rita Burgess. I understand that. And I believe that was
4 in April, if memory serves me correctly. It may be late
5 May.

6 My problem is this, I can't candidly stand here and
7 say that my client was in custody. But it was done and he
8 did come in with some pressuring on behalf of law
9 enforcement, which puts me to the argument that he was
10 Mirandized back when Detective Burgess talked to him. He
11 was not, to my knowledge, Mirandized prior to the
12 pre-interview -- or the interview for the polygraph that
13 was done at the request of law enforcement. And law
14 enforcement took the polygraph.

15 I think -- and I doubt seriously that this would come
16 out in testimony. But I think we're very close to
17 Missouri v. Siebert, a United States Supreme Court case,
18 where they addressed the issue of asking first and
19 Mirandizing later. And, quite candidly, Your Honor, I
20 think that was the intent of this polygraph. That is, to
21 see what they could get out of my client either
22 pre-polygraph, or polygraph, or post-polygraph, and try to
23 use that to get him to make some incriminating statement.

24 So I simply submit two things. Number one -- and I'm
25 sure you well know and I mean no disrespect, if the word

1 "polygraph" comes out on that witness stand, I'm going to
2 stand on my head and ask for a mistrial.

3 Number two, I don't think he should be allowed to
4 testify, period. He was, obviously, an agent of law
5 enforcement. Whether my client knew that or not, I don't
6 know.

7 But, number two, I suggest, Your Honor, and believe
8 and argue that he should have been Mirandized or, at
9 least -- well, he should have been Mirandized, Your Honor.
10 I think he was not. And, therefore, I would move to
11 suppress or not allow Mr. Lark's testimony.

12 MR. O'CONNELL: May it please the Court.

13 THE COURT: Mr. O'Connell.

14 MR. O'CONNELL: Your Honor, I join in the motion.
15 Because, one, my client is informing me that she
16 repeatedly told the person giving the polygraph test that
17 she was ill, that she was taking medicine, and she was
18 sick, and that he shouldn't give her the polygraph test,
19 or ask her any questions.

20 And I was just asking her -- I was remiss on this, I
21 guess. Was this polygraph test done before or after they
22 gave their statements where they were Mirandized? If it
23 was done afterwards, I think they shouldn't have even
24 given the polygraph test.

25 My point is that why bring somebody up and, actually,

1 misinform the jury of what the person does. The person is
2 a polygraph examiner. And they're going to make a
3 creative jump -- just like that missing link they're
4 talking about where the jury can substitute their own
5 stuff for it. They're saying that, okay, what we're going
6 to do is he's a polygraph man, but we're going to call him
7 a creative -- or some kind of investigator. It's not what
8 the man does.

9 I object to it because he's going to testify to
10 something that -- they come in and they are under the
11 color of law, you know. They're trying to help out.
12 That's what my client was trying to do. I think
13 Mr. Morris was, too. And, yet, they're still saying,
14 well, weigh it like this, your child died because of so
15 and so. We need you to give a polygraph test. Tell me
16 how many people would say, no, I want to see my lawyer
17 first.

18 And you've got to remember that none of these people
19 were even indicted then and even had a lawyer. So what
20 I'm getting at is that they gave a statement and made
21 comments to the investigator under the color of law. And
22 it should never come in.

23 THE COURT: Thank you, sir.

24 Mr. Richardson.

25 MR. RICHARDSON: I probably should have said this

1 from the beginning. They were Mirandized.

2 THE COURT: When? By this gentleman?

3 MR. RICHARDSON: No. They were Mirandized by
4 Detective Burgess before they went in.

5 THE COURT: What date? Are you talking about when
6 she did --

7 MR. RICHARDSON: The date of the polygraph.

8 THE COURT: Oh, the date of the polygraph.

9 MR. RICHARDSON: I'm sorry. It's a separate Miranda
10 from than what we've already done.

11 THE COURT: Okay.

12 MR. DEJONG: Well, that, certainly, puts a different
13 complexion on it then, Your Honor. But, again, at least,
14 in limine, the word polygraph, polygrapher, or anything as
15 to the interpretation of a polygraph, I submit, does not
16 come in.

17 THE COURT: Well, do we need to do a Jackson v. Denno
18 on this statement?

19 MR. RICHARDSON: At this point, it sounds, based upon
20 Mr. DeJong's argument that, yes, we do.

21 THE COURT: Let's go ahead and do it.

22 MR. RICHARDSON: At this time, I would call Rita
23 Burgess.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 RITA BURGESS,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: If you'll take the stand.

5 And state your name.

6 THE WITNESS: Rita Burgess.

7 DIRECT EXAMINATION

8 BY MR. RICHARDSON:

9 Q Ms. Burgess, you've already testified you're a
10 detective with the Pickens County Sheriff's Office?

11 A Yes, sir.

12 Q And in relation to the case that we're here today
13 about, did there come an occasion that you offered a
14 polygraph examination to the Defendant, Jamie Morris, and
15 to the Defendant, Donna Phillips?

16 A Yes, sir.

17 Q And when you offered that, did they -- what was their
18 response?

19 A They both agreed to take the polygraph.

20 Q Okay. And where did you -- did you meet them at the
21 polygrapher's office, or how did that happen?

22 A No, sir. There's a room at our office that the
23 polygraph operator will use. He brings his equipment, and
24 sets it up in our office.

25 Q Okay. And were you there?

1 MR. RICHARDSON: And, lastly, Your Honor, it's our
2 intent to call Dr. Ward -- we're going to call him twice,
3 once for custody issues, and then the other one for the
4 autopsy aspect of it. So I'm going to recall him. I just
5 wanted to let the Court know that.

6 THE COURT: Okay. Well, let's take about a
7 five-minute break. Then we'll have the witnesses.

8 (WHEREUPON, a break was taken.)

9 THE COURT: Anything else before we bring the jury
10 in?

11 MR. RICHARDSON: No, Your Honor.

12 MR. HARBIN: Judge, I can put on the record that I've
13 spoken with the Solicitor about the DSS concerns I had,
14 and I believe we've worked out an agreement. Essentially,
15 what I'd ask is they testify only to that, not to the
16 characterizations, as they often do.

17 THE COURT: Thank you, Mr. Harbin.

18 You can bring the jury on in.

19 (WHEREUPON, the jury came into open court at
20 approximately 10:02 a.m.)

21 THE COURT: Good morning.

22 I apologize for the delay. We had to take up one
23 matter unexpectedly.

24 The State may call its next witness to the stand.

25 MS. BARWICK: Thank you, Your Honor.

1 The State would call Michelle Henry to the stand.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand.

4 WHEREUPON,

5 MICHELLE HENRY,

6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 If you'll have a seat.

9 And state your name for the record, please.

10 THE WITNESS: Michelle Henry.

11 DIRECT EXAMINATION

12 BY MS. BARWICK:

13 Q Ms. Henry, if you'll speak up a little more. You
14 might scoot closer to the microphone. I know it's kind of
15 weird for you.

16 Let's try that now.

17 A Michelle Henry.

18 Q Ms. Henry, do you know Latasha Honeycutt?

19 A Yes, ma'am.

20 Q And how do you know her?

21 A She was my neighbor.

22 Q Okay. And if you'll speak up just a little bit more.

23 They have to hear it way over there.

24 She was your neighbor?

25 A Yes, ma'am.

1 Q And was this back in 2008?

2 A Yes, ma'am.

3 Q Did you ever have the opportunity to talk to
4 Ms. Honeycutt about Child n's condition the Sunday
5 before -- the Sunday before he was unresponsive?

6 A As far as?

7 Q As to how Child was?

8 A Yes.

9 Q And did she tell you a little bit about his
10 condition, physically, how he was?

11 A I have seen Child , and played with Child . And he,
12 basically, was a normal child.

13 Q Okay. Now, the Sunday before the Monday when he is
14 sent to the hospital, did Latasha say anything about how
15 he was acting that Sunday evening?

16 A After everything was all over with, she told me when
17 Child came home, he was sleeping a lot. And she couldn't
18 wake him up.. He was very drowsy.

19 Q Did she tell you about any efforts that she had done
20 to try to wake him up that Sunday evening?

21 A They had tried to wake him up, as far as like
22 standing him up and stuff like that. And he was just too
23 drowsy.

24 Q Was he -- did she say whether or not he was
25 successful in standing up?

1 A She said that he wasn't.

2 MS. BARWICK: No further questions..

3 THE COURT: Cross-examination.

4 MR. DEJONG: Thank you, Your Honor.

5 May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. DEJONG:

8 Q Did she tell you about him pitching fits?

9 A No.

10 Q Did she tell you about checking on him three or four
11 times during the night?

12 A No, not that I remember.

13 Q Okay. So what she told you was after Child went to
14 the hospital; correct?

15 A Correct.

16 Q Do you remember when this conversation was?

17 A The following weeks after.

18 Q I'm sorry?

19 A The following weeks after Child had gone to the
20 hospital.

21 Q The following week?

22 A Yes.

23 Q Okay. So some days after Child went to the
24 hospital, she shared this with you?

25 A Yes.

1 MR. DEJONG: Thank you, ma'am.

2 No further questions.

3 The witness is with you, Mr. O'Connell.

4 MR. O'CONNELL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. O'CONNELL:

7 Q Ms. Henry, do you know if Ms. Honeycutt was taking
8 any kind of medications?

9 A I don't know that for sure.

10 Q Okay. Do you know if Mr. Roper was taking any kind
11 of medication?

12 A Prescribed by a doctor, I don't think so. But I -
13 don't know all of his personal business.

14 Q Okay. Did you help or clean up the house any after
15 the -- let's say the 17th of March?

16 A Yes. After Child went to the hospital, I did clean
17 the house.

18 Q Okay. What did you remove from the house?

19 A I just -- I got the groceries and stuff out of the
20 house, because they weren't going to be there for a while.
21 Other than that, there was nothing.

22 Q What about the throw up on the floor of the little
23 boy's room?

24 A That's what I cleaned up.

25 Q Okay. What did you do with that, the rags and stuff?

1 A I threw them away.

2 Q Okay. So you weren't there the evening my client
3 brought the child back to Ms. Honeycutt; is that right?

4 A I never saw Child that afternoon.

5 Q Okay. And you weren't there the next day until you
6 cleaned out the house?

7 A Right. That was a couple days later.

8 Q A couple days later. So you really don't know
9 anything that occurred between Sunday evening and noon --
10 or about 11:00 on the Monday; is that correct?

11 A No, sir.

12 MR. O'CONNELL: Thank you very much.

13 MR. HARBIN: May it please the Court.

14 CROSS-EXAMINATION

15 BY MR. HARBIN:

16 Q Ms. Henry, I know it was sometime ago, and I'm going
17 to ask you some things maybe you don't remember,
18 specifically. But the conversation you recalled having
19 with Latasha, would it be fair to say that she was
20 describing a toddler that was ill, that had a cold,
21 congestion, that kind of thing? Did she share those facts
22 with you?

23 A No.

24 Q Did she tell that you when his father had brought him
25 home the night before that he had reported being cold,

1 congested, and cranky, irritable, sleepy?

2 A No.

3 Q None of that?

4 A No.

5 Q How did the conversation occur then?

6 A When -- after all this was happening, after Child
7 was in the hospital, that's when it had been confirmed
8 that he had been overdosed. And that's when I was told
9 that when he came home, he was groggy.

10 Q That he was what?

11 A Groggy, as in sleepy.

12 Q And you said you had interacted with Child before?
13 You had played with him; right?

14 A Yes, sir.

15 Q As a neighbor would, I guess; right?

16 A Yes, sir.

17 Q And you've done that with Brandon as well, and
18 Latasha, and all of them?

19 A Yes.

20 Q Interacting as a normal neighbor and family would?

21 A Yes.

22 MR. HARBIN: Thank you.

23 No further questions.

24 THE COURT: Any redirect?

25 MS. BARWICK: No, sir, Your Honor.

1 THE COURT: All right. Thank you, Ms. Henry.

2 You may call your next witness.

3 MR. RICHARDSON: Thank you, Your Honor.

4 The State would recall Detective Burgess to the
5 stand.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand.

8 WHEREUPON,

9 RITA BURGESS,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Have a seat.

12 And state your name for the record.

13 THE WITNESS: Rita Burgess.

14 DIRECT EXAMINATION.

15 BY MR. RICHARDSON:

16 Q Detective, you've testified that you had given
17 Miranda rights to the Defendants on an occasion back in, I
18 believe, it was March and April; is that correct?

19 A That's correct.

20 Q Okay. Did there come an occasion when you, again,
21 had Defendant Morris and Defendant Phillips come to your
22 office?

23 A Yes, sir.

24 Q Okay. And do you recall when that was?

25 A Mr. Morris came to my office on May the 29th, 2008.

1 And Ms. Phillips came to my office on June the 4th, 2008.

2 Q Okay, ma'am. And did you, again, advise them of
3 their Miranda rights at that time?

4 A Yes, sir, I did.

5 Q Okay. Let me hand you what's been marked as State's
6 Exhibit No. 18. What is that?

7 A It's the Miranda rights for Jamie Edward Morris.

8 Q And is it signed by him?

9 A Yes, sir, it is.

10 MR. DEJONG: Without objection, Your Honor.

11 THE COURT: What exhibit is that?

12 MR. RICHARDSON: This will be State's Exhibit No. 18,
13 Your Honor.

14 THE COURT: Okay. It's in evidence.

15 (WHEREUPON, State's Exhibit No. 18 was admitted into
16 evidence.)

17 BY MR. RICHARDSON:

18 Q Let me hand you back State's Exhibit No. 18. And, on
19 that form, what rights did you give to Defendant Morris?

20 A It reads, Before we ask you any questions, you must
21 understand your rights. You have the right to remain
22 silent. Anything you say can be used against you in
23 court. You have the right to talk to a lawyer for advice
24 before we ask you any questions and to have him or her
25 with you during questioning.

1 If you have no money to pay a lawyer's fee, the Court
2 will appoint one to represent you without cost, if you
3 wish.

4 If you decide to answer questions without a lawyer
5 present, you still have the right to answer -- I'm sorry,
6 you still have the right to stop answering at any time.
7 You, also, have the right to stop answering at any time
8 until you talk to a lawyer.

9 Q Okay. And did he initial each and every one of those
10 rights?

11 A Yes, sir, he did.

12 Q Okay. And did he waive those rights?

13 A Yes, sir.

14 Q Okay. Is there a waiver of that form?

15 A Yes, sir.

16 Q Would you, please, read that to the jury?

17 A I have read this statement of my rights and I
18 understand what my rights are. I am willing to make a
19 statement and answer questions. I do not want a lawyer at
20 this time. I understand and know what I'm doing. No
21 promises or threats have been made to me. No pressure or
22 coercion of any kind has been used against me.

23 Q Okay, ma'am. Now, did you, also, have -- at a later
24 date, you testified that you had Donna Phillips come to
25 your office; is that correct?

1 A Yes, sir.

2 Q Let me hand you what's been marked as State's Exhibit
3 No. 19. And what is that?

4 A It's her Miranda rights.

5 Q Okay. And did she sign that?

6 A Yes, sir, she did.

7 MR. O'CONNELL: Your Honor, I'm objecting on the same
8 grounds we objected to before.

9 Thank you.

10 THE COURT: Your objection is noted. And it's in
11 evidence.

12 MR. RICHARDSON: It's State's Exhibit No. 19.

13 (WHEREUPON, State's Exhibit No. 19 was admitted into
14 evidence.)

15 BY MR. RICHARDSON:

16 Q Let me hand that back to you, Detective. And,
17 likewise, when were those Miranda rights given?

18 A June the 4th, 2008.

19 Q And what are the rights you gave the Defendant?

20 A Before we ask you any questions, you must understand
21 your rights. You have the right to remain silent.
22 Anything you say can be used against you in court. You
23 have the right to talk to a lawyer for advice before we
24 ask you any questions, and to have him or her with you
25 during questioning.

1 If you have no money to pay a lawyer's fee, the Court
2 will appoint one to represent you without cost, if you
3 wish.

4 If you decide to answer questions without a lawyer
5 present, you still have the right to stop answering at any
6 time. You, also, have the right to stop answering at any
7 time until you talk to a lawyer.

8 Q And did Defendant Phillips initial those rights?

9 A Yes, she did.

10 Q And did she waive those rights?

11 A Yes, sir.

12 Q Can you read the waiver to the jury, please?

13 A I have read this statement of my rights and I
14 understand what my rights are. I'm willing to make a
15 statement and answer questions. I do not want a lawyer at
16 this time. I understand and know what I'm doing. No
17 promises or threats have been made to me. No pressure or
18 coercion of any kind has been used against me.

19 Q Okay, ma'am. After those rights were given, did you
20 then have a -- did Michael Lark speak to them?

21 A Yes, sir.

22 Q To each Defendant?

23 A Yes, sir.

24 Q And was this just after those rights were given?

25 A Yes, sir.

1 MR. RICHARDSON: Thank you.

2 That's all the questions I have. Please answer any
3 questions Defense counsel may have.

4 CROSS-EXAMINATION

5 BY MR. DEJONG:

6 Q As to Mr. Morris, was it your request that he come
7 in?

8 A I believe it was, yes, sir.

9 Q All right. And then you spent some period of time
10 with Mr. Morris prior to him talking to Mr. Lark; correct?

11 A On this date, we talked briefly. And he agreed to
12 talk to Mr. Lark. And I called Mr. Lark to come to our
13 office.

14 Q Well, what time did Mr. Morris -- well, let me ask
15 you this. Was this done at the law enforcement center?

16 A Yes, sir.

17 Q What time did he get to the law enforcement center?
18 "He" being Mr. Morris.

19 A It would likely have been around 2:00, because we
20 spoke very briefly.

21 Q And what time did he leave the law enforcement
22 center?

23 A I don't have a record of what time he, actually,
24 left.

25 Q Do you know how he left?

1 A Yes, sir.

2 Q How did he leave?

3 A I drove him home.

4 MR. DEJONG: All right. Thank you, ma'am.

5 Nothing further.

6 MR. O'CONNELL: Nothing from us, Your Honor.

7 THE COURT: Anything further?

8 MR. RICHARDSON: Nothing further of this witness,
9 Your Honor.

10 THE COURT: Thank you, ma'am.

11 MR. RICHARDSON: The State would call Michael Lark to
12 the stand.

13 MR. O'CONNELL: Your Honor, may I ask that the sound
14 be elevated? Because I and my client are having a hard
15 time hearing.

16 THE COURT: Okay.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right hand.

19 WHEREUPON,

20 CHARLIE MICHAEL LARK,
21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you, sir.

23 If you would, have a seat.

24 And state your name for the record, please.

25 THE WITNESS: My name is Charlie Michael Lark.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Mr. Lark, you are an investigative consultant; is that correct?

A Yes, sir, I am.

Q And did you have an occasion to speak with the Defendant, Jamie Morris, and, also, the Defendant, Donna Phillips?

A Yes, sir, I did.

Q Okay, sir. And do you recall the date that you spoke to the Defendant Morris?

A Pardon?

Q I'm sorry. Do you recall the date that you spoke --

A Oh, yes, sir. I talked with Mr. Morris on May the 29th, and Ms. Phillips on June the 4th, 2008. I'm sorry. Both of them, May 29, 2008, and June 4, 2008.

Q Okay, sir. And let's speak -- let's talk about Defendant Morris first. Did you enter into -- did you ask him some questions?

A Yes, sir. We had a conversation about Child .

Q Okay. Can you relate to the jury what he told you about that incident?

A Mr. Morris told me that the only medication that he had given Child was Equate medication, which he had given on Sunday afternoon. And that was following a -- there

1 was a coughing spell that he was having.

2 Also, he said that his mother had a prescription for
3 hydrocodone, and had a prescription for cough medication.
4 He said that his mother kept the hydrocodone in her purse,
5 and that he did not see his mother give her -- give Child
6 any medication during the weekend. And, again, he did
7 state that the only medication he was aware of that Child
8 had gotten that weekend was on Sunday afternoon around
9 2:30, 3:00 while he was at his sister's house. And this
10 was the Equate medication.

11 Q Okay, sir. And did he tell you how many dropper
12 fulls of the Equate that he gave?

13 A Yes, sir. He told me that he had given Child two
14 dropper fulls of the Equate, which he told me was the
15 prescribed dosage.

16 Q Okay, sir. And what, if anything, did he relay about
17 he and his mother together the entire time that they had
18 the child?

19 A Would you repeat the question? I apologize.

20 Q Did he relate to you whether he and his mother were
21 together the entire time they had the child?

22 A Yes, sir. He told me that he and his mom were
23 together the entire weekend, from Friday afternoon to
24 Sunday afternoon.

25 Q And what, if anything, did he tell you about how long

1 the coughing had lasted?

2 A He told me that the coughing had been -- he had been
3 coughing throughout the weekend, but it wasn't anything
4 that he considered very serious.

5 Q Okay, sir. And did he relate when the coughing took
6 place mostly, whether it was daytime or nighttime?

7 A Could I look at my report, sir?

8 Q Yes, sir.

9 A Mr. Morris informed me that the coughing was mostly
10 at night.

11 Q Okay, sir. And did he -- regarding the -- did you
12 talk to him about the Tussionex medication?

13 A He told me that the Tussionex -- that his mom kept
14 the Tussionex medication in a pumpkin in her closet. He
15 said he had a hard time reaching this, where the pumpkin
16 was kept.

17 And he said that his mom got the medication down on
18 about two occasions while Child was in the room. But he
19 did not see Child get any of the medications that was in
20 the pumpkin.

21 Q When she got the medication down while Child was in
22 the room, did he reveal to you where the -- where Child
23 was, and where the medication was?

24 A Yes, sir. He said that the tops were on the
25 medication, but Child was playing with the bottles. But,

1 to his knowledge, none of the medication had come out of
2 the bottles, because the tops were on the medication
3 bottles.

4 Q Okay, sir. And did he talk about going to his
5 sister's house?

6 A Yes, sir. He talked about going to his sister's
7 house on Sunday afternoon.

8 Q Okay. And did he relate to you whether he and his
9 mother were with Child the entire time they were at this
10 house?

11 A Yes, sir. He said that they were -- that he and his
12 mom were with Child while they were at the house.

13 Q Okay, sir. Now, I take your attention to Defendant
14 Phillips. You, also, had a conversation with her; is that
15 correct?

16 A Yes, sir. I had a conversation with her on June the
17 4th, 2008.

18 Q Okay. And did she reveal to you anything regarding
19 nightmares that Child may have had?

20 A Yes, sir.

21 Q Sir?

22 A Yes, sir. She told me that Child was having
23 nightmares during the night. And that she was wanting
24 Jamie to try to take care of him, because Child was
25 Jamie's son. And she wanted him to try to take care of

1 him. But there was times during the night when he was
2 still having the nightmares that she would hold him, and
3 he would go to sleep.

4 She said that she did look on the computer for
5 remedies for the nightmares. But, you know, she said,
6 basically, she just held him, and he would fall asleep.

7 Q Okay. And, likewise, did Defendant Phillips talk
8 about the medication being in the possession of the child?

9 A Yes, sir. She talked about that she had gotten the
10 pumpkin down from the shelf in the closet and --

11 Q I don't mean to interrupt you. But the pumpkin
12 you're talking about, is that where she said she kept the
13 medicine?

14 A Pardon me.

15 Yes, sir.

16 Q I just wanted to explain --

17 A Yes, sir. The pumpkin was where she told me she kept
18 the medication.

19 Q And then what did she say?

20 A That she had gotten the medication down. She did not
21 see Child get any of this medication. He did play with
22 the bottles. The tops were on the bottles.

23 She told me her only concern was she had accidentally
24 dropped one on the floor, and Child could have picked it
25 up. But she said she did not see how that was possible,

1 that the tops were on the bottles. And she didn't see
2 Child get any medication.

3 MR. RICHARDSON: I beg the Court's indulgence.

4 (Pause.)

5 MR. RICHARDSON: Thank you, sir.

6 Please answer any questions Defense counsel may have.

7 THE WITNESS: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. DEJONG:

10 Q Mr. Lark, with regard to Mr. Morris. Now, he shared
11 with you that he and his mother were together the entire
12 weekend; right?

13 A Yes, sir.

14 Q But, certainly, not that they were on top of each
15 other 24/7?

16 A No, sir. No, sir. I didn't assume that that's what
17 he was talking about.

18 Q All right. Well, I just wanted to clarify that.
19 Certainly, the child could have been out of Mr. Morris'
20 view and sight and been with the grandmother?

21 A What I was thinking -- what I interpreted him to mean
22 was that they were both in the same household, that they
23 were not apart.

24 Q Yes, sir.

25 A They were not -- he did not, specifically, say they

1 were in eyesight of each other all weekend.

2 Q Yes, sir. And I just wanted to clarify.

3 A Yes, sir.

4 Q They were in the same household and same environment?

5 A Yes, sir.

6 Q But not on top of each other for 24 hours a day?

7 A No, sir. I didn't interpret him -- that to mean
8 that.

9 Q All right, sir. Now, with regard to this medication.
10 Mr. Morris said he knew the medication was there; correct?

11 A Which medication are you referring to?

12 Q I'm talking about Tussionex.

13 A Yes, sir.

14 Q All right. And that it was kept in a pumpkin; right?

15 A Yes, sir.

16 Q Now, Mr. Morris, other than two droppers of Equate,
17 never said anything to you about giving this child any
18 other medication, did he?

19 A That is correct.

20 Q And, indeed, Mr. Morris shared with you that he
21 didn't know about anybody else giving this child
22 medication?

23 A That's true, sir.

24 Q And, actually, the cough that he described to you, he
25 said that cough was not persistent; right?

1 A Yes, sir.

2 Q And, actually, that he started becoming ill around
3 2:30 or 3:00 on Sunday afternoon?

4 A Yes, sir.

5 Q Okay. Now, let's switch over to Ms. Phillips for
6 just a moment. In talking with her, she said that she had
7 gotten the medications down, as I gather, to take the
8 medication?

9 A That's what I assumed, too, sir.

10 Q Right. And that was Tussionex; correct?

11 A I could not -- I don't know that for sure, sir. I
12 don't know if there was any other medications in there in
13 the pumpkin --

14 Q All right. I didn't mean to cut you off, Mr. Lark.

15 A No, you're fine.

16 Q But you have been, as I understand it, specifically,
17 referring to the Tussionex, and the Tussionex was in the
18 pumpkin; right?

19 A Yes, sir.

20 Q And she said she got the pumpkin down to take her
21 medications; right?

22 A Yes, sir.

23 Q Okay. Now, likewise, she didn't say anything about
24 that she ever gave the child --

25 A Yes, sir. That's true. She did not say she gave the

1 child -- Child any medication that weekend.

2 Q All right. And what day was this, if it came up in
3 your conversation, that she got the pumpkin down?

4 A I'm not sure if that's in my notes or not, sir.

5 Can I refer to my notes?

6 Q If you want to refer to your notes, feel free to do
7 so, sir.

8 A Sir, my notes do not refer to a particular date.

9 And, you know, I'm not sure what day it was.

10 Q Well, excuse me. Your notes do indicate that the
11 child was with Mr. Morris and Ms. Phillips from Friday
12 through Sunday evening; correct?

13 A Yes, sir.

14 Q So, certainly, in trying to put the pumpkin in
15 context, that could have been any time within that,
16 roughly, 60 hours?

17 A True. Yes, sir.

18 Q Did Mr. Morris ever indicate to you that he got the
19 pumpkin down this particular --

20 A I don't recall if he said he got it down. He said it
21 was hard for him to reach, that it was high.

22 Q Right. But he never said anything about getting the
23 pumpkin down on this particular weekend?

24 A No, sir, not -- may I refer to my notes again,
25 please, sir?

1 Q Yes, sir.

2 A He did not refer to getting the pumpkin down, no,
3 sir. He did state it was high, and it was hard for him to
4 reach.

5 Q Yes, sir. And when the medication was down,
6 according to Ms. Phillips, Child was under constant
7 supervision at that point in time; correct?

8 A That's what I was told, yes, sir.

9 MR. DEJONG: The witness is with you, Mr. O'Connell.

10 MR. O'CONNELL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. O'CONNELL:

13 Q Let me ask you this. When you were talking with
14 Ms. Phillips, my client here, did she tell that the Lortab
15 falling on the floor happened -- if it happened at all,
16 occurred the same time as the Tussionex was in the little
17 pumpkin thing, or were there, actually, two different
18 days?

19 A She did not specify any dates, sir. She said she was
20 concerned that it could have fell, but she did not know of
21 any time that it did fall. Because the tops were on the
22 bottles. And she was concerned about -- she was just
23 worried about how Child got the medication. And she said
24 she was just concerned that it could have fell. But she
25 did not know of any time in particular. She did not see

1 him picking up any medication, and she did not know of any
2 time when it did fall on the floor.

3 Q From your notes, did she, also, tell you that if the
4 child got any kind of medication, they would have rushed
5 the child to the doctor?

6 A I don't believe that's in my notes. But I'm sure she
7 would have taken care of her child -- her grandchild.

8 MR. O'CONNELL: Thank you very much.

9 MR. HARBIN: May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. HARBIN:

12 Q Did either Mr. Morris or Ms. Phillips ever express to
13 you that after they had discovered Child was sick,
14 congested, whatever, that they told anybody that let's
15 double-check and make sure he didn't get into any
16 medication? Did they express any concern to anyone that
17 that is a possibility that something could have happened?

18 A No, sir. I was not told that.

19 MR. HARBIN: Thank you.

20 No further questions.

21 REDIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q Sir, just briefly. When you were referring to
24 Mr. Morris being at the sister's house, what he told you
25 was that he and Child were together the entire time; is

1 that correct?

2 A Yes, sir. He and Child were together.

3 MR. RICHARDSON: Thank you, sir.

4 That's all I have.

5 THE COURT: Redirect -- recross?

6 MR. DEJONG: No, Your Honor.

7 MR. O'CONNELL: Nothing from us, Your Honor.

8 THE COURT: Thank you, Mr. Lark.

9 All right. You may call your next witness.

10 MS. BARWICK: Thank you, Your Honor.

11 The State would call Kathy Hartzell to the stand.

12 THE CLERK: If you'll place your left hand on the
13 Bible and raise your right hand.

14 WHEREUPON,

15 KATHY HARTZELL,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you, ma'am.

18 If you would, have a seat.

19 And state your name for the record, please.

20 THE WITNESS: My name is Kathy Hartzell.

21 DIRECT EXAMINATION

22 BY MS. BARWICK:

23 Q Ms. Hartzell, did you get involved in the Child
24 case?

25 A Yes, ma'am.

1 Q What was your involvement?

2 A I was called as a guardian ad litem in July of 2008.

3 Q And did you have a conversation with Latasha
4 Honeycutt about what happened to Child ?

5 A Yes, I did.

6 Q And did she tell you anything about Child 's
7 condition the Sunday night before he was found
8 unresponsive on Monday?

9 A Yes, she did.

10 Q And what did she tell you?

11 A She told me that he came home and that she put him to
12 bed at about 8:00. And he was sort of pitching a fit.

13 Q Right.

14 A And she put him down and left him there for a while,
15 came back at about 8:30, gave him a sippy cup of milk.
16 And he took a few sips and quit. And she put it in the
17 refrigerator and put him down for bed.

18 Q Did she say anything about his ability to stand, or
19 anything like that?

20 A She said they had set him down and he stepped back a
21 little bit, but that was all.

22 Q Let's talk about Monday morning. Did she tell you
23 anything about the events on Monday morning?

24 A Yes, she did.

25 Q And what did she say?

1 A She said on Monday morning, they had answered their
2 alarm, woken up to their alarm at 8:00. She had gone to
3 check on Child .

4 Q Yes, ma'am.

5 A And he was sleeping fine. She changed him sort of in
6 the dark, and went back to bed, set their alarm for 10:00,
7 got up at 10:00 and found him unresponsive.

8 Q And did she say -- well, okay. And did she say
9 anything about the sleeping arrangements for Child and
10 Ava? Did she say anything about where Child slept?

11 A Yes. Child had his room in the other end of the
12 trailer with his crib. And she was keeping Ava in the
13 living room so they could hear her.

14 Q Would the living room be between the two bedrooms?

15 A Yes.

16 Q And did you ask her anything about Ava being in the
17 living room, yet Child being back in the bedroom?

18 A That was just the usual arrangement.

19 Q And did she say why Ava was in the living room and
20 Child in the bedroom at all?

21 A Not specifically. But that was her usual arrangement
22 for Child in his own room. And because Ava was the new
23 baby, she wanted her closer so she could hear her.

24 Q Did you ask her if she was concerned about hearing
25 Child ?

1 A No. I didn't ask that question.

2 Q And you said she set her alarm for when?

3 A They woke up to the alarm being set from the night
4 before at 8:00.

5 Q Yes, ma'am.

6 A And after she changed Child n's diaper, he did not
7 wake up. So she put him -- left him alone and went on
8 back and set the alarm again for 10:00. She said she had
9 to get ready for work.

10 Q So he slept through the diaper change?

11 A He did.

12 MS. BARWICK: No further questions.

13 MR. DEJONG: May it please the Court.

14 CROSS-EXAMINATION

15 BY MR. DEJONG:

16 Q When did this conversation take place, Ms. Hartzell?

17 A September the 6th, 2008.

18 Q So that was some six months after the fact; correct?

19 A Yes, sir.

20 Q All right. And that would have been, if you know,
21 after Ms. Honeycutt had talked to law enforcement?

22 A I don't know that for sure.

23 Q Okay. But, nonetheless, it was six months --

24 A I would assume.

25 Q And, at that point in time, if you know,

1 Ms. Honeycutt was aware of the cause of death of the
2 child?

3 A Yes, sir.

4 Q All right. Which was a hydrocodone overdose?

5 A Yes, sir.

6 Q And you were aware of that, too; right?

7 A Yes, sir.

8 Q So when you had this conversation, everyone was aware
9 of the cause of death?

10 A Yes, sir.

11 Q Okay. Now, did she tell you about getting up three
12 or four times during the night on Sunday night, or Monday
13 morning to check on Child ?

14 A She said she did that to change Ava.

15 Q Okay. But did she, also, tell you she checked on
16 Child at the same time?

17 A I asked her if she checked on Child . And she said
18 she had looked at him and he had not kicked off the
19 blankets, but she did not touch him.

20 Q So 8:00, 8:30 on Monday, the 17th, she gets up and
21 changes Child 's diaper?

22 A Yes, sir.

23 Q She saw nothing wrong with the child?

24 A She saw nothing wrong with the child. I asked if he
25 was not floppy, asleep. And she said, no, she didn't

1 know. He just didn't wake up.

2 Q He was asleep?

3 A Uh-huh.

4 Q Okay. Did she register any concern with you at that
5 point in time in September about his breathing at that
6 point in time?

7 A No, sir. She did say that Jamie said he had a cold,
8 but she didn't really see any signs of anything serious.

9 Q Okay. But she wasn't concerned about a cold?

10 A No.

11 Q Okay. And then she gets back up at what time?

12 A 8:00, and then 10:00.

13 Q Okay. So 8:00 was the diaper change?

14 A Yes, sir.

15 Q Everything is fine?

16 A Yes.

17 Q Okay. 10:00, she gets up. Does she share with you
18 that she immediately goes and checks on Child ?

19 A No. She didn't give me a time frame.

20 Q Pardon me?

21 A She didn't give me a time frame. But she did
22 say when the alarm went off, she got up and went to
23 Child .

24 Q And she indicated that after Mr. Morris brought him
25 home, he was pitching a fit?

1 A Yes, sir, several times.

2 Q I'm sorry. I don't quite follow. I'm not trying to
3 be rude..

4 A Yes. It surprised me in our conversation about this
5 child that, oh, four, five, six times in the conversation,
6 he was pitching a fit, he was pitching a fit, he was
7 pitching a fit.

8 Q Was he pitching a fit on more than one occasion?
9 That's what I'm having a bit -- she told you that he was
10 pitching a fit several times, or that he pitched a fit
11 several times?

12 A He pitched a fit twice.

13 Q Okay. Did she give you a time frame on that?

14 A Yes. He pitched a fit when they first put him down.
15 And then he pitched a fit again. And Brandon came in to
16 comfort him before he went to sleep. So that would have
17 been once about 8:00, and once about 8:30, according to
18 their timeline.

19 Q So pitching a fit about 8:00?

20 A About 8:00 --

21 Q In the evening?

22 A -- when they put him down. And 8:30, when she went
23 the second time to put him down for the last time. She
24 thought he went to sleep about 9:00. And they went to
25 sleep about 11:00.

1 Q So the child went to sleep about 9:00?

2 A That's what she said she thought.

3 Q And then it's not really clear whether she did
4 check on him or didn't check on him through the night;
5 correct?

6 A Right.

7 MR. DEJONG: One moment, please, Your Honor.

8 (Pause.)

9 MR. DEJONG: The witness is with you, Mr. O'Connell.

10 MR. O'CONNELL: Thank you very much, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. O'CONNELL:

13 Q Ms. Hartzell, did you have any occasion to talk to my
14 client that day?

15 A Yes, sir, I did.

16 Q And what did she inform you?

17 A About which subject? We had many conversations.

18 Q About the Child -- anything concerning Child

19 A That Sunday night, specifically?

20 MS. BARWICK: Judge, I'm going to object. She can't
21 testify to what his client said.

22 MR. O'CONNELL: Your Honor, I have no further
23 questions.

24 Thank you.

25 MR. HARBIN: May it please the Court.

CROSS-EXAMINATION

BY MR. HARBIN:

Q I've read your report. And it seems like you spent a great deal of time talking to Latasha and trying to get involved in this case, as best you could?

A Yes, sir, three hours that day.

Q And, in one particular section, you noted that you were trying to get -- this is going to be my terminology.

A Yes, sir.

Q But you were trying to dig into her emotional state and trying to get her to open up. And is it fair to say that you found it was difficult to crack that egg?

You had to dig and dig and dig and, finally, got some tears. But it took you a while to get that deep into her, to get her comfortable enough to share with you. Is that a fair assessment from the report I read?

A No, sir. It wasn't exactly comfortable enough. I was rather shocked at the lack of emotion.

Q And she, actually, shared with you that she was anxious around people; is that true?

A No.

Q Can I hand you your report that I have?

A Sure.

Q Okay. Can you read for yourself what I underlined there?

1 A Yes. She did say that. That slipped my memory.

2 Q Yes, ma'am. It's been a long time.

3 A It has been.

4 Q It's been a very long time. In that same
5 conversation, she kind of went on to describe that she
6 gets sweaty and nervous. Is that akin to your
7 recollection?

8 A May I look at my notes?

9 Q I'll let you read as much as you want.

10 A I was focusing on facts versus impression.

11 Yes, sir. I can agree with that.

12 MR. HARBIN: Yes, ma'am.

13 Thank you very much.

14 No further questions.

15 THE COURT: Redirect?

16 MS. BARWICK: No, sir, Your Honor.

17 THE COURT: Thank you, ma'am.

18 You may step down, Ms. Hartzell.

19 Okay. You may call your next witness.

20 MS. BARWICK: The State would call Nancy Rogers to
21 the stand.

22 MR. HARBIN: Judge, may we approach, please?

23 THE COURT: Sure.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Ladies and gentlemen, we're going to take

1 a short recess. Just don't talk about the case. And
2 continue to keep an open mind.

3 Thank you.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 10:44 a.m.)

6 THE COURT: Yes, sir.

7 MR. HARBIN: I'm sorry, Judge. I was sharing the
8 order I just got.

9 THE COURT: Oh, all right.

10 MR. HARBIN: If I could have one moment to share it
11 with them before I tell the Court.

12 (Pause.)

13 MR. HARBIN: Judge, once again, we've worked it out.

14 Thank you.

15 THE COURT: Anything else, for the record, at this
16 time?

17 MR. DEJONG: I don't think so. I need to see what
18 they worked out.

19 THE COURT: All right. We'll take another
20 five-minute break while we have the opportunity.

21 (WHEREUPON, a break was taken.)

22 THE COURT: Anything before we bring the jury back
23 in?

24 MR. RICHARDSON: Nothing from the State.

25 MR. DEJONG: Not on behalf of Defendant Morris,

1 Judge.

2 THE COURT: Okay. Bring the jury in.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:54 a.m.)

5 THE COURT: You may call your next witness.

6 MS. BARWICK: Thank you, Your Honor.

7 The State would call Nancy Rogers to the stand.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right hand, if you would.

10 WHEREUPON,

11 NANCY ROGERS,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: If you would, have a seat.

14 And state your name for the record, please.

15 THE WITNESS: Nancy Rogers.

16 DIRECT EXAMINATION

17 BY MS. BARWICK:

18 Q Ms. Rogers, you work for the guardian program as
19 well; correct?

20 A Yes, ma'am. I'm a volunteer.

21 Q Yes, ma'am. And did you have a conversation with
22 Latasha Honeycutt about what happened the morning Child
23 was unresponsive?

24 A Yes.

25 Q And did she tell you what time she woke up that

1 morning?

2 A Yes.

3 Q What time did she say she needed to be up that
4 morning?

5 A 10:00.

6 Q And why did she -- did she say why she needed -- or
7 why she woke up at 10:00?

8 A She had to be at work at 11:00.

9 MS. BARWICK: No further questions.

10 MR. DEJONG: No questions of this witness, Your
11 Honor.

12 MR. O'CONNELL: No questions, Your Honor.

13 MR. HARBIN: No questions, Judge.

14 THE COURT: All right. Thank you.

15 You may call your next witness.

16 MS. BARWICK: Dr. Michael Ward.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right hand.

19 WHEREUPON,

20 MICHAEL EUGENE WARD, M.D.,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you, sir.

23 You may have a seat.

24 And state your name for the record, please.

25 THE WITNESS: Michael Eugene Ward.

DIRECT EXAMINATION

BY MS. BARWICK:

Q Dr. Ward, where do you work?

A I'm employed by Pathology Associates of Greenville in Greenville County, and as the chief medical examiner for Greenville County.

Q Okay. And do you have familiarity with the practices over at Greenville Memorial Hospital?

A Yes, I do.

Q And over at Greenville Memorial Hospital, was Child ' blood drawn?

A Yes, it was.

Q And what date would that blood have been drawn?

A The blood was drawn on the date of his admission, which was March the 17th, 2008.

Q Can you tell the jury what procedures that blood would have gone under before it made its way down to the lab?

A To us, the lab, or to the lab lab [sic]?

Q To the lab at the hospital.

A The orders are requested by the physicians to draw blood on a certain patient. When those orders are confirmed, then a label is printed, and a request is sent to a phlebotomist or a person who draws the blood. That person would then go and remove those labels and apply

1 them to the tube that the blood will be drawn into.

2 The tube is then taken to the patient. The label on
3 the tube is confirmed with the patient's arm band before
4 the blood is drawn. Then the blood is drawn. And then
5 the tubes with the drawn blood would be taken to the
6 laboratory for analysis.

7 Q And Child ' blood was drawn for what purpose?

8 A It was drawn for medical purposes. In this case,
9 likely a CBC -- or complete blood count, which would tell
10 information about the blood and a basic metabolic profile,
11 which would be electrolytes, glucose, renal function,
12 things like that.

13 Q And the blood, once it gets down to the lab, what is
14 done with it at the lab?

15 A The blood is analyzed and then kept in a refrigerator
16 for a certain number of days after the draw. So I believe
17 it's four days that the blood is kept -- all blood is kept
18 for four days after the draw in case there's need for
19 reanalysis.

20 Q And is the lab a secure facility?

21 A Yes, it is.

22 Q And I don't know if you mentioned it before or not.
23 Is the blood stored in a refrigerator?

24 A Yes. It is refrigerated.

25 Q And does Dr. Christensen work with your office?

1 A He did.

2 Q Back in 2008 when this happened?

3 A In 2008, Dr. Christensen was the deputy medical
4 examiner for Greenville County.

5 Q And did Dr. Mahanes bring that blood to
6 Dr. Christensen in your office?

7 A Yes. The records indicate that on the date of
8 Child 's autopsy, which was March 21st, 2008, that
9 Dr. Mahanes brought urine, which had been recovered from
10 Baptist Medical Center Easley, and blood, which
11 Dr. Mahanes had recovered from the laboratory at
12 Greenville Memorial Hospital, and gave those to
13 Dr. Christensen.

14 Q And what did Dr. Christensen do with that blood at
15 that point?

16 A The blood was packaged in our usual fashion, which in
17 my file is a form which is a request from AIT
18 Laboratories, which is a toxicology laboratory. And the
19 blood was labeled with their number. We -- each sheet has
20 individualizing laboratory numbers from AIT.

21 So one of those labels is removed, and attached to
22 the sample. In this case, a sample of blood from Easley
23 dated March 17th, 2008, and a sample of blood from
24 Greenville Memorial Hospital drawn at the time of his
25 admission on March 17th, 2008. Each of those was labeled

1 with the AIT label, packaged and mailed through a carrier
2 service to AIT Laboratories.

3 Q And, Dr. Ward, let me back you up. I don't know if I
4 heard you correctly or not. You said the blood was from
5 where?

6 A Greenville Memorial.

7 Q And what did you get from Easley to send off?

8 A Urine.

9 Q Okay. I don't know if I heard you say blood. And it
10 was urine from Easley?

11 A It's urine from Easley, and blood from Greenville
12 Memorial.

13 Q And those are both sent off to AIT?

14 A That is correct.

15 Q Do you recognize this form?

16 A Yes, I do.

17 Q And what is that form?

18 A This is a photo copy of the form that I have in my
19 file, which is the AIT Laboratory request form that has
20 the unique laboratory number indicating the label that
21 would have been applied to the tube of urine and blood
22 with Dr. Christensen's signature.

23 Q Thank you, Dr. Ward.

24 Now, when it gets sent off to AIT Laboratories, is it
25 sealed? How is that handled?

1 A The blood is in a sealed stopper container, which,
2 basically, means it's airtight and liquid tight, so
3 nothing else is done with that. The urine is in, most
4 likely, a screw-type container that is a pill proofer.
5 It's placed inside of a mailer box, along with the
6 request. That box is then sealed and initialled by the
7 physician, Dr. Christensen, and sent via through a carrier
8 to AIT.

9 MS. BARWICK: I'm just waiting on the Defense to
10 review it so I can enter it into evidence.

11 (Pause.)

12 MS. BARWICK: Your Honor, at this time, the State
13 would like to introduce State's Exhibit No. 27 into
14 evidence.

15 MR. DEJONG: Without objection, Your Honor..

16 MR. O'CONNELL: Without objection.

17 MR. HARBIN: No objection.

18 THE COURT: Okay. It's in evidence.

19 (WHEREUPON, State's Exhibit No. 27 was marked for
20 identification and admitted into evidence.)

21 MS. BARWICK: Your Honor, at this time, the State has
22 no more questions for Dr. Ward, but we would like leave to
23 recall him as a witness.

24 THE COURT: Any cross-examination?

25 MR. DEJONG: I'm sorry, Your Honor?

1 THE COURT: Cross-examination?

2 MR. DEJONG: With reference to this, obviously, not
3 waiving down the road. It's my understanding they're
4 going to recall him.

5 CROSS-EXAMINATION

6 BY MR. DEJONG:

7 Q So, Dr. Ward, as far as -- well, let me back up. Are
8 you aware that Easley Baptist did a drug screen?

9 A A urine drug screen, yes.

10 Q And that was on urine; correct?

11 A Correct.

12 Q Now, as far as further testing on the urine and the
13 blood, that was done by AIT Labs; is that correct?

14 A That is correct.

15 MR. DEJONG: The witness is with you, Mr. O'Connell.

16 CROSS-EXAMINATION

17 BY MR. O'CONNELL:

18 Q Dr. Ward, what time was the Greenville blood taken
19 from the child?

20 A I do not know. It was after his admission to the
21 hospital, which was approximately 12:30 p.m. It would
22 have been drawn within a few hours of that admission, but
23 I do not know the exact time.

24 MR. O'CONNELL: Okay. Thank you very much.

25 MR. HARBIN: Judge, I have no questions for Dr. Ward

1 at this time.

2 THE COURT: Any redirect?

3 MS. BARWICK: No, sir.

4 We would like to recall him, though.

5 THE COURT: Thank you, Dr. Ward.

6 You may call your next witness.

7 MR. RICHARDSON: Thank you, Your Honor.

8 The State calls Dr. Foery to the stand.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand.

11 WHEREUPON,

12 ROBERT F. FOERY,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 If you would, have a seat.

16 And state your name for the record, please, sir.

17 THE WITNESS: Robert F. Foery, F-O-E-R-Y.

18 DIRECT EXAMINATION

19 BY MR. RICHARDSON:

20 Q Sir, where are you employed?

21 A Currently, I am a consultant in forensic toxicology.

22 Q Okay, sir. And what kind of education have you had
23 in forensic toxicology?

24 A I received a Bachelor's Degree in Chemistry from --
25 in Syracuse, New York; a Master's Degree in Chemistry from

1 Province College in Providence, Rhode Island; and a PhD in
2 analytical chemistry from the University of Iowa.

3 Subsequent to that, I had postbaccalaureate training
4 in clinical chemistry, analytical chemistry, and
5 toxicology, both at the State University of New York in
6 Buffalo and Valentine Sacred Heart Medical Center, where I
7 had a fellowship in chemistry and toxicology.

8 Q Okay, sir. And subsequent to your educational
9 background, did you have -- is there any particular
10 training you've had in forensic toxicology?

11 A I've worked in toxicology laboratories, both as an
12 undergraduate and a post-graduate. In addition to that, I
13 worked in the private sector and, actually, built two
14 laboratories in Memphis, Tennessee.

15 And I have worked, subsequently, in drug and alcohol
16 forensic toxicology, as well as post-mortem toxicology.
17 And I had a short period of time in addiction medicine.
18 So I've had a fairly broad background in understanding
19 prescription drugs and drug abuse.

20 Q Okay, sir. And so just to narrow it down, how many
21 years have you spent working in the field of forensic
22 toxicology?

23 A I've, actually, spent about 30 years in the area of
24 clinical chemistry and forensic toxicology.

25 Q Okay, sir. And part of that work experience, was

1 that at a place called AIT?

2 A That's correct.

3 Q Okay, sir. And how long did you work at AIT?

4 A I worked at AIT pretty much full-time from 2005 until
5 2010. In 2008, I began to travel quite a bit for the
6 laboratory giving talks and doing testimony. And still to
7 this day, even though I'm partially retired, I do get
8 involved with cases I've worked on earlier in the
9 laboratory.

10 Q Okay, sir. And have you ever been qualified
11 in states of this country as a forensic
12 toxicologist?

13 A Yes. I've been qualified as a forensic toxicologist
14 in approximately 30 states. And, also, I have been
15 certified to testify in both civil cases, legal cases, and
16 arbitrations.

17 Q Okay, sir. And you said 35 states. Do you have any
18 idea how many --

19 MR. DEJONG: Your Honor, I'm sorry. I cannot hear
20 Mr. Richardson.

21 MR. RICHARDSON: I'm sorry.

22 MR. DEJONG: I've got this machine behind me. If you
23 could, speak up just a little bit.

24 MR. RICHARDSON: Yes, sir. I'll be more than happy
25 to.

1 BY MR. RICHARDSON:

2 Q I believe the last question I had for you is, do you
3 have any idea how many times you've been qualified as a
4 forensic toxicologist in the United States?

5 A Yes, sir, probably too numerous to count, more than
6 1,000.

7 MR. RICHARDSON: Your Honor, at this time, I'd offer
8 Dr. Foery as an expert in forensic toxicology.

9 MR. DEJONG: No voir dire, Your Honor.

10 MR. O'CONNELL: None from us.

11 MR. HARBIN: Nothing, Judge.

12 THE COURT: All right. He's qualified.

13 MR. RICHARDSON: Thank you, Your Honor.

14 BY MR. RICHARDSON:

15 Q Sir, can you explain to the jury what a forensic
16 toxicologist is?

17 A A forensic toxicologist wears a number of hats. The
18 primary hat, I guess, is to interpret both clinical and
19 chemical results of the analysis, in this particular case,
20 an autopsy analysis, and determine what the effect of the
21 drugs or poisons, if present, would have on the condition
22 of the decedent. And so that interpretive area is what
23 forensic toxicologists do most.

24 In the laboratory scene, a forensic toxicologist is
25 often responsible for setting up and maintaining the

1 methods of analysis that are used to determine what
2 poisons or drugs might be present, and to do that within
3 the context of a forensically correct and admissible test
4 result. And there is a forensic standard that the
5 laboratory must follow in order to have its results
6 entered in as evidence in a legal proceeding.

7 So the forensic toxicologist has the responsibility
8 for setting up and maintaining those methods, training
9 folks that do the work in the laboratory, and evaluating
10 their performance, and then evaluating the results for
11 every forensic test that is released by the laboratory.

12 So I am the final certifying officer before the
13 results leave the laboratory and it is then communicated
14 to the medical examiner, to the hospital, to attorneys, or
15 whoever has requested the testing. So those are the
16 primary responsibilities of a forensic toxicologist.

17 Q Okay, sir. And as far as AIT is concerned, you
18 were -- and I believe it's called a certified scientist?

19 A A certifying scientist is the role of the individual
20 who provides the final review before the result leaves the
21 laboratory and goes out to the public sector.

22 Q Okay, sir. Now, you were employed with AIT back in
23 March of 2008; is that correct?

24 A That's correct.

25 Q And are you familiar with their procedures at that

1 particular time?

2 A Yes, sir.

3 Q Okay, sir. And in -- can you explain to the jury in
4 receiving it -- and I'll ask you before I go to that a
5 question -- let me back up.

6 You said your analysis of -- is it of blood and urine
7 that you develop it and analyze?

8 A Yes. Those are quite normal samples that are
9 submitted to the laboratory. In addition to that, the
10 physician that does the autopsy may send aqueous humour,
11 which is eye fluid, may send stomach contents, may send
12 tissue. But, in this particular case, the specimens that
13 were analyzed were blood and urine.

14 Q Okay, sir. Now, when you receive a sample of blood
15 and urine, how does that come to AIT?

16 A The specimens are collected and packaged by the
17 physician who does the autopsy. They go into a little
18 kit. The kit goes into a box. The box is sealed. And it
19 then comes to the laboratory either by Fed Ex, or UPS, or
20 DHL, or the post office. Some of them are, actually,
21 mailed in or courier service. They can get to the
22 laboratory any number of ways.

23 As soon as it gets to the laboratory, there is an
24 individual, a toxicology assistant, who examines the
25 package and makes sure it is sealed. And then they open

1 up the seals. They take out the specimens and they begin
2 to look at the specimens, put demographic information
3 about the patient or the decedent into the computer, and
4 start ordering the tests that have been requested by the
5 physician.

6 So that's done in a secure area. All of the
7 laboratory is separated by locked doors, which are open
8 with key card access. So only individuals who are
9 responsible for working in a certain area of the
10 laboratory can go into the laboratory. Specimens are kept
11 under lock and key, as well as any portions of the
12 specimens that have been removed for analysis. That's a
13 forensic standard for handling a specimen.

14 So if you've got a full -- what we would call
15 litigation package on a specimen, it would have noted on
16 it everyone who touched the specimen, the date and time in
17 which they touched it, and for what purpose. To take out
18 a portion for analysis, to subject it to a certain kind of
19 analysis, and all of that is documented right up to my
20 final review when the -- in this case, my final review
21 when the result was distributed.

22 Q Okay, sir. And have you reviewed this case -- or
23 reviewed the chain in this case?

24 A I have reviewed the chain in this case. And I have
25 reviewed the medical examiner's autopsy report. And all

1 of the reports that we -- AIT generated to send back to
2 Pickens County.

3 Q Okay, sir. And, as far as the chain is concerned,
4 were all policies and procedures of AIT followed?

5 A To the best of my knowledge, it was a routine test.
6 And the handling of the specimen and the analysis met the
7 forensic standards that the laboratory has.

8 Q Okay, sir. And you stated that these samples would
9 come to you sealed; is that correct?

10 A That's correct. They come in a sealed container.
11 Open it up, and inside the container would be various
12 tubes containing fluids, or tissues, or materials that
13 were recovered at autopsy.

14 Q Okay, sir. And would your -- would you form a test
15 on tubes that were not sealed -- that you received not
16 sealed?

17 A No. We would not perform a test on tubes that were
18 not contained in a sealed container, that's correct.

19 Q And that record is kept in the chain in your
20 computers where everybody is available to the chain?

21 A Yes. A complete litigation package might be 75 or 80
22 pages long.

23 Q Okay, sir. Now, sir, in this particular case
24 involving Child , how were you involved in the
25 testing procedures?

1 A I first get involved in the test when the results are
2 ready to be reviewed and then released to the medical
3 examiner. And, at that time, I look at how the sample was
4 processed, and who did the processing, and who did the
5 testing on the sample, and then what was found.

6 The forensic standard for testing to identify and to
7 determine how much of a particular substance might be
8 present involves, essentially, two procedures. The first
9 procedure is called a screening procedure. That is a
10 relatively rapid test that is performed on a sample to
11 determine whether or not there might be a drug or foreign
12 substance. It's a very quick yes/no answer. And the
13 result is not admissible in court. It's a screening
14 procedure only. Yes, there's something there. No,
15 there's nothing there. If there's nothing there, then the
16 laboratory does not proceed further with analysis. The
17 report is negative and turned out as a negative report.

18 If there is something there, the forensic standard
19 requires that the laboratory do what is called a
20 confirmation test. And this test is one which is more
21 sensitive and more specific than the screening test so
22 that that test, when carried out correctly, can give an
23 unequivocal determination of the presence of a particular
24 drug and the concentration of that drug in the fluid or
25 tissue that was analyzed.

1 So, in this particular case, there was a screening
2 test done. And the screening test indicated the presence
3 of some drugs. And then the drugs were confirmed. And
4 the screening test indicated the presence of opiates and
5 chlorpheniramine. And the confirmation test indicated
6 that hydrocodone was the opiate which was present in the
7 blood. And in the urine, hydrocodone, hydromorphone, and
8 chlorpheniramine were found.

9 Q Okay, sir. Now, once that determination is made, do
10 y'all develop a report?

11 A Yes.

12 Q Okay, sir. Let me hand you what's been marked as
13 State's Exhibit No. 28. If you can, review that for me,
14 please, sir.

15 A Yes, sir. This is a report, which was generated by
16 the laboratory and was reviewed by me prior to release to
17 the Pickens County Coroner's Office. And this indicates
18 the results of a random urine test and the -- it's called
19 a random urine because it was collected prior to the
20 autopsy. But it was packaged up by the medical examiner
21 or by the coroner.

22 And that urine sample was positive for hydrocodone,
23 which is an opiate, and for its primary metabolite. And
24 that is oxymorphone. And the relationship between the
25 oxycodone and oxymorphone is the following. If you take a

1 particular drug and the drug gets into the bloodstream --
2 the bloodstream flows to the liver. And the liver is like
3 a clean up area for the body. The liver detoxifies the
4 body from any foreign substances.

5 In this particular case, one of the ways that the
6 body gets rid of hydrocodone is to transform it into
7 another more water soluble substance called hydromorphone.
8 And that helps the body to eliminate the drug in the
9 urine. So it goes into the kidney and then, eventually,
10 into the urine, and that's how we identify it in the
11 urine.

12 So the urine was positive for the parent drug, which
13 is hydrocodone and for its metabolite, hydromorphone. And
14 that's consistent with the baby receiving this drug
15 somehow and metabolizing the drug to a primary metabolite.
16 And then, also, found in that urine were chlorpheniramine,
17 which is an anti-Tussin. That means it's given to try to
18 control coughing and wheezing for respiratory problems.

19 And, also, in the urine, there was a small amount of
20 salicylate, which is aspirin. In the blood, there was
21 only enough blood specimen to confirm the presence of the
22 hydrocodone. There was not enough blood to confirm the
23 presence of the chlorpheniramine and the hydromorphone,
24 only the hydrocodone.

25 Q Okay, sir. In -- and I think Mr. DeJong said this

1 before. I cannot pronounce these words very well. That's
2 the reason I went to law school. The chlor --

3 A Chlorpheniramine.

4 Q Okay. Thank you, sir.

5 Is that a substance that's, also, found in Tussionex?

6 A Yes. Those -- both of those two substances are found
7 in a pharmaceutical preparation called Tussionex. And
8 there are three kinds -- three formulations of Tussionex.
9 There's something called Tuss, T-U-S-S, which is a liquid.
10 And then there are Tussionex capsules. And then there is
11 Tussionex, which is a time-released liquid. And those
12 substances are found in all three of those formulations.

13 Q Okay, sir. And if I may have that report.

14 MR. DEJONG: May I have just a moment, please, Your
15 Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 BY MR. RICHARDSON:

19 Q And, sir, while Mr. DeJong is reviewing that, let me
20 ask you so we can be clear. I'm going to hand you what's
21 been marked as State's Exhibit No. 41. Do you know what
22 that is?

23 A Yes. This is a bottle of Tussionex. It is a liquid
24 suspension. That means that everything was not dissolved
25 completely, that it was a mixture which contained some

1 solid material and liquid material. And it contains both
2 hydrocodone and hydromorphone, as well as chlorpheniramine.
3 And this is prescribed for a half a teaspoon two times a
4 day. And with this suspension -- it's called Pennkinetic
5 suspension. It means it's a time-released medication.

6 So when you take it, it's not all absorbed at once in
7 the stomach. It is absorbed over a period of time so as
8 to provide more continuous relief of coughing, and
9 wheezing, and symptoms such as that for individuals who
10 have some kind of pulmonary problem.

11 And this is a bottle which was prescribed to Donna
12 Phillips by CVS pharmacy.

13 MR. RICHARDSON: Your Honor, at this time, the State
14 would move to introduce State's Exhibit No. 28.

15 MR. DEJONG: Without objection.

16 MR. O'CONNELL: Same here.

17 MR. HARBIN: No objection.

18 THE COURT: It's in evidence.

19 (WHEREUPON, State's Exhibit No. 28 was marked for
20 identification and admitted into evidence.)

21 BY MR. RICHARDSON:

22 Q On the report that I've handed back to you, I believe
23 it was State's Exhibit No. 28, does that include the urine
24 and blood samples?

25 A Yes, sir.

1 Q And, in particular, with the blood, was there a
2 particular level that is denoted on there for the amount
3 that was found in the blood?

4 A The concentration of hydrocodone in the blood was
5 found to be 102 nanograms per milliliter. The therapeutic
6 range for an adult would be 10 to 40 nanograms per
7 milliliter. So it was quite a high dose compared to the
8 normal for an adult. And, in this particular case, we're
9 dealing with a child.

10 Q Yes, sir. And my question would be that would be --
11 102 would be high for an adult?

12 A It would be high for an adult. And I think it would
13 be very high for an adult.

14 Q Now, you testified that the Tussionex, State's
15 Exhibit No. 41, had a time release aspect to it?

16 A Yes.

17 Q Okay. You may have explained that to the jury, but
18 if you -- how does that exactly work?

19 A The drugs are attached to something which is
20 relatively slow to dissolve, or slow to release the drug
21 for absorption into the bloodstream. And the idea is to
22 provide a more constant flow of drug into the body to
23 counteract the symptoms or why the drug was taken so that
24 it doesn't have to be taken repetitively, and the dosage
25 levels don't get too high over the course of taking the

1 drug.

2 Q Okay, sir. And is there a particular time that you
3 can testify to as to how that would release?

4 A The formulation says, Repeat every 12 hours. I'm not
5 sure that when you manufacture something like that it
6 exactly takes 12 hours to get into the bloodstream. But
7 it takes some period of time, let's say, 10 or 12 hours to
8 be completely absorbed by the body.

9 Q And so when you say 10 or 12 hours, that's from the
10 time that that particular dose is taken?

11 A Is given, correct.

12 Q Excuse me, given. Yes, sir.

13 Okay, sir. Now, based upon that and the levels that
14 were found in Child 's blood, do you have an opinion as to
15 dosage?

16 A An opinion to dosage. I would not have an opinion to
17 dosage. There have been methods published to calculate a
18 dose based on the weight and volume of distribution, and
19 some other factors. But they're extremely unreliable.

20 Q Okay, sir.

21 A And so I would not be comfortable in stating a dose,
22 how many -- in other words, how many milligrams the baby
23 ingested. I couldn't do that accurately so that we would
24 know for certain that -- you know, what the dosage was.

25 As far as the time at which the drug was given, from

1 the presence in the urine and presence in the blood, it
2 would look like to me -- it would be my opinion to a
3 reasonable degree of scientific certainty that that drug
4 was given sometime on Sunday.

5 Q Okay, sir. And do you have an opinion as to how far
6 back the first dose could have possibly been given?

7 A Yes. Based on the half life of the drug, I would say
8 that it was probably given sometime between midnight on
9 Sunday up until the time in which the baby was found. So
10 approximately 24 or 36 hours before the blood was drawn.

11 Q And when you refer to midnight on Sunday, are you
12 referring to midnight Saturday going into Sunday?

13 A Yes.

14 Q Okay. Thank you.

15 From your analysis of the amount in the drug and,
16 also, of the time released aspect of the Tussionex, do you
17 have an opinion as to whether this was a repetitive dose,
18 or a single dose given to the child?

19 A I don't think I can state unequivocally that it was a
20 repetitive dose. But, based on the behavior of the child
21 on Sunday and the fact that the child was given medication
22 on Sunday, I would think that it could very well have been
23 a repetitive dose. But at the bare minimum, it was a
24 dose.

25 Q And, in this particular case, is it -- was there a

1 test done to show if there was any Tylenol in the child's
2 system?

3 A Yes. Tylenol is the brand name for a drug called
4 acetaminophen. And acetaminophen is an analgesic drug.
5 And it is often given in place of aspirin.

6 So these days, children often get acetaminophen if
7 they have a temperature, or if they have a cold, instead
8 of salicylate. But, in this case, a small amount of
9 salicylate was found, a small amount of aspirin was found.
10 And there was no acetaminophen found in the specimen. It
11 was analyzed for that and there was no acetaminophen.

12 MR. RICHARDSON: I beg the Court's indulgence.

13 (Pause.)

14 BY MR. RICHARDSON:

15 Q And do you -- what are the substances found in
16 Lortab?

17 A Lortab contains hydrocodone and acetaminophen. And I
18 believe that that was available in 2008, but it's not
19 available now. It has been taken off the -- it has been
20 taken off the market. But it contains hydrocodone and
21 acetaminophen.

22 So if someone had taken that drug, you would expect
23 to find hydrocodone, hydromorphone, and acetaminophen in
24 the blood and in the urine. In this particular case, we
25 did not find acetaminophen in either the blood or the

1 urine. So acetaminophen was not ingested by the child.

2 Q Okay, sir. And if the Tussionex is given on
3 several -- three, four, five different occasions on
4 Saturday -- or going into Sunday with the time release,
5 would that build up into the child's body?

6 A I think it would build up in the child's body. And I
7 think it would build up when the child is in distress. It
8 appears from the narratives of the witnesses that the
9 child was in some distress late Sunday night and early
10 Monday morning.

11 I would suspect -- a physician would have to testify
12 to this. But I would suspect that the baby under stress
13 like that might begin to slow down its ability to
14 metabolize the drugs. And, therefore, the levels might
15 increase in the bloodstream.

16 MR. RICHARDSON: Okay, sir. Thank you for your
17 testimony.

18 Please answer any questions that Defense counsel may
19 have for you.

20 MR. DEJONG: Thank you.

21 May it please the Court.

22 CROSS-EXAMINATION

23 BY MR. DEJONG:

24 Q Dr. Foery?

25 A Foery.

1 Q Am I pronouncing that correctly?

2 A Yes, sir.

3 Q So, actually, the testing was done by other people in
4 the AIT lab; right?

5 A That is correct.

6 Q Under your supervision?

7 A Correct.

8 Q Now, at that point in time, was a Dr. Scott
9 Kreiger [phonetic] or Kriger, K-R-I-G-E-R, with AIT?

10 A Yes. He was with AIT. For a period of time, he was
11 a colleague of mine. And then when my job duties changed
12 and I did more work on the road, if you will, he took over
13 that position.

14 Q Okay. So, in 2008, which position were you in?

15 A In 2008, at the time at which this report was done, I
16 was a certifying scientist, forensic toxicologist. And he
17 had been hired for some months. I'm not exactly sure how
18 many months, but he was my colleague.

19 Q All right, sir. Now, let's talk a little bit
20 about -- well, first, there is a difference between a
21 urine test and a blood test. Would you agree with that?

22 A Yes.

23 Q And, indeed, a urine test is not as confirmatory,
24 shall we say, as a blood test?

25 A I wouldn't agree with that. The difference between

1 the urine test and the blood is a matter of time.

2 Q All right, sir. Now -- and if I mispronounce these,
3 please, straighten me up. You've been saying them for
4 years, I haven't been.

5 A Yes, sir.

6 Q Number one, when we start talking about medications,
7 drugs, and the human body, the body starts breaking those
8 drugs down. I think you alluded to that earlier; correct?

9 A That's correct.

10 Q And those are what's called metabolites; correct?

11 A Yes.

12 Q Now, hydrocodone is the drug itself; right?

13 A It would be called the parent drug.

14 Q Right. Okay. Now, hydromorphone -- if I'm
15 pronouncing that right -- that is a metabolite; correct?

16 A That is correct.

17 Q Now, timing, you indicate, is the difference between
18 urine and blood; right?

19 A Yes. The urine is an indication of what an
20 individual has ingested and metabolized, and put out into
21 the urine. The blood is what is circulating in the blood
22 at the time at which the blood was drawn.

23 Q Right. But now metabolites can, also, get into the
24 blood?

25 A Yes.

1 Q And, again, hydromorphone is a metabolite of
2 hydrocodone?

3 A That's correct..

4 Q All right. Now, in this time frame that we're
5 talking about, the liver almost immediately starts
6 metabolizing into the urine. You're going to find them in
7 the urine before blood?

8 A I would disagree with that.

9 Q You would disagree with that?

10 A Yes. There will be some resorption of the metabolite
11 into the blood probably before it gets into the urine.

12 Q Okay.

13 A So a urine test probably would take -- depending on
14 the half life of the drug, some hours before you could get
15 a detectible amount of the drug in the urine. So the time
16 frame is going to be longer.

17 Q To get into the blood?

18 A To get into the urine.

19 Q Than the blood?

20 A Yes.

21 Q Well, in this case -- and correct me if I'm wrong --
22 I don't see that any hydromorphone was found in the blood?

23 A Well, it wasn't found in the blood because we did not
24 have enough blood to analyze for the hydromorphone or the
25 chlorpheniramine. So, unfortunately, the amount of blood

1 that was submitted with the autopsy specimens was only
2 enough to do the confirmation on the hydrocodone.

3 Q Well, on this timing issue, whether or not there was
4 hydromorphone in the blood would be significant, would it
5 not?

6 A It might be significant. But the fact that there is
7 hydrocodone and the concentration that it's in in the
8 blood is very significant.

9 Q Right. But, again, if we're going into time,
10 hydrocodone is the parent drug; right?

11 A We don't know that the hydromorphone was not there.
12 We just didn't have enough specimen to analyze for it.

13 Q By the same token, we don't know that it was there?

14 A Well, it was in the urine. So my assumption is if it
15 was -- if the parent drug was in the blood and the urine,
16 and the metabolite was in the urine that there was some
17 metabolite in the blood. But we, unfortunately, did not
18 have a sufficient specimen to test for it.

19 Q In fact, the reports that came back from AIT showed a
20 blood negative for hydromorphone, and negative for
21 chlorpheniramine, or whatever it is?

22 A Chlorpheniramine, it's not negative. It was because
23 there was not enough blood to do the test.

24 Q So rather than say I don't know, you say it's
25 negative; right?

1 A I think there's a note on the report, if I may
2 consult it.

3 Q Sure, please do.

4 A On the blood report, it said, Insufficient specimen
5 volume remaining to complete the testing for hydromorphone
6 and for the chlorpheniramine.

7 Q And it, also, says negative for both; right?

8 A It says that the test was cancelled and the
9 hydromorphone sample was unsuitable, because there was
10 insufficient volume as was the chlorpheniramine.

11 Q Right. I understand that part of the report. But
12 right above that where you have hydromorphone, it says,
13 Negative?

14 A It says, Hydrocodone positive, hydrocodone quant, 102
15 nanograms per mL, hydromorphone unsuitable. The note,
16 Insufficient specimen volume remains to complete testing.
17 And then other opiates, which are in that panel, the
18 substances which were in that test panel were negative.

19 Q Okay. If I can show you what I'm looking at,
20 Dr. Foery, maybe we are or maybe we aren't on the same
21 sheet of music. Is that a copy of an AIT lab report?

22 A Yeah. This is a -- this is a specimen. This is a
23 different specimen. The specimen I'm referring to is
24 40073125. That is the specimen that was analyzed. It was
25 the one that, I believe, was drawn at the hospital.

1 This specimen is 4075551. This is a lavender topped
2 tube as well, but it's a different specimen number. So
3 it's a different tube. And there was -- I don't know
4 whether they took blood from that tube and added it to the
5 original tube. But it shouldn't say negative, because it
6 said the testing was -- it said, Insufficient volume.

7 Q Doesn't it say something was added to it? And I
8 realize that's not a very good copy.

9 A It says, Confirmation tested added to this additional
10 sample due to insufficient volume of other samples. But
11 this sample wasn't analyzed.

12 Q But my point is the report --

13 A It shouldn't say negative.

14 Q But it does say negative, does it not? It says,
15 Hydromorphone negative?

16 A Well, it says that, but the indication is quite clear
17 on the other copies of the reports that there was an
18 insufficient volume. So the sample wasn't tested. So
19 there's -- the fact that it says negative is -- it says
20 negative, but there's no -- the sample was not tested.

21 Q Well, are you saying that is an error that they have
22 "negative" there?

23 A It could very well be.

24 Q Okay. Now, you say this Tussionex was a time
25 release; right?

1 A Yes.

2 Q And -- well, I'm going to learn how to say this
3 before this trial is over. Chlor --

4 A Chlorpheniramine.

5 Q Chlorpheniramine?

6 A Chlorpheniramine.

7 Q Chlorpheniramine.

8 A How about if you just call it CPA?

9 Q CPA?

10 A Yes.

11 Q If that works for you, it works for me. Because I
12 still can't get the other one.

13 You found CPA in the urine?

14 A Correct.

15 Q And we're not going back through that litany we just
16 did on the other one, but that stands. Are there other
17 substances or drugs that have CPA in them?

18 A Yes.

19 Q Such as?

20 A Oh, I think there are 50 or 75 different drugs.

21 Q Okay. Not all of them would have hydrocodone in
22 them, or whatever. That could be just CPA, or it could be
23 mixed with some other drug that is not a narcotic?

24 A That's correct.

25 Q Now, hydrocodone, what is -- if you know, Dr. Foery,

1 what is a peak time of -- how long does it take
2 hydrocodone to reach its peak?

3 A Do you mean for a single dose?

4 Q Yes, sir.

5 A I would say it takes between an hour and a half and
6 two and a half hours.

7 Q Right. So you take a dose of hydrocodone, and it's
8 going to reach its peak in roughly one and a half hours;
9 correct?

10 A Roughly.

11 Q Okay. Now, you cannot say, as you have already
12 testified, that there was any repetitive testing -- any
13 repetitive dosing -- dosage in this case?

14 A I can't rule it out or rule it in.

15 Q Right. So that becomes -- to that regard, that
16 becomes a doubt. You just can't say, right?

17 A Right.

18 Q Nor can you say -- let's assume it was one dosage,
19 nor can you say how much that dosage was?

20 A That's correct.

21 Q All right, sir. Now, on time release, you say 12 --
22 some 12 hours; right? You're saying this dose could have
23 been given back up to 12 hours?

24 A If it was time released, then that would mean that
25 the -- that the estimation of an hour and a half for peak

1 dosage wouldn't hold. Because we're controlling the rate
2 at which the drug is absorbed by the body.

3 Q Well, I understand that aspect. But it's not
4 manufactured to where you take a prescribed dosage and
5 you're going to overdose on it, is it?

6 A No.

7 Q The dosage, even as it's released -- and that's why
8 they do it is because the dosage reaches a peak. It
9 starts to fall off and then that time release, rather than
10 taking another dose, a little more hydrocodone kicks in,
11 it hits its peak, it starts to fall off, and so on and so
12 on?

13 A I don't believe that's an accurate way of depicting
14 it. But what happens is the hydrocodone level goes up to
15 some point. And then it stays there. Because the
16 hydrocodone level is being maintained at the rate by which
17 the drug is being absorbed by the body.

18 Q Right. But, by the same token, if you're saying that
19 you take a dose of that time release, it's not going to
20 keep going up?

21 A It should end sometime relative to 10 or 12 hours.

22 Q Right, or less?

23 A I didn't say or less.

24 Q I did.

25 A I disagree with less.

1 Q Six to four?

2 A Six to four?

3 Q Hours?

4 A No..

5 Q Okay.

6 A For the time release?

7 Q Uh-huh.

8 A No.

9 Q Now, would you characterize this, Dr. Foery, as a
10 high level of hydrocodone?

11 A The level of 100 in a baby, I would say, it was high.

12 Q Okay. Now, maybe we've covered this, maybe we
13 haven't, so we'll cover it again if we haven't. If
14 hydrocodone was given 12 hours in advance of the blood
15 draw -- are we together so far?

16 A Uh-huh.

17 Q Would you expect to find hydromorphone in there?

18 A In where?

19 Q In the blood.

20 A Yes.

21 Q But, in this case, we cannot say there was
22 hydromorphone in the blood?

23 A And we can't say there wasn't.

24 Q Right.

25 A Because we didn't test for it.

1 Q Right. So that's a toss up, a coin flip. How long,
2 Dr. Foery, after this hydrocodone was taken would it be
3 before the effects would become felt, or visible?

4 A Are you assuming here that the -- that a time release
5 was given?

6 Q That's what you're testifying to, so I have to assume
7 that, yes, sir.

8 A Okay. If the time release was given, I would suspect
9 that there would be some effect of the drug felt, perhaps,
10 within an hour.

11 Q All right.

12 A But not a peak level of the drug. I'm just saying
13 some effects would be felt.

14 Q Okay. Well, when is the peak going to be, even on
15 the time release?

16 A Well, it's not going to be the same peak that you
17 would get if you did not give a time release. In other
18 words, if you gave an injection or a bolus -- okay -- it
19 would be faster and more -- the absorption of the drug
20 would be not as controlled as it is in the time release.

21 Q Well --

22 A So the drug is going to be absorbed slower. And so
23 the levels are going to stay higher for a longer period of
24 time. But the levels would not necessarily become toxic
25 levels.

1 Q Run that by me one more time.

2 A In other words, the drug is designed not to produce a
3 toxic level of --

4 Q Right.

5 A But a therapeutic level.

6 Q Right.

7 A So a therapeutic level is going to be in the range of
8 10 to 40 for an adult.

9 Q So you say that the effects would be felt and -- I'm
10 not trying to put words in your mouth, but it would
11 visible within an hour?

12 A Yes, some effects.

13 Q Right. Okay. Well, certainly, then the effects
14 would be more visible after 12 hours, would they not?

15 A No. I think the effects are constant. The idea of
16 the time release is to provide a continuous dosage of the
17 medication.

18 Q Well, if it's a toxic dosage, then you're going to
19 see the toxicity in one hour?

20 A It's not a toxic dosage.

21 Q Well, was that a toxic level in this child?

22 A It was a toxic level, yes.

23 Q That level had to come from some place?

24 A But it didn't come from a single dose of time
25 release.

1 Q But you've already said you couldn't testify to that,
2 you don't know?

3 A That's correct. I don't know how many doses were
4 given. My opinion, to a reasonable degree of scientific
5 certainty, was that there was more than one dose given.

6 Q Right. So that would have had to have been over a
7 period of time?

8 A I can't tell that you, sir. I wasn't there. I don't
9 know how the baby was dosed, if the baby was dosed.

10 Q Well, when we're talking about doses, you don't --
11 well, I guess you're saying tomato and I'm saying tomato,
12 so maybe I'll say it your way. When we talk about dose,
13 we're talking about a prescribed dose.

14 So you're saying you don't know if more than one dose
15 was given at the same time, or if it was over a period of
16 time?

17 A Well, first of all, sir, this drug is rarely
18 prescribed for a two-year-old. So the use of the word
19 "prescription" is not appropriate here. And it wasn't
20 prescribed for the baby, as far as I know. It was
21 prescribed for some other person.

22 So -- and I don't know what, you know, the dosage is.
23 All I know is that the data indicates that the
24 concentration of the drug in the blood is somewhere
25 between two and a half and five times higher than it

1 should be for a therapeutic dose, if it were given to an
2 adult. And this drug shouldn't be given to children.

3 If it is given to children, it has to be given under
4 a doctor's care. And so the only conclusion I can have as
5 to why the level got higher than that is because more than
6 one dose was given. I didn't say how many doses or when,
7 but more than one dose was given.

8 Q But not time frame. That's what we're talking about;
9 right?

10 A The time frame -- my opinion is based on a time frame
11 that I kind of discovered from the records of the witness
12 narratives, and given the baby's behavior on Sunday night
13 and into Monday morning. My time frame is that the drug
14 was given to the baby on Sunday after midnight -- on
15 Sunday morning.

16 Q Now, again, let's talk about effects. So given a
17 21-month-old child, male, who has been given Tussionex,
18 under your testimony, which I don't agree with, but for
19 purposes of this cross-examination was given Tussionex
20 sometime after midnight on Saturday -- Sunday morning is
21 what we're talking about --

22 A Correct.

23 Q -- or what you're talking about. That child then is
24 brought home -- basically, a timeline here, brought home
25 by the father somewhere between 6:30 and 9:00 at night

1 pitching a fit, crying. Is that indicative of a
2 hydrocodone overdose?

3 A No.

4 Q Huh?

5 A First of all, I don't know what "pitching a fit"
6 means. I don't know whether the child was -- I mean, if
7 the child was crying, that isn't necessarily pitching a
8 fit. I don't know what the personality of this child is.

9 But what I based it on was the fact that the child
10 begins to exhibit some unusual symptoms starting Sunday
11 afternoon, as I recall from the testimony of the father.
12 And the child is cranky, ornery, falls asleep, fighting
13 sleep, wakes up again. And so the child is -- and, again,
14 I'm not a pediatrician. The child is in some sort of
15 distress. It seems obvious to the father that the child
16 is in some sort of distress.

17 And then the child gets something from the father.
18 And then the child goes home. And the child is somewhat
19 cranky, goes home, but, eventually, goes to bed at 9:00 at
20 night and seems out of it. And it seems like out of it
21 immediately, and the baby didn't want to eat anything. I
22 think the mother's testimony was that she wanted to give
23 the baby some milk. And the baby didn't drink from the
24 sippy cup, put the sippy cup down, and then, basically,
25 was out of it.

1 And so from 9:00 on Sunday night until the baby was
2 discovered Monday morning, the baby was out of it at bed
3 time. So it's -- I'm thinking the baby received the drug
4 prior to that.

5 Q The baby was fine at 8:00 Monday morning.

6 A The baby was fine at 8:00 Monday morning?

7 Q You're talking about the mother's testimony. That's
8 what comes in is that the baby was fine at 8:00 on Monday
9 morning.

10 A The baby did not wake up when the baby was changed.
11 And then at 10:00, I think the baby had severe respiratory
12 distress. And so I'm thinking that one of the reasons
13 that the baby was in some kind of distress on Sunday
14 afternoon was that possibly the baby had received that
15 drug as early as Sunday afternoon.

16 Q I like the word "possibly." It is possible. But
17 there are other explanations for that as well, are there
18 not?

19 A Well, I'd have to evaluate them.

20 Q Okay. Well, it's March, children catch colds; right?

21 A Yes.

22 Q They get cranky when they catch a cold?

23 A Some do.

24 Q They have runny noses. They cough; correct?

25 A I'm sure that babies do that, yes.

1 Q And there can be respiratory problems totally
2 unassociated with any kind of drug usage or anything else,
3 can't there?

4 A I couldn't testify to that accurately. I think a
5 physician would have to testify as to what sort of
6 respiratory problems you have with a cold. But,
7 certainly, they would be less than the respiratory
8 problems you would have with pneumonia, or something like
9 that.

10 Q I believe we have talked about -- well, I don't know
11 that we have talked about it or not. Maybe we need to
12 talk about it. We've talked about peak times of
13 hydrocodone, which we agreed was about an hour and a half
14 for -- and I know we're not talking time release on that.

15 A Okay.

16 Q That wasn't a trick question. Okay. Now, even
17 getting -- well, let's talk about half lives. Is a half
18 life and a peak time any more or greater? In other words,
19 is a half life longer or shorter than this peak time we're
20 talking about?

21 A The half life should be longer than the peak time.

22 Q What is a half life?

23 A It's the time that it takes for the concentration of
24 drug in the blood to drop 50 percent.

25 Q Okay. Now, how is that half life affected by a time

1 release?

2 A Well, in a time release, you're controlling the
3 absorption of the drug. So you don't have a peak time.
4 And you have the drug being absorbed somewhere around the
5 rate at which it is being metabolized so that you've
6 stretched out that period for 10 or 12 hours.

7 Q Okay. Would you agree, Dr. Foery, that given the
8 extremely elevated dose of hydrocodone in the blood in
9 this case that it is very possible that the last dose of
10 the drug would have been consumed prior -- consumed
11 shortly before the collection of the specimen?

12 A Say that again.

13 Q Given the extremely elevated level of the drug in the
14 blood, is it possible the last dose of the drug would have
15 been consumed shortly before the collection of the
16 specimen?

17 A To the best of my recollection, the specimen was
18 collected sometime between --

19 Q I don't mean to be rude to you, Doctor. Would you
20 give me a "yes" or "no" answer, and then you can explain
21 your answer?

22 A The answer is no.

23 Q Okay.

24 A And the reason is that if it was given a couple of
25 hours before the blood was collected, that indicates to me

1 that it would have to have been given in the hospital.

2 And I don't believe that the drug would be given to the
3 baby in the hospital if the baby was already being
4 intubated.

5 Q You said you supervise the lab at AIT. You were in a
6 supervisory -- or you certified?

7 A Yes.

8 Q And so you certified the tests, and all that; right?

9 A Yes.

10 Q Did you certify Dr. Kriger's findings?

11 A No.

12 Q Okay. So whatever Dr. Kriger may have said or not
13 said, you did not certify?

14 A I did not certify.

15 Q Okay. You did not say, Doctor, you found any
16 acetaminophen; correct?

17 A Correct.

18 Q But you did find that other thing?

19 A Chlorpheniramine.

20 Q No.

21 A Salicylate.

22 Q Yeah. That's the one I'm talking about. And that is
23 consistent with acetaminophen; right?

24 A No, absolutely not.

25 Q Okay. What is it?

1 A Salicylate, it is an entirely different drug.

2 Q Okay. I misunderstood what you said.

3 A Tylenol is the trade name for acetaminophen.

4 Q Right.

5 A Acetaminophen is a drug, which is an antipyretic.

6 And it's, also, an analgesic that can lower temperature

7 and help control coughing to a certain degree. Aspirin

8 and acetaminophen are not necessarily strong drugs. And

9 they are not related at all. One is not the metabolite of

10 the other. They're two entirely different substances.

11 Q Salicylate?

12 A Yes.

13 Q You figured out what I was saying. Is that aspirin?

14 Is that what we're talking about?

15 A Yes.

16 Q And you did find some of that, right?

17 A Found a little aspirin, yes.

18 Q Does that come from anything other than aspirin?

19 A No.

20 Q Aspirin only?

21 A Well, it could come from something else, but it's

22 unlikely that the baby would -- it could come from oil of

23 winter green --

24 Q I'm sorry?

25 A It could come from oil of winter green, but that's

1 not around much anymore. So I'm assuming that somewhere
2 along the line, the baby got a little aspirin.

3 MR. DEJONG: The witness is with you, Mr. O'Connell.

4 MR. O'CONNELL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. O'CONNELL:

7 Q Doctor, did you do the testing on the drugs before
8 you knew the facts of the case?

9 A Yes.

10 Q So after getting the facts of the case, this is when
11 you're talking about what you believed the dosage is, when
12 it was given, so on and so forth?

13 A Yes.

14 Q Okay. Dr. Kreger --

15 A Kriger.

16 Q -- would you be surprised to know that he wrote,
17 however, given --

18 MR. RICHARDSON: Your, Honor I'm going to object --

19 MR. O'CONNELL: Your Honor, they work at the same
20 place.

21 THE COURT: Hold on a second.

22 What's the objection?

23 MR. RICHARDSON: Hearsay.

24 MR. O'CONNELL: Your Honor, these are his reports.
25 He says he has them.

1 THE COURT: Well, you can ask him further questions
2 to establish a foundation for that.

3 BY MR. O'CONNELL:

4 Q I'm asking you, you worked with this Dr. Kriger;
5 right?

6 A I did work with him for a period of time, yes.

7 Q Was he a good doctor, a good forensic scientist like
8 you?

9 A I think he was a fine forensic scientist, yes.

10 Q Would you oppose or go against any kind of reports he
11 had written?

12 A I, certainly, could. It depends on the circumstances
13 under which they were written. But, certainly, I could.

14 Q Do you hold him in high esteem?

15 A Well, yes, of course, I do.

16 Q And he was the first person, toxicologist, involved
17 in this case from your laboratory; is that right?

18 A No, sir. I don't think he was. I think I was. I
19 think he wrote his -- did his -- what is the date of
20 his -- he wrote his report on May 20th.

21 Q Of 2008?

22 A Pardon me?

23 Q Of 2008?

24 A May 20th, yes.

25 Q Of 2008?

1 A Yes.

2 Q Okay. And, in that report, the last paragraph, the
3 last sentence, would you report that to the Court?

4 THE COURT: Let me see the lawyers up here real quick,
5 for just a second.

6 (WHEREUPON, a bench conference was held.)

7 BY MR. O'CONNELL:

8 Q Doctor, again, did you review that letter at any
9 time?

10 A I did not review the letter, no.

11 Q You have never reviewed this letter?

12 A Oh, I have reviewed this letter. Because it was sent
13 to me in the packet of information that I received from
14 the Solicitor.

15 Q And, after reviewing the letter, did you use it to
16 make any kind of statements that you made in court today?

17 A I did not, no.

18 Q And so the last line of that sentence -- that report
19 means nothing to you?

20 A Well, it means -- and it probably meant nothing to
21 Dr. Kriger. Because I don't think I knew until I reviewed
22 the case with the district attorney when the blood was
23 drawn. There is no record of when the blood was drawn --
24 the blood we analyzed when it was drawn.

25 So Dr. Kriger didn't know whether the blood was drawn

1 when the baby first got to the hospital, or under what
2 conditions the blood was drawn. But I learned today that
3 the blood was drawn at approximately 2:00 in the afternoon
4 after the baby was admitted.

5 And I don't think Dr. Kriger would have made that
6 statement had he known the blood was drawn in the
7 hospital. I don't think he was privy to that information,
8 but I was. So I don't think this -- in light of the fact
9 that the blood was drawn at 2:00 in the afternoon, I don't
10 think the statement is appropriate.

11 Q Sir, doesn't it state and reference the AIT
12 laboratory case, and it gives the number of the case,
13 538519, subject Child ?

14 A The sentence reads, Given the extremely elevated
15 level in the blood, it is possible that the last dose of
16 the drug would have been consumed shortly before
17 collection of the specimen. But he did not know that the
18 specimen was collected after the baby was in the hospital.
19 So I don't think that the sentence itself is referring to
20 the data as we knew it when we did the testing.

21 Q But you hold him in high esteem and you made the
22 statement. So either his statement is incorrect or your
23 statements are incorrect; is that true?

24 A His statement is not incorrect if he does not know
25 when the blood was drawn.

1 Q I --

2 A If he knows when the blood was drawn, he would not
3 have made that statement. He said that it is possible.
4 He didn't say it was.

5 Q But that's what -- or you're saying it's possible,
6 you don't know exactly?

7 A Excuse me. What am I saying is possible?

8 Q About the dosage and everything. You don't know when
9 this happened, you weren't there. So you're saying it's
10 possible; is that true?

11 A With respect to my testimony, yes. With respect to
12 this testimony, the blood was drawn in the hospital.
13 Therefore, I do not believe that the baby was given the
14 last dosage a few hours before the blood was drawn.
15 Because the baby was under medical supervision at that
16 time. And I don't think anybody in the medical profession
17 would have given that baby that drug two, three, four,
18 five hours before the blood was drawn.

19 Q A medical professional. You're stating that you
20 reviewed the file --

21 A I did not review this letter. I did not make the
22 statement. Dr. Kriger read the letter -- Dr. Kriger,
23 excuse me, wrote the letter. And he did not know when the
24 blood was drawn.

25 Q He was corresponding with the coroner?

1 A I can't comment on that. I don't know that.

2 Q And you're telling this jury you reviewed two things,
3 the analysis and then the record, witness statements, and
4 everything, to come up with your statement about when this
5 occurred; is that right?

6 A That is correct.

7 Q Thank you.

8 One other question. You said -- what did you say,
9 hydrocodone -- the Lortab had nothing to do with this; is
10 that right?

11 A Lortab contains acetaminophen. And there was no
12 acetaminophen found in the baby.

13 MR. O'CONNELL: Okay. Thank you.

14 THE COURT: Mr. Harbin.

15 MR. HARBIN: No questions at this time.

16 Thank you, Judge.

17 THE COURT: Redirect?

18 MR. RICHARDSON: Nothing further from us, Your Honor.

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

20 MR. DEJONG: May we approach, Your Honor?

21 THE COURT: Sure.

22 (WHEREUPON, a bench conference was held.)

23 THE COURT: All right. You may call your next
24 witness.

25 MR. RICHARDSON: Thank you, Your Honor.

1 The State calls Dr. Ward.

2 WHEREUPON,

3 MICHAEL EUGENE WARD, M.D.,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you, sir.

6 State your name again for the record.

7 THE WITNESS: Michael Eugene Ward.

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q Doctor, where are you employed?

11 A I am employed in Greenville County by Pathology
12 Associates in Greenville, and by Greenville County as the
13 chief medical examiner.

14 Q And how long have you been employed as such?

15 A 18 years, since 1995.

16 Q And what is your educational background?

17 A I received my Bachelor's Degree in Biology from the
18 University of Alabama. I have a Masters Degree in
19 Forensic Science from the University of Alabama in
20 Birmingham. I received my medical degree from the
21 University of South Alabama, which is in Mobile.

22 I did a four-year anatomic pathology residency at the
23 Medical University of South Carolina in Charleston, and a
24 one year fellowship in forensic pathology at the
25 University of Mexico. I'm board certified by the American

1 Board of Pathology in both anatomic and forensic
2 pathology.

3 Q Okay, sir. And other than your education, what kind
4 of training do you have to be a forensic pathologist?

5 A Well, the pathology is, basically, the study of
6 disease processes and how they affect man. The
7 fellowship, the subspecialty training is the training that
8 we receive in forensic toxicology, one, the interpretation
9 of toxicology in determining cause and manner of death.
10 Subsequent to that, there is a yearly requirement of 40
11 hours of continuing medical education that we undergo to
12 maintain that certification.

13 Q Yes, sir. And have you previously been qualified in
14 the courts of South Carolina as an expert?

15 A Yes, sir.

16 Q In what field?

17 A In anatomic and forensic pathology.

18 Q And how many times have you been so qualified?

19 A Well over 100 times.

20 MR. RICHARDSON: Your Honor, at this time, I offer
21 the Doctor as an expert in those fields.

22 MR. DEJONG: No voir dire, Your Honor.

23 MR. O'CONNELL: None from us.

24 MR. HARBIN: Nothing from us, Judge.

25 THE COURT: All right. He's qualified.

1 MR. RICHARDSON: Thank you, Judge.

2 BY MR. RICHARDSON:

3 Q Can you explain, Doctor, what a pathologist does?

4 A Certainly. A pathologist is a medical physician
5 whose training is to diagnose disease processes, primarily
6 either on tissues removed from a person at the time of
7 surgery, or during the time of autopsy. A pathologist --
8 I'm sorry, a forensic pathologist takes that one step
9 further with training in not only disease and disease
10 processes that affect man, but wounds, wound
11 interpretation, toxicological interpretation in
12 determining cause of death, manner of death, and then
13 presentation of that information in the court of law.

14 Q Yes, sir. Now, did your office perform an autopsy on
15 Child ?

16 A Yes, they did.

17 Q Okay, sir. And when was that done?

18 A The autopsy was performed on March 21st, 2008.

19 (WHEREUPON, State's Exhibit No. 29 was marked for
20 identification only.)

21 BY MR. RICHARDSON:

22 Q Let me hand you what's now been marked as State's
23 Exhibit No. 29. Can you identify that, please, sir?

24 A Yes. State's Exhibit No. 29 is a photo copy of the
25 autopsy report generated by our office on Child .

1 Q Thank you, sir.

2 Now, as they are looking at that, have you -- prior
3 to today, have you reviewed that autopsy report?

4 A Yes, I have.

5 Q Okay. And was it -- there was an associate in the
6 office that, actually, did the autopsy; is that correct?

7 A That is correct.

8 Q And who is that?

9 A Dr. Eric Christensen.

10 Q Okay. And where is he today?

11 A He's, currently, the associate medical examiner in
12 the State of Utah.

13 Q Okay, sir. And did he work under your supervision?

14 A He did.

15 MR. RICHARDSON: Your Honor, at this time, I would
16 move State's Exhibit No. 29 into evidence.

17 MR. DEJONG: May I ask -- I'm a little out of order.
18 May I ask a point of clarification either of
19 Mr. Richardson or the good Doctor?

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. DEJONG:

23 Q So Dr. Christensen, actually, did the autopsy?

24 A Yes, sir. That is correct.

25 Q So that I understand, you're testifying from

1 Dr. Christensen's notes?

2 A That is correct.

3 Q And findings?

4 A Yes, sir.

5 MR. DEJONG: I object, Your Honor.

6 THE COURT: You object to the exhibit?

7 MR. DEJONG: Yes, sir. Actually, I object to the
8 Doctor's testimony.

9 THE COURT: Let me see the exhibit, please, sir.

10 (Pause.)

11 THE COURT: Mr. Richardson, I'll give you the
12 opportunity to develop further foundation for the
13 document.

14 MR. RICHARDSON: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q This, the autopsy report itself, is this something
18 that's done in the regular course of business?

19 A Yes, it is.

20 Q Okay, sir. And in doing that, is it, also, kept as a
21 document, a business record in your office?

22 A It is.

23 Q Okay, sir. And in that sense, are you in control of
24 such business records?

25 A I am, yes.

1 Q Okay. And, in fact, sir, these reports of death, are
2 they made for public record?

3 A They are a public record, yes.

4 Q And are you required to keep such reports?

5 A We are.

6 MR. RICHARDSON: Your Honor, at this time, I would
7 move the document into evidence.

8 MR. DEJONG: I renew my objection, Your Honor.

9 MR. O'CONNELL: And I'll join that, Your Honor.

10 Thank you.

11 THE COURT: All right. Overruled. It's in evidence.

12 MR. DEJONG: Would you hear argument, Your Honor?

13 THE COURT: Yes. Sure.

14 Ladies and gentlemen, I'm just going to ask you to go
15 back to the jury room for a few moments. And don't talk
16 about the case. And continue to keep an open mind.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 12:30 p.m.)

19 THE COURT: What's that beeping that keeps going off?

20 MR. DEJONG: We've got a breathing machine back here,
21 Your Honor.

22 THE COURT: But it hasn't been beeping before.
23 What's causing it to beep?

24 MR. DEJONG: That, I don't know.

25 DEFENDANT PHILLIPS: Because we can't hear, and I

1 have to cut it off. Everything is so low. I have to cut
2 it off to hear. And I have to cut it back on because I
3 have to breathe.

4 THE COURT: Well, don't -- if you're having trouble
5 hearing, you need to let me know. We can't have the
6 beeping going on.

7 DEFENDANT PHILLIPS: We've all -- we can't --

8 THE COURT: I said if you want me to speak up or you
9 want a witness to speak up, you need to let your lawyer
10 know. We don't need any kind of editorial right now.

11 Go ahead.

12 MR. DEJONG: Your Honor, I'm not sure where the State
13 is going with Dr. Ward. I can only gather that they don't
14 have him here simply to introduce the autopsy report.

15 Now, even if they do, I have issues with that.

16 Dr. Christensen did the autopsy. I don't think there's
17 any question about that at this point in time. Dr. Ward
18 did not do the autopsy.

19 I think we're in a situation both -- well, starting
20 out with Crawford, right of confrontation, then
21 Melendez-Diaz, which gets into testing, lab reports, and
22 that type of thing. We have a right to have the person
23 here that did those reports.

24 Now, there is a recent case, in all honesty with,
25 Your Honor, I think it came out within the last, probably,

1 three to four months, I think that is Illinois v.
2 Williams. They did modify both -- well, I think
3 indirectly Crawford, and they modified somewhat
4 Melendez-Diaz.

5 THE COURT: They just broke Justice Scalia's heart
6 when they did that, didn't they?

7 MR. DEJONG: I'm sorry, Your Honor.

8 THE COURT: They just broke Justice Scalia's heart
9 when they did that, didn't they?

10 MR. DEJONG: Broke our hearts, yes, it did.

11 THE COURT: Broke Justice Scalia's heart.

12 MR. DEJONG: Yes, it did. Indeed, it did.

13 But, Your Honor, I think this is a different
14 situation than even in Illinois v. Williams. I'll be very
15 candid with the Court. I have not had time to sit down
16 and read that entire opinion. But it's my understanding
17 of Illinois v. Williams that there was a lab report
18 generated by somebody else. And they allowed somebody
19 else to testify. Because it really wasn't the substance
20 of the lab report, as I understood the case, that was
21 being testified to.

22 I think this case is different. Dr. Ward is here to
23 testify solely based on the findings of Dr. Christensen.
24 And I think under the Sixth Amendment right of
25 confrontation, we have a right to confront Dr. Christensen

1 in this case about his procedure, his protocols, and
2 everything else that he used, and his findings, and this
3 autopsy not coming in secondhand through Dr. Ward. And I
4 would, therefore, respectfully move that it be suppressed,
5 Your Honor.

6 THE COURT: All right. What's the State's position?

7 MR. RICHARDSON: Your Honor, as far as the document
8 itself coming in, it comes in under a business record and,
9 also, public record. It's an exception to the hearsay
10 rule. He, also, will be basing his opinion based on that
11 report. And that's covered in State v. Hutto, which
12 allows an expert to base his opinion upon such hearsay
13 evidence. That's 325 S.C. 221.

14 In that particular case -- I don't know which one I'm
15 arguing. Am I arguing to get it into evidence, or that he
16 can rely on it?

17 But if we're talking about reliance, in that
18 particular case, they had a specific scenario where they
19 had somebody that did a test and put it into a report.
20 And then another expert based his opinion on that in
21 trial. That was appealed. And the Supreme Court upheld
22 the Court allowing that testimony to come in. And that's
23 the basis. I think the law is clear on this.

24 Your Honor, we have a memo, if you like, that we can
25 pass to you and everybody else.

1 THE COURT: Well, how do you -- let me ask this,
2 Mr. DeJong. How is this report testimonial?

3 MR. DEJONG: The autopsy was done with a view towards
4 prosecution, obviously.

5 THE COURT: Well, in State v. Cutro, the Supreme
6 Court said a public record much like a business report is
7 not testimonial, and its admission similarly does not
8 violate the Defendant's confrontation rights.

9 I mean, it's a public record, isn't it, in addition
10 to possibly a business record?

11 MR. DEJONG: I didn't know they were. I might find
12 me some fireside reading in the future. I might get me
13 some autopsy reports. I didn't know they were public
14 record until just now.

15 THE COURT: Well, aren't -- I don't know. Aren't
16 they required to be undertaken in certain circumstances?

17 I'm sure somebody in the courtroom might have some
18 information on that.

19 THE WITNESS: Yes, sir.

20 We are required by law to, at the time of autopsy,
21 generate a report, and keep that report on record. And it
22 is a public documentary releasable upon request.

23 MR. O'CONNELL: Your Honor, if I may.

24 THE COURT: Yes, sir.

25 MR. O'CONNELL: The reason I'm joining is, one, I was

1 told I couldn't present some evidence because it was
2 hearsay. And this is, obviously, hearsay, because he
3 didn't do the report.

4 But, number two, I could always be mistaken, but
5 didn't Dr. Mahanes say he did the autopsy? I could be
6 wrong about that, but I thought that's what I heard him
7 say.

8 THE COURT: I don't remember that precisely. I don't
9 remember him saying that, but the record will speak for
10 itself.

11 But I believe Cutro stated that autopsy reports are
12 not hearsay under Rule 803(8). So I would have to
13 overrule that objection.

14 As far as Illinois v. Williams, I will look at that
15 case. I was aware of it, but I haven't had the
16 opportunity to completely analyze it.

17 But what is your position, specifically, in regard to
18 that in light of the Cutro case, Mr. DeJong?

19 MR. DEJONG: I'm sorry, Your Honor. I couldn't hear
20 you.

21 THE COURT: I'm sorry. What is your position about
22 Crawford and the Sixth Amendment confrontation and
23 Illinois vs. Williams in light of the Cutro decision,
24 which said that they weren't testimonial, autopsy records
25 aren't testimonial?

1 MR. DEJONG: I don't agree that they're not
2 testimonial, Your Honor. But, unfortunately, you have the
3 advantage on me. No disrespect. I don't have a computer
4 here. Okay. But -- and I'm not disputing what Your Honor
5 is telling me.. If that's what the law says, then that's
6 Your Honor's ruling and, certainly, I have to abide by it.
7 But I still believe it is testimonial in nature.

8 THE COURT: All right. Well, I'll tell you what. I
9 understand the importance of this to the case. I'm going
10 to go -- I think we're just going to go ahead and break
11 for lunch right now, probably to Dr. Ward's frustration.
12 But, nevertheless, I do think this is important. And I
13 want to take the time to do everything right.

14 So we're just going to recess until 2:00.

15 And if you'll tell the jury to come back at 2:00.

16 THE BAILIFF: Yes, sir.

17 THE COURT: Thank you.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: Any further argument?

20 MR. DEJONG: No, not on my behalf.

21 MR. O'CONNELL: No, Your Honor.

22 MR. RICHARDSON: Not from the State, Your Honor.

23 THE COURT: Based on the Cutro case, our Supreme
24 Court has ruled that autopsies are non-testimonial.
25 Mr. DeJong makes an appealing and compelling argument to

1 the contrary. But, nevertheless, our Supreme Court has
2 spoken on that.

3 The Williams v. Illinois case, which I've had the
4 opportunity to review during the break, was just decided
5 June 18th of this year. And it came out with somewhat of
6 a new slant on the definition of testimonial that is
7 markedly more narrow than what Justice Scalia first stated
8 in Crawford. Although in Crawford itself, he did say that
9 business records were an example of non-testimonial
10 evidence.

11 But, in the Williams case, they -- a five to four
12 decision, the test included a requirement that the
13 evidence in order to be testimonial and be subject to
14 Crawford and the requirement of confrontation guaranteed
15 by the Sixth Amendment, it would have to, specifically,
16 accuse a specific individual of a crime. And this autopsy
17 report doesn't do that. It is simply a finding. And it's
18 not making accusations against any specific individual.
19 While it might be considered testimonial under the old
20 test, if it were not a business record, under this new
21 test, it would be another ground for finding that Crawford
22 did not apply. It's not an accusatory document.

23 So, with that, anything further before we have
24 Dr. Ward resume the stand?

25 MR. DEJONG: Your Honor, with that, it's my

1 understanding that that's kind of where we stopped before
2 breaking for lunch. I think Mr. Richardson had
3 reintroduced it -- or requested again that it be
4 introduced. I objected. Your Honor took it under
5 advisement. And I'm not arguing with your ruling.

6 THE COURT: Right.

7 MR. DEJONG: I gather you're letting it in. And if
8 it's coming in, certainly, that's Your Honor's ruling.
9 But if it's going to happen, then I would ask that it
10 immediately come in when Dr. Ward gets back on the stand,
11 so I don't have to sound more litigious than I normally
12 sound and object to it again.

13 THE COURT: I'll be glad to state when the jury comes
14 back in the room and he's on the stand that State's
15 Exhibit No. 29, the pathology report, is admissible.

16 MR. DEJONG: And if you want to say that, that's fine
17 with me, just so I don't have to object and we have to go
18 through all that to reserve my objection.

19 THE COURT: I understand.

20 Thank you.

21 Anything further?

22 MR. RICHARDSON: Nothing from us.

23 MR. DEJONG: Nothing further, Your Honor.

24 THE COURT: Dr. Ward. You can come on back up, sir.
25 Bring the jury in, please.

1 (WHEREUPON, the jury came into open court at
2 approximately 2:05 p.m.)

3 THE COURT: All right. Ladies and gentlemen, I hope
4 you had a nice lunch.

5 For the record, State's Exhibit No. 29, the Pathology
6 Associates of Greenville report, is in evidence subject to
7 previous objections and exceptions.

8 (WHEREUPON, State's Exhibit No. 29 was admitted into
9 evidence.)

10 THE COURT: With that, you may continue your
11 examination.

12 MR. RICHARDSON: Thank you, Your Honor.

13 CONTINUED REDIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q Doctor, I'm going to hand you back State's Exhibit
16 No. 29 that's now in evidence. And excuse me if I've
17 asked the question, because I'm not sure exactly where we
18 left off. But have you reviewed that report?

19 A Yes, I have.

20 Q And, in your review of that report, do you -- can you
21 render an opinion as to how Child died?

22 A Yes, I can.

23 Q And what is that opinion?

24 A Child died as a result of a drug. And that
25 drug would be hydrocodone overdose.

1 Q Okay, sir. Now, in addition to the toxicology aspect
2 of that, did -- was a full autopsy done?

3 A It was, yes.

4 Q Okay, sir. And, in doing so, you -- I assume that
5 y'all as pathologists would check all areas that are
6 possible that could cause death?

7 A That is correct.

8 Q And that was done in this case?

9 A It was.

10 Q Okay, sir. And, also, would you, also, check for
11 other abrasions, or sores, or things of that nature?

12 A Yes, we would.

13 Q Okay, sir. In this particular case, did Child
14 have any abrasions, or sores, or anything of that
15 nature about his body?

16 A He had what would be described as a lesion on the
17 lower back just above the natal cleft, which is,
18 basically, your crack. So he had about a hand-sized area
19 of redness there on his lower back, which at the time
20 of -- initially, looking at the photographs, you're
21 uncertain if that's a bruise, is it a burn. But reviewing
22 the microscopic slides, this is an area of skin that's an
23 early -- what we would call a pressure ulcer. There is
24 ischemia, or this part of the skin has gone without blood
25 flow and without blood supply, so it has started to die.

1 So the skin -- the superficial skin layer and then
2 the underlying components of the skin are now beginning to
3 die, because they were without blood flow for a period of
4 time.

5 Q Okay, sir. And I believe there was -- I believe you
6 said you took a sample of that and looked at it under a
7 microscope. Is that the way it went?

8 A That is correct.

9 Q And what does that tell you -- I should ask, how
10 would that come to be? What does that tell you about this
11 child?

12 A This is a change that is relatively frequently seen
13 in comatose patients where they lay in one position for a
14 prolonged time without movement, and the pressure of the
15 body on that portion of skin, basically, occludes or
16 prevents blood from flowing into that area and allowing
17 the skin to die.

18 Q Okay, sir. In addition to that, was -- the stool of
19 Child , was that, also, checked as part of the autopsy?

20 A The portion of the large intestine that remained
21 after organ harvesting was examined. And there was a
22 fairly large amount of firm knot-like stool. So it wasn't
23 the usual soft consistency that you would expect to see,
24 or hope to see. But this was more firm stool consistent
25 with a period of constipation.

1 Q Okay, sir. And regarding constipation, if the death
2 is caused by hydrocodone, how would that relate to a
3 hydrocodone overdose?

4 A Well, hydrocodone is a narcotic. And narcotics
5 are -- one of the known complications of taking a
6 narcotics for pain relief is the development of
7 constipation.

8 Q Okay, sir. And can you get the constipation from a
9 single dose? Is that possible?

10 A I guess it's possible, but I wouldn't think you would
11 have this degree of constipation.

12 Q So what does this degree of constipation indicate to
13 you, in your expert opinion?

14 A To me, it indicated this was more of a multiple dose,
15 longer than just a single dose of narcotic exposure.

16 Q Okay, sir. Now, can you explain to the jury, when a
17 child starts feeling the effects of the hydrocodone to the
18 extent that intoxication is onset, what symptoms he may
19 show?

20 A From a narcotic overdose from hydrocodone, this level
21 of drug is going to suppress Child's central nervous
22 system to the degree that he will not have the usual
23 respiratory drive. So he's not going to unconsciously
24 breathe like we do.

25 So, as that happens, there's a build up of carbon

1 dioxide in the blood. As we just exist, we break down
2 sugar for energy, and we produce carbon dioxide. This
3 carbon dioxide is in the blood, and it's transported to
4 the lungs. And when we exhale, we exhale carbon dioxide.

5 When Child is not breathing enough to blow off all
6 of the CO₂, then that begins to build up. And CO₂ mixed
7 with water is a gas. And it's an acidic -- I'm sorry.
8 It's an acid. So it drops the PH balance of our blood,
9 which is normally 7.3, 7.35. It starts to go down.

10 Having an elevated acid level in your blood causes
11 you to become irritable. It can alter your mental status
12 so you're not thinking normally. If you're able to judge
13 a person's mentation, they may be confused. The drug
14 level would, certainly, make them sleepy, lethargic, such
15 that, ultimately, they would, essentially, pass out. And,
16 in this case, a high enough level that he would,
17 basically, become comatose.

18 Q Okay, sir. If Child had been given medical
19 treatment at sometime prior to EMS coming, would he have
20 lived?

21 A Well, if he had been given medical treatment on
22 Sunday night when he was being put to bed, yes. If at
23 8:00 on Monday morning, I don't know. I suspect that he
24 had already been exposed to this decrease in PH so that
25 he's now in an acidotic state. He most likely has already

1 aspirated and is developing pneumonia, and probably has
2 some degree of brain injury from not getting enough
3 oxygen. Whether he would be able to be revived at 8:00
4 a.m., as opposed to 10:00, I don't know.

5 MR. RICHARDSON: Thank you, Doctor.

6 That's all the questions I have. Please answer any
7 questions Defense counsel has for you.

8 THE COURT: Yes, sir, Mr. DeJong.

9 MR. DEJONG: Thank you, Your Honor.

10 May it please the Court.

11 RE CROSS-EXAMINATION

12 BY MR. DEJONG:

13 Q Well, Dr. Ward, we don't know that he was comatose at
14 8:00 on the morning, do we?

15 A I believe he was, yes.

16 Q You believe he was?

17 A Yes.

18 Q Okay. But, other than your belief, we don't know
19 that he was comatose at 8:00 in the morning?

20 A Let me rephrase. In my opinion, I think he was
21 comatose at 8:00 a.m. in the morning.

22 Q Well, when breathing becomes more shallow, it becomes
23 noticeable, does it not?

24 A No, sir. It becomes less noticeable.

25 Q Do you mean people would look at you and your

1 breathing would become shallow, and it would become less
2 noticeable that it's shallow?

3 A My understanding is that at 8:00 in the morning, from
4 previous testimony, that the lights were off. The mother
5 had just awoken. She did not notice this area of redness
6 on his lower back. He doesn't awaken after 12 hours of
7 sleep to have his diaper changed. In my opinion, he is
8 comatose.

9 Q But there was nothing that was reported out of the
10 ordinary either?

11 A That's correct.

12 Q So that leaves us -- that's your opinion; right?

13 A Yes.

14 Q Now, a drug overdose would, also, slow urination,
15 would it not? You would not urinate as often?

16 A Having a narcotic on board might make it more
17 difficult to urinate. Because the same smooth muscles
18 that don't allow you to have a bowel movement, also, make
19 it difficult for you to urinate, the same sort of
20 sphincter control. But formation of the urine would
21 probably not be impeded. So he's still making urine. He
22 may not be urinating.

23 Q Well, the point of that is, he peed sometime before
24 8:00?

25 A There's nothing about being in a comatose state that

1 would keep from you urinating.

2 Q And, also, constipation in a child is not merely
3 caused by drug use?

4 A No, sir.

5 Q There are many explanations for constipation?

6 A There are some, yes.

7 Q Okay. Let's assume in some cases a child might have
8 an allergy to a food. Does that create constipation?

9 A I would anticipate -- it, certainly, could. Most
10 food allergies would probably cause a loose stool, as
11 opposed to a constipation. But I would say that's
12 possible.

13 Q Now, the report you are referring to, obviously, you
14 didn't generate the report?

15 A That's right.

16 Q And you didn't do the autopsy?

17 A I did not.

18 Q Okay. And the findings with regard to drug levels
19 was not done by either you or Dr. Christensen; right?

20 A That is correct.

21 Q That was all done by AIT Laboratories?

22 A Yes, sir.

23 Q Okay. You're not a toxicologist, I gather; right?

24 A I am not.

25 Q Well, I'll ask you -- and if you don't know, you can

1 tell me. Do you know the peak times of hydrocodone?

2 A My understanding of the literature is that it's
3 within an hour and a half to two hours or so after
4 ingestion of a non-timed released dose. The peak time of
5 the time released dose, I do not know.

6 Q Okay. Fair enough. Now, what we -- he was comatose
7 somewhere -- well, we know he was comatose at 11:15 in the
8 morning?

9 A Yes, sir.

10 Q But as to exactly when he went comatose, no one can
11 say, can they?

12 A Exactly when, no.

13 Q Right. And not being a toxicologist, you can't say
14 whether it was a single dose or a multiple dose, can you?

15 A It's my opinion that this was not a single dose.

16 Q If I understood you correctly, you said your theory;
17 is that correct?

18 A I said my opinion.

19 Q Your what?

20 A I said, in my opinion, this is not a single dose.

21 Q All right. And, as to the time of those doses, that
22 we don't know either?

23 A That's correct. I do not know when he received any
24 of the doses.

25 Q We don't know if it was before 8:00 or 9:00 on Sunday

1 the 16th, or after that time, do we?

2 A It's my opinion that he, certainly, had received the
3 narcotics agent hydrocodone before the description of his
4 actions at the time they put him to bed, which is when
5 he's very sleepy, near lethargic, irritable, and without
6 significant appetite.

7 Q As I understand it, he was more than irritable,
8 Dr. Ward. We use the good old southern expression he was
9 pitching a fit.

10 A Is that a question?

11 Q Well, I think there's a difference between irritable
12 and pitching a fit. Would you agree with that?

13 A Again, it goes to, I guess, the definition of the
14 child. But if he's acting out in such a way that is
15 unusual for him, then, yes, maybe he was pitching a fit.
16 I don't know.

17 Q And in this autopsy, was the stomach contents -- did
18 you check for stomach contents?

19 A No, sir.

20 Q You did not?

21 A The stomach and entire small intestine, and a portion
22 of the large intestine were removed at post-mortem
23 harvesting of organs.

24 Q So we're clear about that. Organs were taken for
25 other uses, is that a bottom line statement?

1 A That's correct. The liver, the kidneys, pancreas,
2 which is why they take the stomach and small intestine,
3 were harvested for use in other individuals.

4 Q But there was nothing that would lead you to believe
5 that the liver wasn't functioning properly, or any of
6 those things; correct?

7 A When he was admitted to the hospital, there were
8 alterations of blood tests that were performed to such
9 that, one, his blood gas was very low. It was well into,
10 I believe, 6.7, which is significantly below the 7.3 that
11 we would expect.

12 He had an elevated blood urea and an elevated
13 creatinine indicating he was not having good renal blood
14 flow. And he had elevated liver enzymes, again,
15 indicating that there's an alteration in blood flow as a
16 result of the comatose state that he was in.

17 Q But, again, as to the time of that, we don't know
18 either, do we? That's the way he was when he came into
19 the hospital, presumptively?

20 A Yes, sir. But the presence of that area of redness
21 indicate -- which was present when he was admitted to the
22 hospital indicates that he had been in that position for
23 several hours prior to being found, or moved.

24 Q Six hours?

25 A It could be, at least, six, eight, 12 hours.

1 Q Okay. So that could have developed after -- what
2 you're saying, if I understand you correctly, is that
3 could have developed -- well, I'm pointing at nothing out
4 here. I thought I had a timeline out here, but I don't.
5 That could have developed after 6:00 Monday morning?

6 A No, sir. It happened, in my opinion, before 8:00
7 Monday morning when he was moved.

8 Q Aside from being a pressure point, were there other
9 explanations for that redness?

10 A No, sir.

11 MR. DEJONG: The witness is with you, Mr. O'Connell.

12 MR. O'CONNELL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. O'CONNELL:

15 Q If the organs had not been used, would your opinion
16 be any different if you were able to check those organs?

17 A No, sir.

18 Q Okay. So because they took the liver, and kidneys,
19 and stomach, no one tested them for anything?

20 A Except that they were transplanted into other
21 individuals and were functioning. Other than that, they
22 were tested for nothing.

23 Q So they were working fine?

24 A That's correct.

25 Q So when they were removed and working fine, does that

1 change anything in the scenario you're talking about?

2 A No, sir.

3 Q Okay. Now, if the child had lasagna or some kind of
4 meat, say, an hour or two before the child was returned to
5 the mother, which is between 7:30 and 8:00 on Sunday
6 evening, would that have any bearing on your statement?

7 A I'm sorry. My statement with regard to?

8 Q As to when the child started to expire. You're
9 giving us a scenario of the child's systems. If this is
10 correct, it started shutting down, like A shut down first,
11 B shut down next, so on and so forth; is that right?

12 A As a result of the drug-induced state from the
13 hydrocodone that, yes, he's having central nervous system
14 depression such that he's not breathing. He develops this
15 acidosis. This acidosis begins to affect other organ
16 systems, including renal blood flow, hepatic blood flow,
17 or liver.

18 And I would, also, anticipate that whatever was in
19 his stomach at that time was not being processed and was
20 likely -- if it had not been donated would have still been
21 in his stomach at the time of autopsy.

22 Q Doctor, would your testimony here today be any
23 different if you hadn't discussed the case with the
24 Prosecution before testifying?

25 A No, sir.

1 Q So when they gave you this information about the
2 timeline and statements from other people, and so on and
3 so forth, you had already formed your basis and that was
4 it. And you never talked to the Prosecution about who did
5 what, and when they did what, and what was said, like the
6 mother had the child at 8:00, the mother got up. You knew
7 none of that before you made your statement?

8 A The basis of my opinion is on the review of the file
9 that we have in our office. In that file is the autopsy
10 report. I have reviewed the microscopic slides, the
11 photographs from the autopsy, the toxicological findings,
12 and investigative reports that were provided to us by the
13 Coroner's Office. In those reports are indications of
14 what medications were found, and who had those
15 medications, and a description of the child by witnesses
16 at the time he was put to bed. All of that
17 information, certainly, was incorporated into my opinion
18 today, yes.

19 Q Then you knew about the brain injury of the child
20 about a year or two before; right?

21 A That's correct.

22 Q And that has nothing to do with what we're talking
23 about here today?

24 A His previous injury has nothing to do with his death.

25 Q What happened -- if it happened 10 months or less

1 than a year?

2 A It had nothing to do with his death on that day.

3 MR. O'CONNELL: Okay. I have no further questions at
4 this time.

5 MR. HARBIN: Thank you.

6 May it please the Court.

7 CROSS-EXAMINATION

8 BY MR. HARBIN:

9 Q Doctor, I just want to make sure I have a clear
10 understanding of your previous testimony. And I'll do it
11 by way of singular questions that, hopefully, make more
12 sense than not.

13 Hydrocodone has, as I understand it, a general effect
14 of slowing the body's metabolic rate. Is that a fair
15 statement? It slows things down in general, and has that
16 ultimate effect? And I'm trying to repeat what you said
17 and make sure I'm understanding it correctly.

18 A At a normal dose, no. At what we would consider to
19 be a therapeutic dose, hydrocodone would have no effect on
20 your metabolism, on your respiratory rate, on anything.
21 It might make you sleepy. And that's why you don't take
22 it and drive, and why you take it before you go to bed.
23 At this dose, which is a lethal dose of hydrocodone, then
24 many things are going to be affected. And I'm not sure
25 that metabolism is the right word, but systems processing

1 is.

2 So anything that has to do with his central nervous
3 system is going to be depressed, his respiratory drive,
4 anything that has to do with smooth muscle function.
5 Because narcotics, basically, inhibit smooth muscle
6 movement. They're going to be depressed. So bowel
7 movements, spontaneous urination. I mean, it's going to
8 be hard to start your stream flow, because smooth muscles
9 are not going to want to relax. Stomach emptying, all of
10 those things are going to be affected by this level of
11 narcotic.

12 Q I think you're much better at answering questions
13 than I am of asking. I think you just about answered my
14 next question.

15 The reason I use the word "metabolism" is that when
16 you say the word "depressed," do you mean slow down,
17 you're not being as fast, you're not being as productive,
18 blood is not flowing quite as effectively and carrying
19 nutrients as it normally would because of the depressed
20 state of body? Is that -- I know I'm misusing terms. But
21 is that a general --

22 A That's a fair statement, yes.

23 Q And as the dose -- or as the body is processing more
24 and more amounts of hydrocodone, such as -- I'm asking you
25 such as would be possible in a time-released drug, that

1 depression increases, and increases, and increases? Is
2 that a fair statement?

3 In other words, I'm using the wrong words, but
4 there's more and more depressed states of what you just
5 described as the levels of hydrocodone rise in the body.
6 And you can correct me whatever --

7 A That would be correct. That as Child is sleeping or
8 in his early comatose state, I think his drug levels are
9 continuing to stay at that level, or to rise. I mean,
10 with this time-release medication, it makes it a little
11 more difficult to explain. But he, eventually, comes to a
12 level that suppresses his brain functions. It inhibits
13 his ability to control things, his gag reflex, such that
14 while he's asleep, instead of swallowing to clear the
15 secretions out of his mouth, they're now going into his
16 lungs, which is why he has pneumonia when he gets to the
17 hospital.

18 So he, certainly, reaches a peak, a certain level.
19 We won't call it a peak. He reaches a certain level.
20 Whether it's maintained at that level because of the time
21 release or if it continues to go up because he just
22 received medication before he was dropped off at home, I
23 do not know. Only that when he got to the hospital and
24 blood was drawn at roughly between, say, 1:00 and 2:00,
25 that that drug level was at a lethal dose.

1 Q And, Doctor, as you were describing the lesion on his
2 backside, as your body becomes more and more depressed,
3 the systems in your body become more and more depressed.
4 Are you physically moving slower, or less?

5 For example, if a toddler normally tosses and turns,
6 is he less likely to do that -- more likely to lie still
7 in -- well, still, I guess that's the best word I can
8 think of?

9 A Yes. At this level of intoxication, I would expect
10 Child to just lay there and not move at all.

11 Q And that goes to your point about how the lesion was,
12 actually, formed by a steady pressure on the same point in
13 his body. If he's laying still, that's kind of how you
14 get -- as opposed to you and me that go to sleep every
15 night, but we don't wake up every night because we're
16 moving around a little bit?

17 A That's correct.

18 MR. HARBIN: Thank you.

19 No further questions.

20 MR. RICHARDSON: Nothing further from the State, Your
21 Honor.

22 THE COURT: Thank you, Dr. Ward.

23 MR. O'CONNELL: Your Honor, may I ask a follow-up
24 question?

25 THE COURT: Sure.

RECROSS-EXAMINATION

BY MR. O'CONNELL:

Q One question. There's been testimony he was laying in a bundle of vomitus -- or there was vomitus, what would that mean? What would that be?

A I'm sorry?

Q The child threw up -- on the 911 tape, he threw up in the mouth of the man giving the CPR. Is that a natural reaction, or what?

A That's not an uncommon phenomenon when someone is having CPR. The respirations that are given, not only do they go down into the trachea, but they go down into the esophagus. And if enough stomach -- I'm sorry, if enough air is forced into the stomach, then it's not an uncommon phenomenon during resuscitation to vomit.

Q Do you know if anybody checked that vomitus out?

A No, sir. I would anticipate they did not.

Q Okay. What about if the child was brought back or showed signs of life in the ambulance going to the hospital?

A Well, I'm not sure what you mean by "showed signs of life." It would not be -- I would anticipate and do anticipate that they were able to get cardiac activity back on Child. They were never able to get him to where he could breathe on his own. He was placed on a

1 ventilator and remained on the ventilator. And he was,
2 subsequently, declared brain dead in the hospital.

3 Q And you're saying that the child had pneumonia at the
4 hospital, even though I think the previous doctor said he
5 didn't have pneumonia at the hospital?

6 A He had pneumonia at the time of autopsy, bilateral
7 pneumonia consistent with aspiration pneumonia. Whether
8 they were able to see it radiographically, which is the
9 only way another clinician would be able to tell, I don't
10 know. But, at autopsy, he had pneumonia.

11 Q Okay. Would any of the medications given at the
12 hospital trying to revive the child or anything change
13 your opinion, or have anything to do with your opinion as
14 you're stating here today?

15 A No, sir. My review of the records indicate he was
16 not given a narcotic drug.

17 Q I didn't say that. I said any of the medications,
18 could they have worked together?

19 A No, sir. That would not change my opinion. He was
20 not given hydrocodone. Child died as a result of a
21 hydrocodone overdose. And those are the only medications
22 we found at toxicology.

23 Q But that's only your opinion; is that right?

24 A That is my opinion, yes.

25 MR. O'CONNELL: Okay. Thank you.

1 MR. RICHARDSON: Still nothing further from the
2 State.

3 THE COURT: Thank you, Dr. Ward.

4 Yes, sir, Mr. Richardson.

5 MR. RICHARDSON: Your Honor, at this time, the State
6 rests.

7 THE COURT: Ladies and gentlemen, the State has
8 concluded their presentation of testimony and evidence.
9 And, at this time, I have to take up a matter with the
10 lawyers. And I'm just going to ask you to go back to the
11 jury room.

12 Don't discuss the case with anyone. And continue to
13 keep an open mind. We'll resume, hopefully, in 10 or 15
14 minutes.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 2:36 p.m.)

17 THE COURT: Any motions at this time?

18 MOTIONS

19 MR. DEJONG: May it please the Court.

20 Your Honor, on behalf of Mr. Jamie Edward Morris, I
21 would respectfully move for a directed verdict at this
22 point in time. I realize we have to -- the Court has to
23 look at the evidence in the light most favorable to the
24 State. However, in this case, Your Honor, I submit there
25 is no evidence that the State has presented which would

1 MR. DEJONG: Thank you, Your Honor.

2 MR. O'CONNELL: Your Honor, may it please the Court.

3 THE COURT: Yes, sir, Mr. O'Connell.

4 MR. O'CONNELL: I will respectfully make a motion to
5 have a directed verdict as to Defendant Phillips here, the
6 grandmother. There's been no evidence shown whatsoever
7 that she gave any drugs to anybody. There's no evidence
8 to determine that she did it in the manner the code says
9 to do it, in a manner with extreme indifference to human
10 life.

11 All they've said is there's been some medicine in her
12 house that she, actually, went and gave to the police.
13 And there's testimony that somehow this child got an
14 overdose. But it's never been directed and said she gave
15 it to him. I don't even think circumstantial evidence
16 goes that far. They've just proved, as far as I can see,
17 that there was some Tussionex in the house. And that's
18 it. They haven't proven who gave it to him, or anything
19 like that. There are other people involved in this that
20 could have gave the child stuff and done other things,
21 Your Honor.

22 But the bottom line is the second part of it is where
23 is the showing of extreme indifference? I haven't seen
24 any of that. There's been no testimony -- not one iota of
25 testimony saying they did anything, that my client or

1 Mr. Morris had any extreme indifference.

2 To me, that means -- and I think the part I gave you
3 up here about how it is, they had to have the intent to
4 harm this child. Where has that been shown by the State's
5 witnesses, Your Honor? I'm asking for a directed verdict
6 on behalf of my client.

7 THE COURT: All right, sir. I believe under the
8 crime charged that harm to the child's physical health or
9 welfare could mean that the Defendant failed to supply the
10 child with adequate food, clothing, shelter, or health
11 care. And this failure caused an injury or condition that
12 caused death.

13 I think there was testimony we just heard that there
14 was a lethal dose of hydrocodone in the child's system.
15 It is revealed by the autopsy. There was, also, evidence
16 of the existence of pneumonia, constipation, and a
17 pressure sore that was consistent with the child being
18 left unattended to the point that blood flow was ceasing
19 to be delivered to the child's backside.

20 So I think all of that viewed in the light most
21 favorable to the State would demonstrate extreme
22 indifference, if believed by the jury. And, of course,
23 I'm not making any credibility determinations. It's up to
24 the jury to determine credibility. I simply find that
25 there's enough for this statutory crime to go to the jury

1 as to your client, Ms. Phillips.

2 MR. O'CONNELL: Thank you, Your Honor.

3 MR. HARBIN: Judge, may it please the Court.

4 THE COURT: Yes, sir.

5 MR. HARBIN: A similar motion for directed verdict,
6 but I've got a bit more specific claim. As I read the
7 statute -- I'll read it through and then go, A person is
8 guilty of homicide by child abuse if a person causes the
9 death of a child under the age of 11. And it goes -- and
10 it says, While committing child abuse. It goes on to
11 define child abuse or neglect means an act or omission by
12 any person that causes harm. Harm has gone on to be
13 defined. It says, Harm to a child's health or welfare
14 occurs when -- and it says either, A, inflicts or allows
15 to be inflicted upon the child physical injury, which I
16 don't believe was, actually, alleged here. Including
17 injuries sustained as a result of excessive corporal
18 punishment. The part B is, I believe, interesting, it
19 says, Fails to supply the child with adequate food,
20 clothing, shelter, and health care. And the failure to do
21 so causes a physical injury or condition resulting in
22 death.

23 We've had, at least, three doctors get up on the
24 stand and testify explicitly as to the cause of death.
25 Each one of them said the explicit cause of death was a

1 We'll take about a five-minute recess.

2 (WHEREUPON, a break was taken.)

3 THE COURT: Yes, sir. You can bring the jury on in.

4 (WHEREUPON, the jury came into open court at
5 approximately 3:19 p.m.)

6 THE COURT: Ladies and gentlemen, we've reached the
7 stage of the trial where the State has concluded their
8 presentation of evidence. And, now, the Defense has the
9 opportunity, but, again, not the obligation, to present
10 any evidence they wish to.

11 So, Mr. DeJong.

12 MR. DEJONG: Thank you, Your Honor.

13 May it please the Court.

14 We'd call Dr. William E. Brewer to the stand.

15 Dr. Brewer, if you would, come around and be sworn.

16 THE CLERK: Place your left hand on the Bible and
17 raise your right hand.

18 WHEREUPON,

19 WILLIAM EDWARD BREWER, PhD,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you, sir.

22 Have a seat.

23 And, if you would, state your name for the record,
24 please.

25 THE WITNESS: My name is William Edward Brewer.

DIRECT EXAMINATION

BY MR. DEJONG:

Q And are you a doctor?

A I have a PhD in chemistry.

Q All right, sir. Let's talk a little bit about your background. You say you have a PhD in chemistry. Where did you do your undergraduate work?

A I have a Bachelor of Science in Chemistry from North Carolina State University, and a PhD in chemistry from the University of South Carolina.

Q When did you get your undergraduate degree?

A In 1987.

Q When did you get your PhD?

A In 1991.

Q All right, sir. Tell us a little bit about -- well, let me ask you this. Where do you work now?

A I, actually, work at the University of South Carolina. I teach forensic chemistry, including forensic toxicology. I, also, own a couple of companies. I have a consulting company that has been in business since 2002. We review about half the deaths in the State of South Carolina. We review the toxicology reports currently. We've been doing that for about 10 years.

I -- just to back up a little bit, I worked at the South Carolina Law Enforcement Division as a forensic

1 toxicologist for six and a half years. And then I left
2 there and worked as a veterinary toxicologist for Clemson
3 University. And I left there to teach full-time at the
4 University of South Carolina. I'm board certified in
5 forensic toxicology.

6 Q Do you belong to any professional associations or
7 organizations?

8 A Yes, sir. I'm a member -- a full member of the
9 Society of Forensic Toxicologists. I'm a member of the
10 American Academy of Forensic Scientists.

11 Q All right, sir. And I'm not asking you to name it,
12 but have you been established --

13 A Yes, sir.

14 Q -- in the area of toxicology?

15 A Yes, sir.

16 Q On more than one occasion?

17 A Yes, sir.

18 Q And have -- prior to today's date, have you testified
19 in South Carolina courts as an expert witness?

20 A Yes, sir.

21 Q Do you know how many times?

22 A I'd say approximately 40 or more.

23 Q And was that as a forensic toxicologist?

24 A Yes, sir.

25 Q I believe you -- maybe you shared with us, but you

1 worked for SLED for a period of time?

2 A Yes, sir.

3 Q And how long was that?

4 A Six and a half years.

5 Q And what did you do for SLED?

6 A Analyzed biological specimens for the presence of
7 drugs and alcohol, poisons, and analyzed and quantitated
8 those levels to help assist in death investigations. I
9 was, also, involved in driving under the influence cases
10 as well.

11 MR. DEJONG: Your Honor, at this point in time, I
12 would move to have him qualified as an expert forensic
13 toxicologist.

14 THE COURT: Any voir dire?

15 MR. RICHARDSON: No voir dire.

16 THE COURT: All right. He's qualified.

17 Yes, sir.

18 MR. DEJONG: Thank you, Your Honor.

19 BY MR. DEJONG:

20 Q Dr. Brewer, at my request, did you review the
21 documents and records in this case?

22 A Yes, sir.

23 Q All right. And with particular regard to the
24 toxicology report?

25 A Yes, sir.

1 Q Toxicology aspect of it?

2 A Yes, sir.

3 Q And you have reviewed the records?

4 A Yes, sir.

5 Q Did you review all of the records?

6 A I reviewed all the records you sent.

7 Q In part, what we're probably going to look at mostly
8 is the AIT reports, but maybe a couple of other things.
9 Let's before we get into that look at a timeline that has
10 been, basically, established before you got here. And I
11 don't know if you can read this or not?

12 A I can.

13 Q On March the 14th of 2008, the child in this case was
14 picked up between 1:00 and 1:30 by his father, Jamie
15 Morris, and his grandmother, Donna Phillips. The child
16 was there until -- there's a fairly large window there,
17 but between 6:30 and 9:00 on Sunday evening. After that
18 time, the child was totally with the mother and/or her
19 boyfriend. So that's kind of the timeline that has been
20 established.

21 Now, in looking at, -- or let me ask you this,
22 Dr. Brewer. Let's talk a little bit about metabolites.

23 A Sure.

24 Q I'm sure you can cover volumes -- can you give us a
25 basic definition of what a metabolite is?

1 A Liver is your primary organ for metabolism. The
2 function is to make drugs that are present, foreign
3 objects more water soluble so you can excrete it out of
4 your body and remove it from your body. And, in this
5 case, we're talking about hydrocodone. It's primary
6 metabolite is hydromorphone.

7 Q All right, sir. In reviewing the records from AIT,
8 Laboratory, did you find any indication of hydromorphone,
9 if I'm pronouncing that correct?

10 A No. There was no indication of hydromorphone.

11 Q Either in the urine or the blood?

12 A In the urine, there was an indication. But that's --
13 well, not trying to digress, but that would be expected in
14 the urine sample.

15 Q Why would that be expected in the urine?

16 A Because of the fact your liver is metabolizing it,
17 and it's more water soluble. You're going to get some
18 urine excretion of the primary metabolite.

19 Q Would we say that metabolites -- well, do metabolites
20 get in the urine faster than the blood?

21 A You would expect to see higher concentrations in the
22 urine.

23 Q So, really, to make an accurate assessment in this
24 case, the metabolites in the blood would be important?

25 A Correct. Blood levels are really what you have to

1 look at. Urine levels are really irrelevant.

2 In this case, I do want to point out that the
3 hydrocodone level was much higher than the hydromorphone
4 found in the urine. That may or may not be relevant. But
5 blood levels are, for certain, what you look at. That's
6 what you're interpreting, the blood levels.

7 Q If we had the test for hydromorphone, would that give
8 any indication as to the time of ingestion of the
9 hydrocodone?

10 A Yes, sir. Typically, on an acute overdose of recent
11 exposure, you'll find the main drug is present in the
12 blood, but maybe low or negative for its metabolite,
13 because it doesn't have a chance to metabolize. Does that
14 make sense?

15 So it takes time to metabolize the active ingredient.
16 So sometimes in acute death, the recent exposure, you
17 would see high levels of a drug, but not necessarily
18 anything of the metabolite. And, over a period of time,
19 the metabolite starts to accumulate as the parent drug
20 starts to decrease in concentration.

21 Q All right, sir. Now, let's look at just a timeline
22 here. Well, let's back up. The allegations are that this
23 child died of a hydrocodone overdose?

24 A Yes, sir.

25 Q And, specifically, I gather at this point in time the

1 State said that the hydrocodone came from Tussionex. Are
2 you familiar with Tussionex?

3 A I am.

4 Q And does Tussionex have hydrocodone in it?

5 A It does.

6 Q Okay. Now, can you share with the jury a little bit
7 about what Tussionex is?

8 A Well, it's a medication that contains both
9 hydrocodone and chlorpheniramine. It's, actually, used as
10 a time-release formula. So, typically, dosing is,
11 generally, every 12 hours, as opposed to every four to six
12 hours. So you dose it less frequent. And that's the
13 advantage of it.

14 It's actually -- and I don't want to get into the
15 chemistry of it.

16 Q All right. So the basic difference is you don't have
17 to dose as often; correct?

18 A Correct.

19 Q All right. Now, does -- well, the hydrocodone and
20 the time release, does it have a peak time?

21 A Yeah. Typically, the peak hydrocodone concentration
22 that would be achieved is about four hours. Actually, in
23 the literature, it's 3.6, or 3.7, or something like that.
24 So the peak hydrocodone level still peaks, you know,
25 within a few hours.

1 Q Would that be whether or not it is time released or
2 any other --

3 A If it's not time released, hydrocodone is, generally,
4 one and a half hours where the concentration would peak,
5 where you would get your maximum hydrocodone
6 concentration.

7 Q So that peak time is, you said, four to six hours?

8 A I think the peak time is less than four hours for the
9 time released.

10 Q Okay.

11 A That's the peak.

12 Q And that would be -- well, let me ask you this. In a
13 situation where there are allegations of repetitive
14 dosing, would that make any difference?

15 A Yes. It could be in a sense that -- there's too many
16 variables to find in that regard about -- you know,
17 because it's going to accumulate if you do repeat dosing
18 of it. It depends on how frequent and how much the dosing
19 is. And those are variables we don't know.

20 Q Okay. Well, not knowing those variables and not
21 having the benefit of knowing whether there were any
22 metabolites in the blood, I'm going to ask you to look at
23 this timeline. And looking at that timeline, even with
24 Tussionex time release, when would, in your opinion,
25 Dr. Brewer, you see the effects of the hydrocodone?

1 A You should see it within -- probably within three
2 hours, but the maximum concentration being achieved, let's
3 say, four to six hours. So the symptoms are going to be
4 within a few hours.

5 Q Well, let's say someone -- let's back up here on the
6 timeline and say the child was dosed -- or given Tussionex
7 somewhere early, early Sunday morning, shortly after
8 midnight on Saturday, and that would have been -- or
9 Sunday would have been the 16th, but the early morning
10 hours. Would you have expected to see the child being
11 comatose prior to 11:15 on Monday, March the 17th?

12 A Oh, absolutely. I mean, by the afternoon.

13 Q All right, sir.

14 A Several hours after the dosing, if we're dealing with
15 a hydrocodone death overdose.

16 Q All right. Now, if the child -- well, let me ask you
17 this. Does hydrocodone affect urination at all.

18 A It does. Opiates tend to cause urine retention.

19 Q Now, in this case, I believe there was an indication
20 that the diaper had been changed at 8:00 in the morning?

21 A There is a note on that.

22 Q And that he had urinated?

23 A Yeah. I don't want to get -- there's variables.

24 But, yeah, that doesn't necessarily mean he wasn't
25 hydrocodone before or after. It's just a comment that I

1 made that -- a note, basically.

2 Q Right.

3 A There is urine there. Could it still be there if
4 hydrocodone is present? It's possible. But a lot of
5 times, you don't see urination, depending on the levels of
6 hydrocodone.

7 Q Okay. And if the child's diaper was changed and he
8 did not awaken, that does not necessarily indicate he was
9 comatose, does it?

10 A No. I guess that's my biggest problem in reviewing
11 these records. There's a lot of things in this,
12 unfortunately -- and it makes the case pretty challenging.
13 The biggest problem I have is if the scenario is that the
14 child was given the drugs the night before, the child,
15 certainly, would not be fine at 8:00 a.m. That's just a
16 given. And there's some indication that the child was in
17 a deep sleep.

18 But there's, also, a record where she indicates that
19 he rolled over. But there's multiple records where it is
20 stated that the child was fine at 8:00 a.m. And that's
21 the only problem that I have with the inconsistency of
22 saying the dosing was the night before. That is a
23 problem -- I'm not -- you know, that you guys will have to
24 sort out.

25 Q Well, aside from 8:00 a.m. on Monday the child being

1 fine, there's, also, testimony -- or it's in the record
2 that several times during the night he had been checked on
3 and he was fine. Would that indicate --

4 A You know, it depends on the degree of checking on.
5 And I'll be the first to say I've never changed a diaper
6 in my life. So if a child is in a really deep sleep and,
7 let's say, there's the effects of hydrocodone, would you
8 expect the child to -- would you know that he's in a deep
9 sleep and cannot be woken up? Would you know that as a
10 parent? And I can't answer that personally.

11 As I said, I -- actually, I tried to make a couple
12 phone calls to see if I could get some feedback from
13 people that would be knowledgeable in this area, and I'm
14 not one. So saying a child is fine, I don't know what
15 that extent means. If the child is normally a deep
16 sleeper, is it possible that he's in a deep sleep and is
17 fine? Or is the scenario, you know, that he was fine,
18 literally fine, and then all a sudden two hours later,
19 he's in respiratory depression. So that's -- you know,
20 that's the debate.

21 Q Would you -- I'm sorry. Could you quantitate for us
22 to some degree the level of hydrocodone in this particular
23 case?

24 A We could do some calculations. The level that was
25 found was 102 nanograms per milliliter in the blood. And,

1 without question, I agree with what everyone else has
2 stated so far that that is the cause of death. I agree
3 with the pathology results.

4 There is another toxicologists that made a comment
5 about it as, well, the toxicity of -- and what his thought
6 was about the hydrocodone level. So I feel confident. In
7 adults, I've seen reports at 120 to 150 nanograms per
8 milliliter as being the cause of death in an adult. It's
9 an opiate intolerant, meaning exposure to the drug. But
10 doing a dosing, it's a little hard to deal with a child.
11 Because most of these values we use for pharmacology
12 purposes on dosing is based on an adult and not a child
13 for obvious reasons. And so it's a little hard to say.

14 I don't think that the child being so small received
15 a very large dose. I think it was a very small dose. And
16 I would venture to say -- and I didn't hear the
17 toxicologist before me, but that he would concur with
18 that. Because I think that's important for the jury to
19 realize, too. We're not talking about a large dose. To
20 me, looking at this, being completely unbiased, this is
21 not an intent to cause harm to the child, you know. It's
22 not a large dose.

23 If I do a calculation based on adult numbers, we're
24 only looking at four milligrams as a dose. It's not a lot
25 of drug. But you're looking at a small child, so it

1 doesn't take much to lead to toxicity.

2 Q Based on the timeline and the level of hydrocodone
3 that AIT found in the urine, do you find anything
4 troubling about that at all in terms of time, and the
5 level of the drug, and the urine?

6 A I don't know if I follow you. I think that the --
7 I'm not sure if I follow your question. I'm sorry.

8 Q Okay. Well, I guess what I'm saying is time-wise,
9 the closer to the time that the drug was administered and
10 the urine specimen, would there be any correlation between
11 those two?

12 A Again, we can't really focus on the urine results so
13 much. Just noting that there's a lot more hydrocodone
14 found than hydromorphone indicates that the child is
15 metabolizing the drug for one, which the toxicologist
16 pointed out in the records. But I don't think there's a
17 lot of --

18 Q I'm sorry?

19 A There's not a lot for me to focus on in terms of the
20 urine. I think the main focus needs to be on the blood.
21 And, unfortunately -- and I don't know if this was pointed
22 out. Yes, they had a limited sample to work with. This
23 happens quite frequently with child deaths. And I see it
24 all the time.

25 As a matter of fact, I'm working with a case right

1 now that involves a limited specimen, and that's not
2 surprising. But you're dealing with a child, especially a
3 two-year-old.

4 But what may not be pointed out is when they test it
5 for hydrocodone, they, also, test it for hydromorphone.
6 They test it for both simultaneously. And they had an
7 error in the analysis. I'm not sure why the error
8 occurred. Sometimes things happen. And whether it was an
9 effect caused by the -- the problem is they go back to
10 retest for hydromorphone and there's no specimen left over
11 in the original specimen. So they tested another specimen
12 later. And they found no hydromorphone and they found no
13 chlorpheniramine either in that later specimen. So
14 there's a lot of variables there.

15 And another thing that's missing that is alarming to
16 me is that the vomitus was never tested. And, as a
17 toxicologist, I would have pinpointed that that's one of
18 the first things I would look at because that's recent.
19 The vomitus -- the child vomited while being given CPR.
20 And I would want to know was hydrocodone present in that
21 vomitus material and what was the concentration, how much
22 was there?

23 Q And I think you said, but if you could clarify, why
24 would that be so important?

25 A Because it would give us an idea if there was a

1 recent exposure. Was the child given hydrocodone two, or
2 three, or four hours prior to being found in respiratory
3 distress? Or was it given 12 to 14 hours prior? And then
4 I would expect to see a very low amount, if not negative,
5 in the vomitus.

6 Q So that would, basically, be testing the contents of
7 the stomach?

8 A Exactly. Exactly. And hindsight is always 20/20.
9 You can always go back and look at something and wish you
10 would have done something. But that's my perspective on
11 this case.

12 Q Anything else that is absent that you find troubling?

13 A That's really it. You know, again, it all boils down
14 to, in my opinion, what the definition of fine is.

15 Because if the baby was fine at 8:00 a.m., I don't believe
16 this exposure occurred have the night before. If the baby
17 is comatose and a parent can believe that the child was
18 fine, that's possible. And I don't know. I'm not placing
19 judgment one way or another. Then it's possible.

20 Q If the child were comatose because of a hydrocodone
21 overdose, can you share with the jury what those symptoms
22 might be?

23 A I would expect the child to be extremely limp and not
24 moving, obviously. I would expect shallow breaths.
25 Because we're talking about respiratory depression that

1 may or may not have been noticed. No response to touch,
2 those type of things.

3 Q And those are fairly noticeable things, would you
4 agree?

5 A Again, I'm not a parent. I'm not going to pass
6 judgment. But I would think so. But I don't know. I
7 have no experience in that area.

8 MR. DEJONG: One moment please, Your Honor.

9 (Pause.)

10 MR. DEJONG: Thank you, Dr. Brewer.

11 I'm not sure which order we're going to go in. But,
12 if you would, answer these gentlemen's questions, I would
13 appreciate it.

14 THE COURT: Mr. Richardson.

15 MR. RICHARDSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. RICHARDSON:

18 Q Good afternoon, Doctor.

19 A Hi.

20 Q Let me ask you, you spoke about this particular
21 medicine being a time-release type of medicine?

22 A Yes, sir.

23 Q And you know, in fact, that the Tussionex we're
24 dealing with today is a time release type of medicine?

25 A Yes, sir.

1 Q And I assume you found that out through your viewing
2 of the records?

3 A Correct.

4 Q And I believe it was your testimony that -- I'm
5 referring to one dose. If you take one does of the
6 Tussionex, then that's going to have a -- and correct me
7 if I'm wrong. But that's going to have a 12-hour period
8 of time?

9 A What that means is at 12 hours, you're going to need
10 your next dose, because your concentration has decreased
11 over time. So you get your next dose. On a standard drug
12 which you would, generally, get that's not time released,
13 then they say every four to six hours, as an example. It
14 means after four hours, you start losing the effect of the
15 drug and you need another dose of that drug.

16 Q Okay. Fair enough. So four hours is the peak on
17 that; is that right?

18 A That's what the literature says. And you can even go
19 to the website. And that's where I pulled some of this
20 information from, and a pharmacologist that I contacted.

21 Q Okay. Well, let me ask you this. If a person is
22 medicating a child with this Tussionex and gives multiple
23 doses within, say, every four hours, do you agree with me
24 that that would build up into the child?

25 A Yes, it would, certainly.

1 Q So, in other words, whatever the child's metabolizing
2 now -- and I hope I'm using the word correctly.

3 A That's fine.

4 Q In actuality, you could be adding to it. In other
5 words, you can add more than what's being metabolized out?

6 A Yes and no. Yes, I'll agree to that to some extent.

7 Q Okay. So, at some point in time, if you're giving
8 multiple doses of a time release and you're giving -- and
9 I agree with you. We don't know how many doses were
10 given. But if you're giving multiple doses over a period
11 of time and it's not done within the time that that drug
12 has metabolized out of the body, then, ultimately, that
13 could get you to a failed position; is that true?

14 A Yes. My only problem in dealing with a two-year-old
15 now is I think even a single dose is going to lead to
16 problems. So, you know, the multiple dosing -- and, of
17 course, it depends on how much. I'm not trying to take us
18 on a different road. But it's not dealing with an adult
19 again. So it's a little bit challenging how you interpret
20 this, but I agree with what you say.

21 Q Now, I guess in this particular case, we -- the
22 figure 102 of the hydrocodone, I guess you reviewed that.
23 And did you testify that's very high in a child?

24 A Yeah. I would say in a two-year-old that's the cause
25 of death. I would, certainly, concur.

1 Q And is it fair to say that if someone gave multiple
2 doses over a Sunday, and those multiple doses could very
3 well become critical sometime after the person had gave
4 them those doses and had given the child over to somebody
5 else?

6 A It's possible, yes. But, remember, you're going to
7 start showing symptoms two hours after your first dosing.
8 You're going to start having symptoms after your first two
9 hours of dosing. And everything depends on how much is a
10 dose, also, how much is being given.

11 Q And would you agree that some of those symptoms would
12 be respiratory problems?

13 A Absolutely.

14 Q Difficulty breathing?

15 A Yes.

16 Q Become lethargic?

17 A Yes.

18 Q Sleepy?

19 A Yes.

20 Q The child would be -- have problems standing and
21 walking?

22 A Yes.

23 Q And I think your statement is that one of your real
24 problems is that -- is the 8:00 a.m. hour; is that
25 correct?

1 A Yes, sir.

2 Q Because -- it is?

3 A Yes, sir.

4 Q Okay. Because from your interpretation of what you
5 read, the child was fine at 8:00 a.m.?

6 A Yes, sir.

7 Q And that came from the Defendant, did it not?

8 A It came from -- yes, it came from the -- well,
9 there's three Defendants, I guess. But it came from the
10 mother.

11 Q Defendant Honeycutt, the mother, yes. So your
12 opinion is based upon what she said, what a layperson said
13 at 8:00 a.m.?

14 A Essentially, yeah. I'm looking at notes that
15 indicate the fine part. Yeah, absolutely. You're saying
16 the baby is fine at 8:00. There's no way the baby is fine
17 at 8:00 and then -- from an exposure 12 to 14 hours being
18 the last exposure, and then goes into respiratory
19 depression two hours after that with no dosing between
20 those times. That's my problem. How do you define
21 "fine" --

22 Q If -- I'm sorry. I didn't mean to interrupt. I
23 apologize. Go ahead and finish.

24 A So yeah, exactly.

25 Q Well, if the child was comatose at 8:00 a.m., would

1 that change your opinion?

2 A If the child was comatose, I would not call that
3 fine. I think we would all agree with that. So that
4 definitely changes my opinion for certain, you know.

5 Q And, in your review of the record, you did review
6 that it was stated that the child did not wake up at 8:00
7 a.m. when the child was changed?

8 A Yeah. It did say that in one statement. In one
9 statement, it said that the baby rolled over on his
10 stomach. And he was turned over back on his back and he
11 was fine. That was one of the statements I read. And
12 there was another statement that stated that the baby was
13 asleep and wasn't awoken. That was another statement.
14 And there was another statement related to this, too, that
15 indicated the baby was fine. And I think there was
16 another statement that suggested that as well.

17 Q Well, there's a lot of different statements?

18 A A lot of different statements, yeah.

19 Q The bottom line is at 8:00 a.m., we don't have a
20 doctor or an expert in here that says that baby was fine
21 at all, do we?

22 A Yeah. There's no expert testimony, obviously.
23 Because nobody was there as an expert to review this at
24 8:00.

25 Q And if, in fact, the baby wasn't checked on all

1 night, would that, also, change your opinion?

2 A If the baby was not checked on all night?

3 Q Yes.

4 A I guess I'm a little confused. Because there's
5 indications that the baby was checked on periodically
6 throughout the night. So if the baby was not, it just
7 means that we don't know. That's all that means.

8 Q You say "indications." And, once again, that was the
9 Defendant Honeycutt saying she had checked on the baby all
10 night; right?

11 A Oh, yeah. I can only base it on the information I'm
12 given to review. Obviously, I wasn't there. So yes, I'm
13 basing it on the information I'm given, correct.

14 Q Well, you worked for the State Law Enforcement
15 Division?

16 A Yes, sir.

17 Q Is it fair to say that people charged with crimes
18 don't always tell it exactly as it is?

19 MR. DEJONG: I'm going to object to that, Your Honor.
20 He may have worked for the State, but it still calls for
21 speculation on his part.

22 THE COURT: Overruled.

23 THE WITNESS: The way I look at it, which is as a
24 forensic toxicologist with a chemistry background, the
25 most important evidence to me is the toxicology report.

1 And that's what's so disappointing to me. It isn't the
2 records of the interviews. Because I agree sometimes
3 mistruths can be misstated. I'm not saying necessarily
4 they're lies. Sometimes, people remember different things
5 differently, et cetera.

6 But what bothers me is not having a hydromorphone
7 level to compare. If I had a hydromorphone level, I would
8 feel a little bit more definitive about my reasoning about
9 the time of exposure of the drug. But that's not given.

10 BY MR. RICHARDSON:

11 Q Correct me if I'm wrong. You did testify that the
12 fact that the child was fine at 8:00 a.m. was a big part
13 of your testimony and your opinion?

14 A Yes, sir. If the child was fine at 8:00 a.m., I
15 don't see how he died two hours later, if the exposure was
16 12 to 14 hours prior.

17 MR. RICHARDSON: Okay. Thank you, sir.

18 I appreciate it.

19 THE COURT: Mr. O'Connell.

20 CROSS-EXAMINATION

21 BY MR. O'CONNELL:

22 Q Doctor, if they had taken the vomitus and then
23 checked it over and everything, would that have helped you
24 at all?

25 A It would have given us an idea, in my view. And I've

1 been doing forensic toxicology for over 20 years. I would
2 have liked to have looked at that specimen. Because that
3 would give me an idea of a level of hydrocodone that could
4 show whether there was a recent exposure or not.

5 And if it's negative, if the concentration is really,
6 really low, that would suggest that we're not dealing with
7 a recent exposure. Because what we have here is we have
8 just one drug level with no metabolite being tested, as we
9 can't even look at its metabolite. One drug level at one
10 point in time that we're trying to base this on toxicity.
11 And it's hard to determine acute toxicity and chronic
12 toxicity. And if we're talking extended periods of times
13 of dosing, all those things with just one analysis, that's
14 problematic.

15 So I would like to see the vomitus. I would have
16 liked to have seen it tested.

17 Q Do you have any idea why the vomitus wasn't taken in
18 this case?

19 A I have no idea. There's nothing in these records to
20 suggest, you know, whether it was -- I think there was a
21 statement made that there was a picture showing the
22 vomitus. So that means to me that, obviously, it could
23 have been collected and analyzed.

24 Q They did collect it. They have a record showing they
25 collected it. They just never tested it. If I remember

1 the testimony, did they -- one or two of the officers
2 said, well, they couldn't get anything from the vomitus;
3 is that true?

4 A I would say, no. I would have tested it, but I
5 wasn't the toxicologist.

6 Q Some of the organs of the child were taken out
7 because they farmed the organs to other children. Would
8 it have given you any kind of clue as to the amount of
9 drugs in the child's system, or anything else?

10 A From what I can gather, the child lived a long period
11 of time, I guess, on life support. So I don't know. I
12 think that considering the fact that they had very limited
13 blood specimen, I probably would have chosen to test the
14 liver and, at least, get an examination of the liver to
15 see if we could see something relating to the hydrocodone
16 and hydromorphone levels.

17 But even then, it's still such an extended period of
18 time on life support. There's a lot of variables there.
19 So I don't know how beneficial it would have been.

20 Q Okay. The child, we all know and believe, was
21 returned between 7:30 to 9:00 on Sunday evening. The
22 child is said to have been up, moving, throwing a fit, or
23 being very irritable. If that child had been dosed even
24 one time prior to that, would that be how the child would
25 be acting?

1 A Typically, these drugs are central nervous system
2 depressants, so a description of drowsiness and lethargy.
3 But fussiness -- sometimes, these drugs are given to
4 prevent fussiness. So it is a little contradicting in
5 that regard --

6 Q So -- excuse me. Go ahead.

7 A Anyway, so I would not expect fussiness and
8 alertness. I would expect -- and that maybe depends on
9 how you define fussiness. But I would expect more of a
10 quiet and calming, lethargy, drowsiness.

11 Q So if there had been an earlier dose, say, like one
12 of the witnesses said they believed -- or they opined that
13 the child had been given a dosage on what we call Saturday
14 morning -- or Saturday after midnight, Sunday, on the
15 16th, the child was given a dose then and then another
16 dose, say, by 8:00 to 12:00, how would that child be when
17 the child was taken to the emergency room?

18 A Again, it depends on the doses, which we don't know,
19 and if given enough to cause effects. It won't take much
20 to cause effects. I would expect the child to be real
21 drowsy.

22 Q Well, would you expect the child to be up, irritable,
23 fussy?

24 A I would expect him to be lethargic and drowsy.

25 Q There's a report that the child was standing -- or

1 stumbling. Would that have occurred?

2 A Again, it depends on how high the level is. So
3 there's just variables that you can't control. I mean,
4 it's possible.

5 Q Would there be -- this -- what was it -- 102
6 nanograms per milliliters, would that have been there if
7 the child had been given drugs, say, right before the
8 child was returned at 8:00 on Sunday evening, 7:30, 8:00?

9 A No, no. The child would have been -- at 102
10 nanograms per milliliter, the child would have been like
11 the child was found in respiratory depression.

12 Q So the child would have been like, you know, a sack
13 of wheat or a bag of potatoes?

14 A Yes, sir.

15 MR. O'CONNELL: Thank you very much.

16 MR. HARBIN: May it please the Court.

17 THE COURT: Mr. Harbin.

18 CROSS-EXAMINATION

19 BY MR. HARBIN:

20 Q Doctor, you referred several times to the variables.
21 And I think you used many variables. There's a lot of
22 variables involved in the calculations you're talking
23 about?

24 A Yes, sir.

25 Q And can you briefly tell us what effects the body's

1 ability to absorb and process drugs -- and, specifically,
2 I'm referring to -- you testified as to how long it takes.
3 What's the accuracy -- or what's the peak time? How long
4 does it take to take effect? What is going to make that
5 either a shorter period of time or a longer period of
6 time? What variables could you consider as a toxicologist
7 to make those numbers change?

8 A It's really not a lot to make it a shorter period of
9 time, per se. Because this drug -- if we're talking about
10 Tussionex and not talking about other drugs. It's
11 designed to be a time release. And there's -- anyway, the
12 design in the drug, we don't need to get into and how it
13 works. But food in the stomach could, certainly, slow
14 some of that process down. So it's possible that a lot of
15 food that's ingested could slow it to some extent.

16 Q Well, let me ask you this. Does the actual metabolic
17 rate of the body -- I'm probably misusing that term. But
18 the rate at which you're breathing, the rate at which your
19 heart is pumping, does that effect how quickly you use up
20 a drug?

21 A It can.

22 Q Now, if you have a drug that depresses the rate at
23 which your heart is beating or your lungs are -- the
24 volume of your lungs or the rate at which your lungs are
25 breathing, would that then tend to lengthen the amount of

1 time that the drug remains in your body because it's not
2 being processed as fast?

3 A Yes. I would agree with that.

4 Q So if you start off with a drug that is depressing a
5 system and then add that same depressant to the system,
6 theoretically, it would take even longer for that second
7 dose to get out of the body than the first dose, because
8 of the depressed nature of the system that it's going
9 through?

10 A I would agree with that.

11 Q Okay.

12 A So the concentration would be accumulating.

13 MR. HARBIN: Yes, sir.

14 Thank you very much.

15 REDIRECT EXAMINATION

16 BY MR. DEJONG:

17 Q Dr. Brewer, when Mr. Richardson was asking you
18 questions, I think it was about the repeated dosage, if
19 that would increase, I think, the concentration. If I
20 recall correct, you said you agreed in part and disagreed
21 in part, I believe?

22 A Well, I think what you have to be careful of is that
23 no doubt that it's going to cause an increase going
24 forward. But even with repeat dosing, we're still getting
25 repeat plasma concentration still from the last dose, you

1 know, four hours prior. Still that's going to be your
2 peak. So, yes, it is building up. And you would expect
3 the concentration to continue to build up. But then
4 you're still going to have a peak from your last dosage.

5 Q Like within four hours?

6 A I would say within four, even stretch it out to six
7 hours.

8 MR. DEJONG: Thank you, Dr. Brewer.

9 MR. RICHARDSON: Nothing further, Your Honor.

10 THE COURT: Any further questions for the witness?

11 MR. O'CONNELL: Your Honor, I was just going to ask
12 one.

13 RECROSS-EXAMINATION

14 BY MR. O'CONNELL:

15 Q I've heard the term "salicylate"?

16 A Salicylates.

17 Q What would that have to do with your opinion?

18 A It's an aspirin metabolite found from ingesting
19 aspirin. So the child, obviously, got aspirin. It came
20 from aspirin -- or a medication that contained aspirin,
21 let me rephrase that.

22 Q It wouldn't have to do with metabolites or metabolic
23 rates?

24 A It doesn't have anything to do with the metabolic
25 rates, or anything. It indicates that the child was

1 exposed to or ingested aspirin, or something that contains
2 aspirin.

3 MR. O'CONNELL: Okay. Thank you.

4 MR. RICHARDSON: I would like to follow-up.

5 THE COURT: Yes, sir.

6 RE CROSS-EXAMINATION

7 BY MR. RICHARDSON:

8 Q In light of that, that particular substance that
9 Mr. O'Connell just questioned you about, is that found in
10 Tylenol?

11 A Tylenol is acetaminophen, so, no, it is not found in
12 Tylenol.

13 Q I apologize.

14 A That's okay.

15 Q Did you see anywhere that Tylenol was found in this
16 child?

17 A I did not. But I'm still a little skeptical of the
18 tox results. And a lot of it has to do with the limited
19 amount of blood that they tested. But, no, I did not see
20 anything.

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

22 MR. DEJONG: Your Honor, I would request that he be
23 excused.

24 MR. RICHARDSON: Without objection.

25 MR. O'CONNELL: No objection.

1 THE COURT: Thank you.

2 You're excused, Dr. Brewer.

3 Okay. We'll take a short recess. Don't talk about
4 the case. And continue to keep an open mind.

5 Thank you.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 4:02 p.m.)

8 (WHEREUPON, a break was taken.)

9 THE COURT: Are you ready to proceed?

10 MR. DEJONG: I'm ready to proceed, Your Honor.

11 THE COURT: All right. Bring the jury in.

12 (WHEREUPON, the jury came into open court at
13 approximately 4:25 p.m.)

14 THE COURT: Yes, sir, Mr. DeJong.

15 MR. DEJONG: Thank you, Your Honor.

16 May it please the Court.

17 We'd call Ms. Karen Renee Shelton to the stand.

18 Come around, please, ma'am, and be sworn.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 WHEREUPON,

22 RENEE SHELTON,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Ma'am, if you would, have a seat.

25 And state your name for the record, please.

1 THE WITNESS: My name is Renee Shelton.

2 DIRECT EXAMINATION

3 BY MR. DEJONG:

4 Q Ms. Shelton, if you will, kind of keep your voice up.
5 You don't have to swallow the microphone. Just stay close
6 to it so we can hear you.

7 A Okay.

8 Q Ms. Shelton, where do you live?

9 A Road in Pickens.

10 Q And are you related to Jamie Morris?

11 A He's my stepson from my first marriage.

12 Q And you say your "first marriage," who were you
13 married to?

14 A George Edward Morris, Jr., his dad.

15 Q All right, ma'am. And I believe his father is
16 deceased; is that --

17 A Yes.

18 Q But you and Jamie have maintained a relationship,
19 even after his father's death?

20 A Yes.

21 Q Do you see each other quite frequently?

22 A Yes.

23 Q Can you describe for the jury the relationship Jamie
24 had with Child ?

25 A JChild was his whole world.

1 Q All right. What do you mean by that?

2 A Child was everything to him. He loved that baby. I
3 mean, that's all he talked about was Child.

4 Q I'm sorry.

5 A That's all he talked about was Child.

6 Q And, to your knowledge, did he provide medical care
7 for this child?

8 A Yes. If Child got a runny nose or a cough, he
9 thought Child had to go to the doctor for anything.

10 Q All right. And did you have occasion to see Jamie
11 and Child on March the -- I believe it would be March the
12 15th, Saturday?

13 A Saturday.

14 Q How did you come about seeing them on Saturday?

15 A They had come to my house. Because I had been sick
16 with heart surgery and stuff.

17 Q Okay. I don't know about the jury, ma'am, but I'm
18 having a little hard time hearing you. Could you speak up
19 a little?

20 A I had been sick a lot. And they had came to my house
21 to let me see Child.

22 Q Okay. Did Jamie's mother come with him as well?

23 A Yes.

24 Q All right. And how long did they stay at your house,
25 Ms. Shelton?

1 A Approximately four and a half hours.

2 Q Okay. Was that morning or afternoon?

3 A Afternoon.

4 Q What did Child do while he was at your house?

5 A He ate very good. I fixed homemade lasagna --

6 THE COURT: Hold on just a second. I'm sorry.

7 Mr. Teal, could you take that cell phone and those

8 keys for her while she's up here?

9 I'm sorry to interrupt. Go ahead.

10 MR. DEJONG: Getting feedback.

11 BY MR. DEJONG:

12 Q Go ahead.

13 A I had fixed homemade lasagna. And he had played with

14 toys in the floor. I even ask Child one time, I said,

15 come here and give Nana -- that's what he called me, Nana.

16 So I asked him to come give me a hug. He got out the

17 middle of playing with the toys and gave me a hug, and

18 went back to playing with his toys.

19 Q As far as his physical condition over that four, four

20 and a half hours, were you able to observe that?

21 A Yes.

22 Q What did you see?

23 A He was fine. There was nothing wrong with that baby.

24 Q All right. Did he exhibit any illnesses at all?

25 A Just a little bit of a runny nose.

1 Q At that point in time, was he coughing?

2 A No.

3 Q All right. Was he -- in any way, did he appear to be
4 lethargic?

5 A No. He was fine.

6 Q An active child?

7 A Active.

8 Q Did you see Child at all, or Jamie, on Sunday, the
9 16th?

10 A No.

11 MR. DEJONG: The witness is with you, Mr. Richardson.

12 MR. RICHARDSON: Thank you, sir.

13 May it please the Court.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. RICHARDSON:

17 Q I'm sorry, ma'am. Is it Shelton?

18 A Shelton.

19 Q Ms. Shelton, you testified they were at your house on
20 Saturday?

21 A Yes.

22 Q Okay, ma'am. I'm not sure, you may have testified to
23 this. What time were they at your house?

24 A Approximately between 2:00 and 6:30.

25 Q So they got there at 2:00, and then left at 6:30?

1 A Somewhere around then.

2 Q Okay, ma'am. And you stated that he would -- that if
3 he had a cough or anything of that nature that he would --

4 A Jamie would take him to the doctor. He's just --

5 Q Without doubt?

6 A I'll be honest, I've always called my stepson a
7 hypochondriac. Because if a baby sneezes or coughs, he
8 thinks they need to go to the doctor. And I had even
9 commented that day that he probably had a runny nose
10 because he might have an ear infection, or may be cutting
11 teeth. Because I have two small ones myself.

12 Q Okay, ma'am. And after they left at 6:30, you don't
13 know where they went, do you?

14 A They said they were going to her sister's house, I
15 believe.

16 Q And, certainly, you weren't there Saturday night at
17 their house, were you?

18 A No.

19 Q So you don't know if he was coughing or sick Saturday
20 night, do you?

21 A Not Saturday night.

22 Q And there's no question that he would take that child
23 to the doctor if he was coughing?

24 A Yes. That's his first reaction is to go to the
25 doctor.

1 Q If he's having a hard time breathing, he would take
2 him to the doctor?

3 A Oh, yeah. He'd definitely do that.

4 Q No question about that?

5 A Oh, yeah.

6 MR. RICHARDSON: Thank you.

7 That's all the questions I have. No further
8 questions.

9 THE COURT: Mr. O'Connell.

10 CROSS-EXAMINATION

11 BY MR. O'CONNELL:

12 Q Ms. Shelton, you described Jamie as a hypochondriac;
13 is that correct?

14 A Yes.

15 Q In your mind, what is a hypochondriac?

16 A If you cough or sneeze, he thinks you need to go to
17 the doctor, to see the doctor. He's always worried about
18 illnesses.

19 Q So he wouldn't let the child go with a sniffle, or
20 even a congested chest, or anything?

21 A No.

22 Q Was he always around this child when he had the
23 child?

24 A Yes.

25 Q Did he ever leave the child with you and run off and

1 go play ball or sports, or go to the drag races, or
2 anything of that nature?

3 A No.

4 Q So he was a great father?

5 A He was a full-time father. He loved Child .

6 Q Since the death of the child, how would you describe
7 Jamie?

8 A Jamie is not the same. He still mourns over his son.

9 Q He's done what now?

10 A He still mourns over his son.

11 Q Ma'am, how would you describe the grandmother?

12 A The grandmother?

13 Q Ms. Phillips, Donna Phillips?

14 A She loved Child with all her heart.

15 Q Would she have done anything to hurt this child?

16 A No.

17 Q Would they have given the child any medicine?

18 A No, other than Tylenol is all they would have given
19 him.

20 Q Would they have given some Tussionex to calm him
21 down --

22 A No.

23 Q -- so they could go play ball, or whatever people do
24 nowadays, like cars or movies?

25 A No.

1 Q They would never do that; right?

2 A No.

3 Q Did you have any occasion to speak to him by
4 telephone or otherwise on Sunday, the 16th of March?

5 A No.

6 Q What, ma'am?

7 A No.

8 MR. O'CONNELL: Thank you very much.

9 Wait a minute.

10 BY MR. O'CONNELL:

11 Q Okay. Did a detective -- Officer Rita Burgess
12 contact you in any way?

13 A No.

14 Q Did Ms. Burgess ever send any of the statements to
15 you about taking up for their own, or anything?

16 A Oh, she said that in the past.

17 Q About what?

18 A They take up for their own.

19 Q Who takes up for their own?

20 A Law enforcement.

21 Q And why did that come about? Tell me what that
22 means. Tell the jury.

23 A I don't know.

24 MR. RICHARDSON: I'm going to object to this
25 testimony. It's not relevant. It's hearsay.

1 THE COURT: Sustained..

2 MR. O'CONNELL: Thank you, Your Honor.

3 MR. HARBIN: No questions, Judge.

4 MR. DEJONG: Step down, please, Ms. Shelton.

5 And I ask that she be excused, Your Honor.

6 THE COURT: All right.. She's excused.

7 MR. DEJONG: Your Honor, we call Jamie Edward Morris
8 to the stand.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand.

11 WHEREUPON,

12 JAMIE MORRIS,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Sir, if you'll have a seat.

15 And state your name for the record, please.

16 THE WITNESS: Jamie Morris.

17 DIRECT EXAMINATION

18 BY MR. DEJONG:

19 Q How old are you, Mr. Morris?

20 A 28 years old.

21 Q In March of 2008, how old were you?

22 A 24.

23 Q Okay. In March of 2004 [sic], where did you live?

24 A I lived at Road in Pickens, South
25 Carolina.

1 Q And did anybody live with you there?

2 A My mother.

3 Q And did you have a son?

4 A Yes, sir.

5 Q And what was your son's name?

6 A Child , Child

7 Q And who was Child 's mother?

8 A Latasha Honeycutt.

9 Q How long had you and Ms. Honeycutt been separated
10 prior to March the 14th of 2008?

11 A I think about five [sic] years.

12 Q Well, did you and she ever live together?

13 A Yes, we did.

14 Q Okay. Let's talk a little bit about March the --
15 well, let's start with March the 14th for the moment. Did
16 you pick Child up on March the 14th?

17 A Yes, my mother and I did.

18 Q Do you know what time it was?

19 A It was around 1:30.

20 Q And that was on what day of the week?

21 A It was on Friday.

22 Q Okay. And how long did you have Child ?

23 A I had him up until about 7:30 Sunday evening.

24 Q Now, as far as you visiting with Child , did you
25 visit him under any kind of court order, or was that just

1 agreed upon between you and Ms. Honeycutt?

2 A No, sir. That was just me wanting to spend time with
3 my son.

4 Q Was there a time on Sunday that you were supposed to
5 have him back?

6 A No. There was no time agreed upon.

7 Q Were you supposed to have him back on Sunday?

8 A Yes, sir.

9 Q Okay. And was that by agreement with Ms. Honeycutt?

10 A No. That was because I had to work Monday morning.

11 Q Okay. Now, what time did you get him back on Sunday
12 evening?

13 A I got him back around 7:30.

14 Q And does 7:30 particularly stick out in your mind, or
15 how do you arrive at that time?

16 A Because it was still like dusk outside. And I just
17 remember it being like right around 7:30.

18 Q All right. When you got back to -- or let me back up
19 here a little bit. On the 16th, was Child sick?

20 A No, he was not.

21 Q Okay. And did you go visit your stepmother on
22 Saturday, the 16th?

23 A Yes, I did.

24 Q Now, on the 17th, was Child sick?

25 A No.

1 Q On Sunday?

2 A He was showing signs of a runny nose. He had just a
3 little cough every now and then. And there was one point
4 where when we were going down the road, he breathed a
5 little funny. And I shifted him in his car seat. And he
6 was breathing fine after that.

7 Q Was that Saturday or Sunday?

8 A That was Sunday.

9 Q What did you do on Sunday?

10 A On Sunday, we went to my aunt's house.

11 Q Okay. Who's your aunt?

12 A Cindy --

13 Q And where does she live --

14 A -- Stevens.

15 Q I'm sorry.

16 A Cindy Stevens.

17 Q Where does she live?

18 A She lives at Woodland Drive in Liberty.

19 Q All right. And how -- what time did you get to your
20 aunt's house?

21 A It was evening time.

22 Q Okay. What time, if you remember, did you leave your
23 aunt's house?

24 A It was dark. It was probably around 8:30, 9:00.

25 Q On Sunday?

1 A No, no.

2 Q Okay. When did you go see your aunt?

3 A No. It was about 6:30, I guess, when we left. I'm
4 not even sure really.

5 Q And she lives in Liberty?

6 A Yes, sir.

7 Q Okay. Now, what did Child do while he was at your
8 aunt's house on Sunday?

9 A He played in the floor with my two little cousins.
10 My cousin -- my first cousin has two kids named Levi and
11 Connor. And he played with them. They was pushing Tonka
12 trucks around. He was scooting around on it using his
13 legs. He was sitting on top of it pushing himself around.

14 Q Was he active?

15 A He was very active.

16 Q Did he take a nap that day?

17 A Yes, he did.

18 Q What time was that?

19 A On Sunday?

20 Q Yes, sir.

21 A From -- he took a nap in the car. He took an hour
22 nap in the car from my sister's house -- going to my
23 sister's house, he took about an hour nap. And then
24 coming back from my sister's house, he took about an hour
25 nap.

1 Q So you went to your aunt's house and your sister's
2 house?

3 A Right.

4 Q On Sunday?

5 A Right.

6 Q Which one did you go to first?

7 A I went to my aunt's -- my -- I can't even remember.
8 I've been so upset with everything.

9 Q Okay. Well, at any time over the weekend, did you
10 give Child any medications?

11 A No.

12 Q Anything at all?

13 A Nothing, except on Sunday, I gave him Tylenol, two
14 droppers full.

15 Q What time was that?

16 A It was around 2:30 to 3:00.

17 Q All right. At any time over the weekend, did you
18 have any knowledge of anyone else giving him any
19 medication?

20 A No.

21 Q Either your mother, your aunt, or your sister?

22 A No.

23 Q Now, when you took him back on Sunday evening, you
24 said around 7:30; right?

25 A Right.

1 Q How was Child acting then?

2 A Child was acting fine. I mean, at my sister's
3 house, he got a little fussy, you know. And then after we
4 left there, he had his nap. And we got back to Latasha's.
5 And I took him out of the car. He woke up as I picked him
6 up out of the car seat. We went inside. And, you know,
7 he seemed all right then to me. I didn't --

8 Q Did -- I'm sorry. Go ahead.

9 A I didn't really want to take him home at that time.
10 I wanted to keep him, but I had to work.

11 Q Okay. Well, did he appear to you to be alert?

12 A Yes, he was alert.

13 Q Okay. Was he responding to you?

14 A Yes.

15 Q Let's back up. When he was at your aunt's on Sunday
16 afternoon, you said he was a little fussy. Apparently,
17 we're having some problems with words here. What do you
18 mean he was a "little fussy"?

19 A That was at my sister's house. Well, he ate some
20 Beanie-Weenies over there and some cereal. And then he
21 was playing around with my nephews. And then about --
22 like I said, about 3:30 or so, he started just acting like
23 he was ill, you know.

24 Q Ill tempered or sick?

25 A Just ill.

1 Q Okay. And what do you mean by "ill"?

2 A I mean, like he was crying and fussy.

3 Q Did he go off into any kind of deep sleep?

4 A No.

5 Q Okay. Other than the naps he took in the car, did he
6 sleep any other time?

7 A No.

8 Q Okay. Well, after -- well, let me ask you this. How
9 long were you at -- when you took Child back at
10 approximately 7:30 on Sunday, how long did -- let me back
11 up again. Did your mom go with you when you took Child
12 back on Sunday?

13 A Yes.

14 Q And how long did y'all stay at Ms. Honeycutt's house
15 when you returned Child ?

16 A I think we were there about maybe 20 minutes.

17 Q Okay. So that would put you leaving pretty close to
18 8:00; right?

19 A Right.

20 Q But you're pretty sure you --

21 A It was just about to get dark when we left.

22 Q All right. Now, after you left him on Sunday, the
23 16th, did you see him conscious again?

24 A No.

25 Q Now, there's been talk that there was Tussionex at

1 your mother's house?

2 A Yes, there was.

3 Q And there was hydrocodone as well; right?

4 A Well, that's found in Tussionex, so, yes.

5 Q Okay. Now, the Tussionex, did you ever see Child
6 get any Tussionex?

7 A No.

8 Q Did you ever give him any Tussionex?

9 A Absolutely not.

10 Q To your knowledge, did your mother?

11 A No.

12 Q Okay. Other than the Equate, did you give him
13 anything at all?

14 A Nothing.

15 Q All right. Were you ever served with an arrest
16 warrant in this case?

17 A I believe it was a direct presentment.

18 Q And when was that?

19 A It was on December the 18th. I had received a call
20 from somebody. I can't remember who. They told me that
21 somebody had a warrant for my arrest.

22 So I called the Pickens County Sheriff's Department
23 and I asked them if they had a warrant for me. And they
24 said, to their knowledge, at that time, they didn't. So I
25 told them that I was at my stepmother, Renee's house and

1 that I wasn't going to turn myself in if they did have a
2 warrant, because I'm not guilty. But I said, If you have
3 a warrant for my arrest, this is where I am.

4 Q Okay. And were you -- did you ask them about a bench
5 warrant or just a warrant?

6 A I just said warrant.

7 Q Were you ever arrested under any kind of warrant?

8 A I don't understand. It was a direct presentment,
9 from what I understand.

10 Q Did you ever go to jail?

11 A Yes, I did.

12 Q Okay. When did you go to jail?

13 A I went to jail on December the 18th.

14 Q And when did you say the direct presentment was?

15 A December the 18th.

16 Q Let's just do something parenthetically. Do you have
17 a prior criminal record?

18 A Yes, sir, I do.

19 Q Have you been convicted of a felony that carried in
20 excess of one year?

21 A No.

22 Q Okay. Well, I'm not asking you what penalty you got,
23 but was the possible punishment more than one year?

24 A Sir?

25 Q Was the possible punishment more than one year?

1 A I don't recall. It's been so long ago. It was like
2 six years ago.

3 Q But you do have a prior conviction; right?

4 A Yes, sir.

5 Q Okay. Now, you went to jail in December -- well,
6 that was December of 2008; right?

7 A Right.

8 Q Okay. And prior to that time, though, you had talked
9 to some law enforcement officials; right?

10 A Right.

11 Q And, mainly, Ms. Burgess; correct?

12 A No. It was somebody at the Pickens County Sheriff's
13 Department when I called on December the 18th.

14 Q Well, I understand that.

15 A Or the 17th is when I called. I'm sorry.

16 Q I'm sorry. I shifted gears on you and didn't tell
17 you I was shifting gears. After that -- no, no. Before
18 that, way before that, let's go back to when Child was in
19 the hospital. That time frame and shortly thereafter, did
20 you talk to people with the Sheriff's Office?

21 A When he was in the hospital?

22 Q Well, around there or shortly after that.

23 A Do you mean when he passed away?

24 Q Yeah.

25 A Yes.

1 Q Okay. Who did you talk with?

2 A I talked to Rita Burgess.

3 Q And how many times did you talk to Ms. Burgess?

4 A Several times.

5 Q Okay. By the way, are you related to Ms. Burgess?

6 A She is my stepmother's sister-in-law.

7 Q Okay. When you -- the first time you talked to
8 Ms. Burgess, do you recall when that was?

9 A I don't recall.

10 Q Do you remember talking to her at Greenville Memorial
11 Hospital?

12 A Yes. I do remember talking to her.

13 Q Okay. And when you were talking -- well, did you
14 approach her to talk to her, or did she approach you to
15 talk to you?

16 A I believe she approached me in the waiting room.

17 Q And what was your mental state at that point in time?

18 A I was in complete shock.

19 Q But, nonetheless, you talked with her; right?

20 A Yes.

21 Q Did you in any way try to withhold anything from her,
22 or not tell her the truth?

23 A No, sir.

24 Q Now, after Greenville Memorial Hospital, did you talk
25 to her again?

1 A Yes, I did.

2 Q And do you recall when that was?

3 A No. I've had a lot of traumas. I don't remember
4 dates well.

5 Q Well, let's see here. They say you talked to her on
6 April the 4th of 2008, would that probably be right?

7 A Yes.

8 Q Okay. When you talked to her that time, do you
9 remember where you talked to her?

10 A It was at the Pickens County Sheriff's Department.

11 Q Okay. And how was it that you went in to talk to
12 her? Did she call you, or did you just volunteer to talk
13 to her?

14 A I think I just volunteered to talk to her. I cannot
15 recall at this time.

16 Q And, of course, that was before you were ever
17 charged; correct?

18 A Correct.

19 Q And then you talked with Ms. Burgess for a while; is
20 that right?

21 A Right.

22 Q And then you gave a written statement; right?

23 A Yes, I did.

24 Q Okay. And have you had a chance to look at this
25 written statement? Do you need to look at it?

1 A Yes. I'd like to look at it.

2 Q By all means.

3 A At this time -- can I speak?

4 Q Yes.

5 A At this time, I was so traumatized. I already notice
6 one mistake in this statement. I said he took a nap
7 between 12:00 and 1:00 on Sunday. He didn't have -- I
8 don't know if he had a nap between 12:00 and 1:00, because
9 I didn't pick him up until 1:30. I was in so much shock.
10 I meant to put Saturday there. Because he did have a nap
11 between 12:00 and 1:00 on Saturday.

12 Q But not on Sunday?

13 A Not on Sunday, not that I'm aware of.

14 Q Okay. Anything else in that statement?

15 A What do you mean? Do you have a question for me?

16 Q You said you noticed that was an error. Were there
17 any other errors in that statement?

18 A Not that I'm aware of.

19 Q Now, there was some talk at one point in time that
20 you gave him two droppers -- one dropper of Equate,
21 Tylenol, I believe. And then you gave him --

22 A I gave him two.

23 Q And when was that?

24 A At my sister's house. My brother-in-law, Donnie, had
25 some Equate grape-flavored Tylenol in a bottle about this

1 big. It was infant Equate.

2 Q Now, after -- well, other than that change you said
3 you made an error in, was everything else, as you read it,
4 accurate?

5 A Yes, sir.

6 Q Okay. And was it truthful?

7 A Yes, sir.

8 Q Now, when you took Child back home on Sunday, March
9 the 17th, who all was at Ms. Honeycutt's house?

10 A It was just Latasha and Ava there at the time.

11 Q Okay. Did anybody else come while you were there?

12 A No.

13 Q Do you know Michelle Henry?

14 A Brandon came as we were leaving. He was pulling in
15 the driveway.

16 Q Do you know Michelle Henry?

17 A Yes, I do.

18 Q Where did she live, if you know, in relationship to
19 Ms. Honeycutt?

20 A She lived directly across -- the trailer -- their
21 trailer was the last one on the left, hers was the one on
22 the hill directly across.

23 Q Did you see Michelle Henry on Sunday evening when you
24 took Child home?

25 A No, I didn't see her. But when I was in the house,

1 Latasha received a phone call from her telling her that I
2 was pulling up in the yard.

3 Q Okay. There's been talk about a Medicaid card.

4 A Correct.

5 Q Did you call DSS about a Medicaid card?

6 A Yes, I did.

7 Q Why did you call them?

8 A Because I misplaced my Medicaid card -- my copy of
9 Child 's Medicaid card. And then shortly after -- well,
10 he had, you know, a runny nose and a little -- just a
11 little cough every once in a while. So I called them and
12 asked them about the Medicaid card. And, shortly after, I
13 located it.

14 Q Okay. That was Child 's Medicaid card?

15 A Yes.

16 Q And did you -- well, once you -- when did you
17 realized you misplaced the Medicaid card?

18 A I realized it when I -- before I called them.

19 Q Well, did you find the Medicaid card -- well, do you
20 remember what day of the week it was you found the
21 Medicaid card?

22 A I found it on the Sunday, I guess, that I called
23 them.

24 Q And did you give Ms. Honeycutt that Medicaid card?

25 A Yes, I did.

1 Q And, at that point in time, did you ask her to take
2 him to the doctor?

3 A Yes, I did.

4 Q All right. Why didn't you take him to the doctor?

5 A Because I didn't feel his symptoms were severe enough
6 that I should take him right away.

7 Q When you took him back on Sunday, the 17th, did
8 you -- well, let me -- how old was Child in March of
9 2008?

10 A In March of 2008, Child was 22 months old.

11 Q Was he walking?

12 A Yes.

13 Q Was he talking?

14 A Yes, he was.

15 Q Okay. When you took him back on Sunday, March the
16 16th of 2008, did you notice anything wrong with his
17 speech?

18 A No.

19 Q Did you notice anything wrong with his walking?

20 A No.

21 Q What did you notice anything that was wrong with him?

22 A Like I said, the only thing was he had a little
23 breathing trouble just right there before we got him home.

24 Q Did you go to Easley Baptist Hospital?

25 A Yes, I did.

1 Q And did you go to Greenville Memorial Hospital?

2 A Yes, I did.

3 Q How did you get from Easley Baptist Hospital to
4 Greenville Memorial Hospital?

5 A I clocked out of work at 12:00 noon. And Brandon
6 came squealing tires up into the parking lot at my
7 workplace. And he was hysterical, you know, crying and
8 shaking. And he told me, Get in the truck.

9 And I said, Well, you know, I have to go tell my boss
10 that -- what's going on, you know?

11 He said, Get in the F'ing truck now.

12 So I got in the truck. And he took off towards
13 Easley Baptist.

14 Q Did you get from Easley Baptist to Greenville
15 Memorial with Brandon?

16 A No, sir.

17 Q How did you get to Greenville Memorial?

18 A Well, when I was at Easley Baptist, they said they
19 were going to airlift Child . And I told them -- I asked
20 them if I could go with him in the helicopter. And they
21 said, No, you cannot.

22 So I told my mom immediately after, I said, Let's go
23 now. And we went by her car.

24 Q Okay. During this weekend -- or there's been talk
25 about this pumpkin where the Tussionex was kept.

1 A Yes.

2 Q Did you get the pumpkin down that weekend?

3 A Yes.

4 Q For what reason?

5 A I got it down for my mother. I frequently had to get
6 it down for her because it was so high up.

7 Q Are you taller than she is?

8 A Yes, I am.

9 Q Did she take Tussionex during the weekend?

10 A I believe she did. She had potassium and all kinds
11 of other stuff in there that, you know, she would ask me
12 to get for her.

13 Q All right.

14 A All of her medications were in that pumpkin. It was
15 a wire that -- had like a wire structure to it. And it
16 had a mesh around it. And you could see through the mesh.

17 Q Over this weekend -- and I'm speaking of the weekend
18 of March the 14th, through the 16th, you and your mother
19 were together; right?

20 A Yes, we were.

21 Q But, certainly, you weren't under each other's feet
22 24 hours a day, were you?

23 A No. We weren't under each other's feet. But I was
24 around Child the whole time, you know. Because, like we
25 said, the house was under some construction at the time.

1 And we were afraid that something might be -- we had
2 plywood stood up on the wall. And we were afraid
3 something could fall over on him, or something.

4 Q When you had Child , how long would he sleep?

5 A Like a normal baby does, through the night. He'd go
6 to sleep around 10:30 and get up at 6:30 to 7:00.

7 Q All right. If Child had been, in your opinion, very
8 ill, would you have taken him to the doctor?

9 A Yes. I most, certainly, would have.

10 Q Is there anything else you would like to tell this
11 jury?

12 A Is there -- can I --

13 Q As to what happened?

14 A What do you mean?

15 Q Well, did you love Child ?

16 A Of course, I did.

17 Q All right. Have you shared with them what happened
18 on that weekend of March the 14th, through the 16th?

19 A Have I shared with who?

20 Q These 14 people.

21 A No.

22 Q Anything you want to add?

23 A To my statement, nothing -- yeah, I could add a few
24 things.

25 Q Go ahead.

1 A Well, when we were at my sister's house, he said --
2 he was, you know, talking a lot saying Daddy and Nanny,
3 and all.

4 Q And that was on Sunday?

5 A Yeah.

6 Q Okay. What else?

7 A Well, when we got back with him -- well, when we went
8 to my sister's house after the Beanie-Weenies, we went
9 outside.. And there was this rocking horse out in the
10 playground. We took him out to the playground with my
11 nephews and my brother-in-law, Donnie. He got on the
12 rocking horse and played on the playground with my
13 nephews.

14 Q Okay.

15 A And then when we left and came back to my house --
16 before we left there to take him back home, I remember he
17 had a Teddy bear and he had a duck. And he wouldn't sleep
18 without them. He wouldn't go anywhere without them.

19 Well, before we left, Child had a confused look on his
20 face in the backseat. And, I said, What's wrong, son?

21 And he said, Where is Teddy?

22 Q Was Teddy with him?

23 A No. So, I said, Hold on a minute. And I went inside
24 the house. And I found his Teddy bear. It was a green
25 florescent Teddy bear. I guess they have it in evidence.

1 I gave it to him. And he was ready to go then.

2 Q All right. From the time on Sunday when you left
3 from your aunt or sister's house, whichever was first or
4 last, did you go back to you and your mother's house?

5 A Yes, we did.

6 Q Did you ever get the pumpkin down between the time
7 you got back there until you went and took Child back to
8 Ms. Honeycutt?

9 A No, sir. Child sat in the car, in fact. Like I
10 said, he was in the backseat.

11 Q Over the weekend, how many times did you get the
12 pumpkin down, if you know?

13 A Maybe twice.

14 Q Okay. What days?

15 A I don't remember exactly. I think it was on
16 Saturday, Friday and Saturday.

17 Q Okay. Anything else?

18 A No.

19 MR. DEJONG: The witness is with you, Mr. Richardson.

20 MR. RICHARDSON: Thank you, sir.

21 May it please the Court.

22 CROSS-EXAMINATION

23 BY MR. RICHARDSON:

24 Q Sir, back in March of 2008, where did you reside?

25 A I resided at my mother's house on

1 Pickens, South Carolina.

2 Q Okay, sir. And how far is that from the Defendant
3 Honeycutt's residence?

4 A I'd say approximately 20 minutes.

5 Q Okay. Now, let me take your memory back to, March
6 the 13th. That would be the Thursday before you got the
7 child. Do you recall going to Latasha Honeycutt's house?

8 A Yes, sir.

9 Q Okay. And that was for the purpose of?

10 A To take her the car seat.

11 Q Okay, sir. And do you recall when you went -- do you
12 recall what time it was?

13 A I don't recall what time it was.

14 Q Was it day or night?

15 A It was afternoon, I think.

16 Q Okay, sir. Do you recall at that time Child being
17 sick?

18 A No. He greeted me when I pulled up in the driveway.
19 He came running up to me with his arms wide open.

20 Q Do you recall him crying, and ill acting, and sleepy
21 on that Thursday?

22 A No, not on Thursday.

23 Q Are you sure about that?

24 A I don't recall him being sleepy or ill on Thursday.

25 Q Okay.

1 A I know they did say he had an ear infection and had
2 been taking Amoxicillin, which I didn't understand because
3 he was allergic to Amoxicillin, to my knowledge.

4 Q So, on Friday, you picked up Child from Defendant
5 Honeycutt's house. Your mother was with you; is that
6 right?

7 A Right.

8 Q Okay. And, as you stated, at that time, y'all were
9 living together; is that right?

10 A Right.

11 Q Okay. And I believe you testified that the entire
12 weekend you were with Child ; is that correct?

13 A (Witness nodded.)

14 Q I'm sorry. You have to say "yes" or "no."

15 A Yes.

16 Q Okay. And although -- so it's fair to say that you
17 were -- every time your mother was with Child , you were,
18 also, with JChild ; is that correct?

19 A I followed him around everywhere he went. He played
20 out in the yard with the John Deere Jeep thing.

21 Q Okay. Now, regarding -- you testified about the
22 Medicaid card. You called about that Saturday, the 15th;
23 is that right?

24 A I guess so. I'm not good with dates, like I said.

25 Q Okay. And so at that time, the reason you called was

1. because Child was either getting sick or was sick; is
2. that right?

3. A Correct.. He had a runny nose. And he was coughing
4. just a little bit in the daytime.

5. Q Okay.

6. A And he coughed a little more at night.

7. Q He was coughing at night, also?

8. A Uh-huh.

9. Q So he was coughing and sickly on Saturday, wasn't he?

10. A Yes. But not to the extent that it was anything you
11. would worry about.

12. Q All right. But his -- and was he waking up at night?

13. A Waking up, yes. He would wake up approximately every
14. two hours on the dot. He would wake up screaming and
15. crying. And I think -- I don't know, but I think he may
16. have had separation anxiety. Because I had Child for a
17. time period of three months by myself raising him on my
18. own. And the mother never even contacted me.

19. Q Okay. So Saturday, not only was he sick and
20. coughing, but he was, also, waking up at night every two
21. hours; is that correct?

22. A Not every two hours, sir.

23. Q Okay. But he was waking up at night?

24. A Two hours after I put him to sleep.

25. Q So you got the Medicaid card because you thought he

1 needed to go to the doctor; is that right?

2 A Correct.

3 Q Now, let's go to Sunday. Okay. You stated you went
4 to your sister's house; is that right?

5 A Right.

6 Q And you've testified that there were no visitation
7 orders, there were no agreements on when you needed to
8 have the kid back on Sunday; is that correct?

9 A Right.

10 Q Okay, sir. And when you were at your sister's house,
11 at some point in time, Child got so bad that you had to
12 leave her house; is that right?

13 A Yes. He was acting fussy and crying a lot.

14 Q To the extent that you felt like you needed to leave?

15 A But he wouldn't go to sleep.

16 Q But to the extent you felt like you needed to leave;
17 is that correct?

18 A No. We just left because he was getting fussy.

19 Well, I guess you could say that. But, as soon as we got
20 in the car, he took a nap. My mom said I was the same way
21 when I was a kid, every time we took a car ride that I
22 would nap.

23 Q And, at that time, when you were at your sister's,
24 you -- would you agree you felt his head and neck and he
25 felt hot?

1 A Yes. I would agree.

2 Q Okay, sir. And do you know how hot he was?

3 A I don't know exactly how hot. I just know he was hot
4 and he was irritable.

5 Q Did you take his temperature?

6 A No, sir. I didn't take his temperature.

7 Q Did you stop anywhere and get a thermometer maybe and
8 take his temperature when you got home?

9 A No. Because he acted -- he slept and rested on the
10 way back. I figured he was fine after that.

11 Q And, in fact, at that time, you stated he was
12 breathing bad; is that correct?

13 A Well, right when we -- almost -- when we were almost
14 to Latasha's house, he started breathing a little funny.
15 And I got upset. And I asked my mom, Do you think we
16 should carry him to the hospital now, or give her the card
17 and have her do it? And like I said, I had to be at work
18 on Monday morning. So I thought I would leave that
19 responsibility with her.

20 Q But you didn't have to be at work on Sunday evening,
21 did you?

22 A You said Saturday.

23 Q Sunday evening.

24 A Sunday evening?

25 Q Yes.

1 A Can you backtrack to the question you asked me first.

2 Q Sure. What I'm asking you is that Sunday evening,
3 when you took Child to Latasha Honeycutt's house, at that
4 time, you didn't need to be at work, did you?

5 A No, not yet. I had to be at work on Monday morning.

6 Q Okay. And, as you stated in your statement, you got
7 very upset about how he was breathing, didn't you?

8 A Yeah, I got upset. I hadn't seen him in 11 months.
9 He had been in other care.

10 Q Okay. And although you were very upset about it, you
11 never took him to the hospital or to the doctor, did you?

12 A No. We were right there at her house. Like I said,
13 I was going to leave that responsibility with her.

14 Q Well, there's been testimony that you would always
15 take your child to the doctor with a runny nose?

16 A Well, one time when he was an infant, he had a
17 cold -- like cold-like symptoms. And I gave him some -- I
18 tried giving him Tylenol first. And it didn't work as
19 well. So I gave him Motrin. And if the Motrin didn't
20 work well, I'd go back to the Tylenol.

21 But I got him some decongestant and all. And I gave
22 it to him. He seemed like he could fight a cold on his
23 own. So I called Easley Pediatrics and told them he had a
24 cold. And I didn't really feel that he needed to get
25 medical attention right then because he seemed like he was

1 fine on his own.

2 Q Okay, sir. Well, it's fair to say you're not a
3 doctor; right?

4 A No. I'm not a doctor.

5 Q And you wanted to --

6 A But they told me on the phone, they said that if they
7 can fight it on their own, then that's better for their
8 immune system than to give him an antibiotic.

9 Q You were so bad upset, but you didn't feel so bad
10 upset about your child's health that you didn't feel you
11 should take the child to the hospital, or the doctor?

12 A No. Like I said, it was just briefly.

13 Q You stated you didn't want to take that
14 responsibility, you put that responsibility in somebody
15 else's hands; is that right?

16 A Right, at the time. Because I didn't -- it was just
17 momentarily.

18 Q And a doctor --

19 A Now, if he would have consistently kept on breathing
20 like that, then, of course, I would have taken him to the
21 doctor.

22 Q And you're very aware that if you had taken him to
23 the hospital and taken him to the doctor, they would have
24 given a full examination of that child; right?

25 A Yes, sir.

1 Q And any doctor or hospital would have seen everything
2 that was going on with that child at that time?

3 A Yes, sir.

4 Q And you felt -- although you didn't have to have him
5 back Sunday at any particular time, you felt it was not
6 necessary for you to take that child to the doctor, even
7 though you were upset about his breathing?

8 A No. At that time, I didn't feel like it was
9 necessary. Because, like I said, it was just momentarily.
10 It was like a three or four second thing. He was
11 breathing funny. And I shifted in the car seat.

12 He had been crying, may I remind you, for like an
13 hour at my sister's house. So I figured the congestion
14 from all the snot, and crying, and tears, and all, that
15 may have been what it was. And his jaw was shaking a
16 little. So I figured he was about to start crying again,
17 or something.

18 Q All that was taking place. And what you did is you
19 went and told somebody else to take your child to the
20 doctor?

21 A Yes, I did.

22 Q That's what you did?

23 A Absolutely.

24 Q And so that we're clear. The prior conviction you
25 have, that's a felony; right?

1 A Yes, sir.

2 MR. RICHARDSON: I think that's all the questions I
3 have.

4 MR. O'CONNELL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. O'CONNELL:

7 Q Jamie, let's go back to Friday afternoon when you
8 picked up your son. You picked up your son with your
9 mother being present; is that correct?

10 A Yes.

11 Q Give us a run down of what happened that afternoon,
12 and then what happened that evening.

13 A Friday afternoon?

14 Q Yeah, Friday afternoon.

15 A Friday afternoon, when we picked him up, we went to
16 her residence, got him and we went back home.

17 Q So your mom's house?

18 A Right.

19 Q Okay. Who was with her and you at that time? Was
20 anybody else with you?

21 A No.

22 Q Okay. At her home, did anybody give the child any
23 medicine --

24 A My sister, Laura, may have been with us. I can't
25 remember.

1 Q And how old is Laura?

2 A Laura, she's 15 now.

3 Q Okay. And you stayed at home. You didn't go out
4 drinking, or anything of that nature, you stayed at
5 home --

6 A Of course not.

7 Q When did the child go to bed that night? Friday
8 night, what time did your child go to bed?

9 A I can't remember. I can't remember.

10 Is it okay if I refer to my statement?

11 Like I said, I'm not really good with times. It
12 wasn't any later than 10:00. It was by 9:30 or 10:00.

13 Q And how did the child go to sleep? Did the child
14 sleep with you, or in a separate bed, or what?

15 A He slept with me on the couch.

16 Q Is that normal? That's what you both do?

17 A Yeah. He slept right beside me.

18 Q So during the night, you would know if something were
19 happening to him; right?

20 A Yeah.

21 Q What time did you get up Saturday morning?

22 A 6:30.

23 Q Was Child up at 6:30?

24 A When I woke up, usually, he woke up there with me.

25 Q Okay. What did you do Saturday? Tell us what you

1 did all day Saturday.

2 A Well, we played outside in the yard.

3 Q You didn't leave the child alone at all? You didn't
4 go to the grocery store, or anything else? You stayed
5 with your child?

6 A I was with him the whole time, yes.

7 Q Okay. That evening, what did y'all do? Saturday
8 evening, what did y'all do?

9 A Saturday evening, we went to my step-momma's house.

10 Q Did anybody give the child any kind of medicines,
11 anything, any kind of medications, anything?

12 A No. He was fine, playing around, you know, acting --
13 playing with her kids and toys. They would come up and
14 jerk a toy out of his hand. And Child was the type, he
15 loved to share. So he wouldn't even cry if somebody took
16 a toy out of his hand. He wouldn't even cry if he had a
17 dirty diaper on usually.

18 Q That evening, tell everybody what happened that
19 evening?

20 A That evening?

21 Q Saturday evening, what happened?

22 A We went to her house. And he played, like I said,
23 with her kids. And then he -- she had made some lasagna.
24 And I had a big plate full of lasagna. And he ate
25 probably half of that plate. And then I fixed another

1 plate. And he was begging for more. He just loved it.

2 Q Okay. Did you stick around for a little while
3 longer, or did you go home?

4 A We went home after about four -- four and a half
5 hours.

6 Q What happened then? Did you go straight to bed, take
7 a shower, bed? What happened?

8 A I don't recall exactly, you know, when we got back.
9 It was about, I guess, 7:00, or a little before 7:00 when
10 we got back.

11 Q Was your child acting funny, any problems with the
12 child at that time?

13 A Huh-uh.

14 Q When did you help your momma get some of her
15 medicine?

16 A I helped her get medicine on Saturday, and I believe
17 maybe Friday.

18 Q So you go to bed Saturday evening through Sunday
19 morning. What time did you get up Sunday morning?

20 A Sunday morning, we got up at like 7:30.

21 Q Was Child up?

22 A Yes. He was looking me right in the eye.

23 Q How was he acting?

24 A He acted fine.

25 Q No one gave him any drugs, or medicine on Sunday -- I

1 mean, early Sunday morning; right?

2 A No.

3 Q Okay. Did he have any kind of like diaper rash, or
4 anything?

5 A Well, I noticed when we had picked him up -- he had a
6 soiled diaper on when I picked him up. It was weighed
7 down real heavy with urine. And I changed his diaper as
8 soon as I picked him up. And he had a rash on him then.

9 Q What did you do for the rash?

10 A I put some Desitin, or something, you know, diaper
11 rash cream on it.

12 Q Okay. Did you change his diaper normally?

13 A Yes, frequently.

14 Q Not your mom or anybody else; right?

15 A No. I wouldn't let nobody take care of him but me.

16 Q Okay. So you changed his diaper?

17 A Yeah.

18 Q Did you change his diaper on Sunday?

19 A Or course; I did.

20 Q Did he have a rash on Sunday?

21 A No. The rash was very clear by then, gone.

22 Q Okay. Sunday morning, what did you do Sunday morning
23 after getting up? Did you eat breakfast?

24 A Yeah. We ate -- I think I had gotten Child some
25 little -- they were like little children's meals. They

1 were pre-sealed in a plastic container. And he ate some
2 of that at about noon. I don't remember if he ate -- he
3 drank a bottle -- I mean, his sippy cup. And he ate some
4 of the Chef Boyardee or whatever it was that I had gotten
5 him, the plastic thing you put them in the microwave.

6 Q So he was okay around noontime; right?

7 A Uh-huh.

8 Q Did he play, go outside? What did he do?

9 A Yeah. We played a lot.

10 Q You then go to somebody else's house; right?

11 A Yes.

12 Q And that's who? Who did you go to see?

13 A When was this? Sunday?

14 Q Sunday afternoon, what did you do?

15 A Sunday, we went to my sister's house.

16 Q Okay. And where is that?

17 A That's in Fountain Inn.

18 Q Okay. How long were you at your sister's house?

19 A I want to say a couple of hours, about three hours.

20 Q During that whole time, did you give the child any
21 medication?

22 A Yes. I gave him the Equate brand grape-flavored
23 infant --

24 Q Did your mother, the grandmother of this child, give
25 him any medication?

1 A No.

2 Q Okay. How do you get -- where did this Tussionex
3 come from?

4 A I have no idea.

5 Q Okay. What time did you leave to go take the child
6 back to Ms. Honeycutt?

7 A We left Sunday at about 7:00 to 7:10 from the house.

8 Q From whose house?

9 A After we went -- we came back from my sister's house
10 and arrived at my house at about 7:10.. And I believe we
11 got there about 7:30.

12 Q You stopped at your house on the way home?

13 A Yes.

14 Q Did Child get out of the car?

15 A No. He stayed in the car the whole time.

16 Q Did anybody give Child any kind of drugs, or
17 anything?

18 A No, sir.

19 Q Okay. Do you have a problem with blocked memory
20 since this incident?

21 A Yes, sir. It's been very traumatic.

22 Q Like what have you been doing? What happens to you?

23 A Sometimes, my mind just goes completely blank in the
24 middle of a statement. Sometimes, I can't even complete a
25 statement. Like if somebody chimes in on me when I'm

1 talking, I'll just forgot what I'm saying.

2 Q What about Child , do you forget about him, or what
3 happened, or anything?

4 A No.

5 Q Does your mother -- your mother still loves Child ;
6 is that correct?

7 A My mom loved Child with all of her heart.

8 Q Would she have done anything to harm this child?

9 A Never.

10 Q There was no written agreement or any type of
11 agreement to take the child back to Latasha Honeycutt?

12 A No.

13 Q Why did you take him back if there wasn't an
14 agreement?

15 A Because, like I said, I had to work on Monday
16 morning. I had just got a new job. Because I wanted to
17 get him back. I wanted custody of him back.

18 Q You were doing that because that's what you thought
19 was the right thing to do?

20 A Yes.

21 MR. O'CONNELL: Answer any questions the other
22 attorney may have.

23 THE COURT: Mr. Harbin.

24 MR. HARBIN: May it please the Court.

25 THE WITNESS: May I have some water, please?

1 (Pause.)

2 THE WITNESS: Thank you, sir.

3 CROSS-EXAMINATION

4 BY MR. HARBIN:

5 Q Tell me when you're okay.

6 A I think I'm good now.

7 Q Mr. Morris, do you think your mom did anything here?

8 A No, absolutely not.

9 Q Has she told you that she did anything?

10 A No.

11 Q Has she ever mentioned anything at all?

12 A No.

13 Q Has she ever mentioned anything might have happened?

14 A (Witness shook head.)

15 Q You're certain?

16 A Well, she had some concern that maybe he may have
17 picked something up, or something like that, but she was
18 pretty certain he hadn't. And all of her bottles were
19 sealed and everything, so there's no way he could have.

20 Q Do you think there's a possibility that something
21 happened, even if she didn't know?

22 A I don't think there's even a sheer possibility.

23 There's no doubt in my mind that he didn't get it while he
24 was with us, period.

25 Q Do you believe everything your mother says?

1 A Yes, I do.

2 Q Your mother never made a statement to you at Easley
3 Hospital?

4 A I don't recall. Like I said, my memory has been --
5 will you be more specific, please?

6 Q I, certainly, can. Would you remember if she had
7 told you she had given the boy cough syrup?

8 A Yes, I would remember.

9 Q And she did not tell you that at Easley Hospital?

10 A Never.

11 Q She did not tell you that in the waiting room at
12 Easley Hospital?

13 A Never.

14 Q Now. That was -- was that your aunt that testified
15 before you? Is that your relationship?

16 A That was my stepmother.

17 Q Stepmother. I apologize. I'm a little bit confused.
18 Because she got up on the stand and described you very --
19 in detail as somebody that's a hypochondriac that can't
20 stand, basically, for any runny nose. You run to the
21 doctor if anything is wrong. Yet, you get up here and
22 respond in what, I think, is a perfectly reasonable
23 fashion to say a runny nose and congestion is nothing to
24 get upset about?

25 A Right. That's perfectly normal with any child to get

1 upper respiratory infections, and colds, and stuff like
2 that on a frequent basis.

3 Q And I, certainly, agree with that. But why would
4 your stepmother say you're going to run to the doctor at
5 the drop of a hat if you're not?

6 A Because she's always known me to be a hypochondriac.
7 When I lived with her, I was always complaining about
8 backaches and stuff like that, and wanting to go to the
9 doctor myself..

10 Q So you were a hypochondriac, and now you're not a
11 hypochondriac?

12 A No, sir. The circumstances didn't change any.

13 Q You told Detective Rita Burgess that --

14 A Except by the fact --

15 Q I apologize.

16 A -- that I know he was okay when I had him.

17 Q You knew he was okay. But when you dropped him off
18 at my client's house, you told the Court that you told her
19 to take him to the doctor. So he wasn't okay, or he was
20 okay. Tell us which one is right.

21 A Well, like I said, he was breathing funny
22 momentarily. But he had been crying for hours at my
23 sister's house. So, yes, I didn't think it was anything
24 to rush straight to the hospital about at that time, no.

25 Q So is that okay or not? I'm still confused. Was he

1 okay when you dropped him --

2 A Well, you're confusing me, too.

3 Q Was he okay when you dropped him off at Latasha's
4 house?

5 A Yes, he was okay. I mean, he was acting like a
6 perfectly normal child, other than just those few moments.

7 Q Okay. You testified -- or you gave a statement to
8 Detective Rita Burgess, and you were in court when she
9 told the Court that you told her that on the way over
10 there, Child 's jaw was shaking and that he had difficulty
11 breathing to the point that you had to move him --

12 A His jaw was shaking as if he was about to start
13 crying. That's the way he usually did when he was about
14 to cry, but he didn't start crying.

15 Q So he started to cry, but then stopped himself before
16 he started crying. So he only had the --

17 A Well, I picked him up out of the car seat as we was
18 driving. Like I said, it happened right before we got
19 there. And I shifted him a little bit, and he was fine.
20 And then we pulled up in the driveway. And I picked him
21 up out of the car seat and consoled him, and he was fine.

22 Q When you told, I believe it was Detective Burgess,
23 that you gave Child a dropper full of Tylenol, and then
24 you later told her that you gave him two dropper fulls. I
25 don't know that I heard --

1 A It's like I told you, sometimes my memory don't serve
2 me well, especially when something just happened to my
3 son.

4 Q You realize that was, of course, a pretty important
5 question to be answering at the time. And, at the time, I
6 believe it was less than two weeks since -- or, actually,
7 even closer in time than that from when everything
8 happened. So your memory was fairly fresh back then, or
9 no?

10 A What now?

11 Q When you gave -- this is four years later; right?
12 It's difficult to remember things today?

13 A Right.

14 Q Yes?

15 A No, not when my son was with me. I mean, besides the
16 timelines, I remember everything.

17 Q Except -- beside the timeline, you remember
18 everything, except you don't know how much Tylenol you
19 gave him, or do you even know if you gave him Tylenol?

20 A I did give him Tylenol.

21 Q Why is it not in the tox screen?

22 A I have no idea. Like those doctors came up here and
23 testified theirselves [sic], there wasn't sufficient testing
24 for anything. This all just seems crazy to me. I mean,
25 they said his liver should have been tested. The vomit

1 should have been tested. I don't understand. Why did
2 they not do that?

3 Q I can't answer that. But I can -- you testified that
4 you gave the child medicine, and that the medicine was
5 Tylenol?

6 A It was.

7 Q And, yet, medicine was found in the child's system,
8 but it wasn't Tylenol.

9 A I can't be accountable for that. I don't know why
10 anything other than Tylenol would be in there.

11 Q And it was the exact medication that was at your
12 mother's house?

13 A No. I never said he got Tylenol at my house. It was
14 the Equate brand grape-flavored infant -- Equate brand at
15 my sister's.

16 Q I'm referring to the medication that was in Child 's
17 system. That was the exact same kind of medication that
18 your mother had; right?

19 A What about it?

20 Q You heard the toxicologist say that there was
21 Tussionex found in Child 's system; right?

22 A Right.

23 Q You know your mother has Tussionex in her house;
24 right?

25 A I know she has Tussionex, yes.

1 Q And the Tussionex was ingested sometime that weekend;
2 right? It had to be.

3 A I don't know when it was ingested.

4 Q And the kid was with you the entire time; right?

5 A He was with me the entire time that weekend, yes,
6 until I dropped him off Sunday evening.

7 Q And he never left your sight for a second?

8 A No.

9 Q So if the child did consume Tussionex, it would have
10 been in front of you --

11 A When I would go to use the bathroom, he would follow
12 me in there and watch me, and try to use the bathroom by
13 himself.

14 Q So if Child consumed Tussionex over the weekend, it
15 would have been right in front of you?

16 A He didn't consume any Tussionex over the weekend.

17 Q Do you recall seeing Brandon at Child's funeral?

18 A Yes, I do.

19 Q Do you recall having a conversation with Brandon?

20 A I don't recall what the conversation was, if we did
21 have a conversation.

22 Q Do you recall, specifically, stating that you know
23 that your -- that something may have happened with your
24 mother's medication?

25 A Never. He used to always try to convince me. Your

1 son had nine times the lethal dose of an adult, and your
2 mom had to give it to him. And I would tell him, no, she
3 would never do that.

4 Q When you told Latasha that you thought that Child
5 ought to go to the doctor, she told you that she already
6 had an appointment on Wednesday for his ear infection,
7 didn't she?

8 A I believe so.

9 Q And you just testified that you didn't think it was
10 urgent. And, yet, you still urged her to take him to the
11 doctor?

12 A I told her if his symptoms got any worse to take him
13 to the doctor. And she said, I don't have his medical
14 records, and they will not see him without them. So I
15 told her, Well, if it gets any worse, you can always take
16 him to the emergency room. They don't need no medical
17 records.

18 Q Why would you assume his symptoms would get worse?

19 A I just told her if it got worse to take him.

20 Q Were you anticipating that his symptoms were going to
21 get worse because you knew something?

22 A No, sir.

23 Q When you and your mother were at Easley Hospital, you
24 overheard the nurse tell a doctor they found opiates in
25 his system. Why did you and your mother immediately leave

1 the area?

2 A When we were at the hospital, I don't recall ever
3 hearing that there was opiates in his system. But when
4 Brandon came to my mother's house and knocked on the door,
5 she told me he had asked her did somebody give him
6 something.

7 Q I'm sorry. I thought you were still talking. You
8 had mentioned -- you went out of your way, I thought, to
9 mention that Latasha didn't -- excuse me. That you kept
10 Child for a period of time; is that right?

11 A Right.

12 Q About three straight months?

13 A Right.

14 Q And that was because Latasha was unemployed and you
15 were able to take care of him, and you wanted to and did;
16 is that right?

17 A That's because she left me at that time for Brandon,
18 which used to be my best friend. And I told her she
19 wasn't taking Child. And she didn't really want to take
20 him, to my knowledge. So she left him with me.

21 Q And why did she leave you?

22 A Huh?

23 Q Why did she leave you?

24 A I don't know.

25 Q You were abusive towards her, weren't you?

1 A She was abusive towards me, sir.

2 Q She was abusive towards -- so tell me about that,
3 please.

4 A Like she was very jealous about any kind of attention
5 from any other women. We could be going down the road --
6 okay, for instance, one day we was going down the road and
7 a red Honda came by us with about three or four blonds in
8 it and they said, Whoo, just hollered out. And I just
9 turned my head and looked. And before I could even turn
10 my head back around, she had done slapped me in the face.

11 Q So every one that said she's unemotional here,
12 they're wrong. She's, apparently, very emotional.

13 A She is very emotional. In fact, she has some pretty
14 bad anger management problems. And she used to get a
15 social security check for it.

16 MR. HARBIN: No further questions.

17 MR. DEJONG: Nothing on redirect, Your Honor.

18 Step down, Mr. Morris.

19 THE COURT: Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Ladies and gentlemen, we're
22 going to go ahead and recess for the evening. Just be
23 back in the jury room at 9:15 in the morning.

24 Don't talk about the case. Don't do any kind of
25 outside investigation. And keep an open mind. 9:15 in

1 the morning.

2 Thank you.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 5:36 p.m.)

5 THE COURT: See you in the morning.

6 Thank you.

7 *****END OF TRANSCRIPT OF RECORD*****
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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-GS-39-2053
	)	
Jamie Edward Morris,	)	
Donna Lynn Phillips, and	)	
Natasha Honeycutt,	)	
	)	
Defendants.	)	

PARTIAL TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held July 26-July 27th, 2012, before
The Honorable D. Garrison Hill in the Court of General Sessions for Pickens
County, Pickens, South Carolina; attended by counsel, as follows:

APPEARANCES:

Doug Richardson, Assistant Solicitor
Jenny Barwick, Assistant Solicitor
13th JUDICIAL CIRCUIT SOLICITOR'S OFFICE
Pickens, SC 29671
Appearing for State of South Carolina

John DeJong, Esq.
Appearing for Jamie E. Morris

James O'Connell, Esq.
Appearing for Donna Phillips

Chase Harbin, Esq.
Appearing for Latasha Honeycutt

VIVIAN CROSS - CIRCUIT COURT REPORTER

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State of South Carolina v. Jamie Edward Morris et al

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Case No. 08-GS-39-2053

Jury Trial of July 26-27, 2012

Before The Honorable D. Garrison Hill

1 call any more witnesses?

2 MR. DEJONG: Yes, sir.

3 THE COURT: How long is the witness?

4 MR. DEJONG: I don't think real long.

5 THE COURT: Mr. O'Connell, how many
6 witnesses do you intend to call, sir?

7 MR. O'CONNELL: Elaine Plumber,
8 Laura Phillips. Time-wise, they should be short
9 -- and my client, Your Honor.

10 THE COURT: Mr. Harbin?

11 MR. HARBIN: I just have two short
12 witnesses and then, depending, my client.

13 THE COURT: Bring the jury on in.

14 (JURY IN @ 9:35 A.M.)

15 THE COURT: Good morning, Ladies and
16 Gentlemen. Mr. Dejong, you may call your next
17 witness, sir.

18 MR. DEJONG: Your Honor, if it may
19 please the Court, we call Ronnie Anders to the
20 stand.

21 (WITNESS TAKES STAND)

22 RONNIE ANDERS, being duly sworn to tell
23 the truth, the whole truth and nothing but the
24 truth, testified, as follows:

25 DIRECT EXAMINATION

1 BY MR. DEJONG:

2 Q. Where do you live, Mr. Anders?

3 A. Lane.

4 Q. Pickens? Easley?

5 A. (Affirmative nod), Pickens.

6 Q. All right.

7 A. Well, it's Easley. Pickens County.

8 Q. Do you know Jamie Morris?

9 A. Yes, I do.

10 Q. Do you know Donna Phillips?

11 A. Yes, I do.

12 Q. How do you know them?

13 A. Donna Phillips, she was our mail carrier
14 for several years, you know,. That's how I met
15 'em down there.

16 Q. Did you and Ms. Phillips have any kind of
17 relationship?

18 A. No.

19 Q. Okay. How would you describe -- you said
20 no relationship. How would you describe your
21 relationship?

22 A. We were just friends.

23 Q. About how long have you -- well, let me ask
24 you this, how long have you known Jamie Morris?

25 A. Oh, god. Probably fifteen years or longer.

1 I'm guessing.

2 Q. All right. I want to take you back, Mr.

3 Anders, to March of 2008, more particularly

4 March 16th of 2008. Did you see Jamie Morris

5 and Donna Phillips and Child that day?

6 A. Yes, I did.

7 Q. Where did you see them?

8 A. I went to their house. I called her that

9 morning about 8:30, talked to her on the phone,

10 and then I -- I asked her could I go look. I

11 went up there. It was about ten o'clock.

12 Q. How long did you stay there?

13 A. About two and a half hours.

14 Q. All right. So that would have put you to

15 about twelve?

16 A. Twelve, twelve thirty. Yeah.

17 Q. All right. Now, when you left, was Child

18 and Jamie and Ms. Phillips still at their house?

19 A. While I was there, her daughter called and

20 -- Brandi, her daughter, called and invited them

21 over to come to their house. Well, I stayed

22 there. When they left, I left.

23 Q. Okay. So ---

24 A. That was around twelve thirty.

25 Q. So if I understand your testimony

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10

1 correctly, they left and then you left but you
2 went separate ways?

3 A. Right. I went home.

4 Q. Were they actually physically leaving when
5 you left?

6 A. No, not yet -- oh, right when I left?

7 Q. Yeah.

8 A. Yes, sir.

9 Q. Okay.

10 A. I left right before they did.

11 Q. Now, that two or two-and-a-half hours that
12 you were there on March 16th of 2008, did you see
13 Child ?

14 A. Yes, I did.

15 Q. Can you describe for this jury what Child
16 was doing?

17 A. Well, when I got there they was taking him
18 outdoors. Okay? He got a little green John
19 Deere tractor/fourwheeler thing. He, Jamie,
20 Donna and them all were out there. He was
21 sitting on it. I spoke -- I bent down on my
22 knees and I was going to push the button. I
23 couldn't do that, that was killing my knees.
24 Anyway, he sat on that a little bit. Then he
25 got out and he walked across the yard, it was a

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1 good ways -- the length of the trailer. There's
2 a big old tree. We walked out there, we was all
3 with him, following him, seeing what he was
4 doing. And he came back behind the trailer and
5 wanted to get on the riding lawnmower. Well,
6 there was a big anthill sitting there, so he
7 couldn't do that. Jamie got him and brought him
8 back around. Sat him down in yard. He walked
9 back to the tractor. We all went back in the
10 house.

11 In a little while, Jamie got out this
12 machine that made all different things out of
13 PlayDoh; you know, you put different little
14 things. Well, Child was sitting there playing
15 with that. He threw one at me. Well, I wadded
16 it up in a ball, give it back to him. He
17 throwed it, hit me in the face. We laughed
18 about it.

19 But when we were outside, he was
20 struggling, he wasn't bawling or anything. He
21 was normal.

22 Q. How about in the house?

23 A. In the house, same way. Well, in the
24 meantime, in the house that's when Donna's
25 daughter called and invited them to her house.

1 Well, -- and Jamie got Child ready, changed
2 diapers, put clean clothes on and everything.
3 We sat around there for a little bit until
4 everybody got ready and then when they left, I
5 left.

6 Q. All right. Did Child appear to you to be
7 sleepy, at all, while you were there?

8 A. No, sir.

9 Q. Did he appear to you -- was he alert, not
10 alert, or how would you describe Child ?

11 A. He was alert.

12 Q. Was he responding or not responding, how
13 was he acting?

14 A. He was responding fine.

15 Q. All right. While you were there on March
16 the 16th, 2008, did you see any kind of
17 medication around the house?

18 A. What?

19 Q. Any kind of medicine?

20 A. What date was this -- you just said the
21 16th? When, the 16th? Or when?

22 Q. Yes, on the 16th.

23 A. I thought you said the 8th.

24 Q. Did you see anybody give Child any
25 medication or medicine while you were there?

1 A. No.

2 Q. Did y'all eat while you were there?

3 A. No.

4 Q. All right. Did you notice whether or not
5 Child had any coughing going on at that point
6 in time?

7 A. (Negative gesture).

8 Q. I'm sorry, you have to answer.

9 A. No, sir.

10 Q. Did you notice whether or not he had any
11 problems with his breathing at that point in
12 time?

13 A. No, sir.

14 MR. DEJONG: Thank you.

15 CROSS EXAMINATION

16 BY MR. RICHARDSON:

17 Q. Mr. Anders?

18 A. Yes, sir.

19 Q. How long have you known Donna Phillips and
20 Mr. Morris?

21 A. I'd say probably fifteen years but I've
22 known the family, her aunt and them, I picked up
23 their trash for nineteen years. I've been
24 knowing the family. But I probably been knowing
25 her for, like, fifteen years.

1 Q. So when you were at the house, was that a
2 social visit?

3 A. Yeah. Yes, sir.

4 Q. I'm sorry?

5 A. Just went over there, yeah.

6 Q. I'm sorry?

7 A. Visiting. Yeah.

8 Q. And you say that you were there about two
9 hours?

10 A. Yes, sir.

11 Q. You have to say "yes" or "no" so that she
12 (court reporter) can take it down.

13 A. Yes, sir.

14 Q. You were there about two hours?

15 A. About two, two-and-a-half hours.

16 Q. After -- you said that they left before you
17 left?

18 A. No, we all pretty well left about the same
19 time.

20 Q. That was about noon or twelve thirty?

21 A. Twelve thirty, yeah.

22 Q. After noon, did you ever see Child again?

23 A. Not until Monday, Monday evening. But Lynn
24 -- Donna called me up from the hospital and
25 wanted me to pick up Lori at her house when she

1 got off the school bus, because I guess she
2 didn't have nobody to call. I don't know. I
3 took her to her daddy's house.

4 Q. Okay.

5 A. Then late that evening me and my
6 granddaughter -- I have custody of two of my
7 grandkids. Okay? Me and my granddaughter,
8 later that evening, about six or seven o'clock,
9 we went to the hospital.

10 Q. So you saw Child in the hospital?

11 A. (Affirmative nod), at the hospital.

12 Q. That was Monday evening?

13 A. Yeah.

14 Q. But between twelve thirty on Sunday and
15 that time, did you see Child ?

16 A. I didn't talk to them no more or nothing.

17 Q. And the night before, that would be
18 Saturday night before ---

19 A. Um-humm.

20 Q. Were you over at the house that night?

21 A. No.

22 Q. So you didn't see what was going on at ---

23 A. I didn't talk to them all week until Sunday
24 morning.

25 Q. So you don't have any idea whether he was

1 coughing or anything at night?

2 A. He wasn't in that two and a half hours I
3 was there.

4 Q. That's all that you know?

5 A. That's all that I know.

6 Q. Is that correct?

7 A. (Affirmative nod).

8 Q. And certainly you don't know what happened
9 after you left, do you?

10 A. No, sir.

11 MR. RICHARDSON: Thank you. That's
12 all the questions that I have.

13 DIRECT EXAMINATION

14 BY MR. O'CONNELL:

15 Q. The events you're talking about were Sunday
16 morning, the 16th; is that correct?

17 A. Sir?

18 Q. The time that you went ---

19 A. Yes, sir.

20 Q. And at that time the child was actively
21 moving around?

22 A. He was doing perfect?

23 Q. Threw something at you?

24 A. Yeah, moving around, playing with his
25 PlayDoh.

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17

1 Q. Did he speak any?

2 A. (No verbal response).

3 Q. Did he talk to you any?

4 A. Well, he jabbered. Yeah, he was talking.
5 He was jabbering but I don't know what he was
6 saying.

7 Q. You don't have any kind of special
8 relationship with Donna Phillips?

9 A. No.

10 Q. You testified that you're a friend, that
11 you've known her; right?

12 A. Right.

13 Q. Did you do anything, do any work for her,
14 do any construction work, mow grass or anything
15 like that?

16 A. No. Well, I've got a business, a clean up
17 service. I went and hauled the little John
18 Deere for her in the truck 'cause she didn't
19 have no way to get it home. She called me up
20 and asked me would I get it and haul it for her,
21 and I said 'sure.' She was doing some
22 remodeling on her house and stuff, she had to go
23 to Lowe's and pick up some stuff and I hauled
24 that for her. But that's about it.

25 Q. They remodeling in their house?

1 A. Yeah.

2 MR. O'CONNELL: Thank you very much.

3 MR. DEJONG: Nothing on redirect, Your
4 Honor. I asked that this witness be excused.

5 THE COURT: Thank you, Mr. Anders.

6 (WITNESS STEPS DOWN)

7 THE COURT: Call your next witness.

8 MR. DEJONG: On behalf of Mr. Jamie
9 Morris, Your Honor, the defense rests.

10 THE COURT: All right. Mr.
11 O'Connell.

12 MR. O'CONNELL: May it please the
13 court, I would like to call Laura Phillips.

14 (WITNESS TAKES STAND)

15 LAURA PHILLIPS, being duly sworn to
16 tell the truth, the whole truth and nothing but
17 the truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY MR. O'CONNELL:

20 Q. What is your relationship with Jamie
21 Morris?

22 A. Jamie is my brother and Donna is my mother.

23 Q. The weekend of the 15th and 16th, starting on
24 the 14th, where were you?

25 A. I was with my brother and my mother.